

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.226. Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies.

- (a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to §26.211 of this title (relating to Rate-Setting for Services Subject to Significant Competitive Challenges), §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies) and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).
- (b) **Purpose.** The purpose of this section is to establish requirements for Chapter 58 electing incumbent local exchange companies (ILECs) to exercise pricing flexibility.
- (c) **Pricing flexibility.** An electing ILEC shall exercise pricing flexibility in accordance with this section and §26.227 of this title.
 - (1) Pricing flexibility includes:
 - (A) customer specific contracts;
 - (B) packaging of services;
 - (C) volume, term, and discount pricing;
 - (D) zone density pricing, with a zone to be defined as an exchange; and
 - (E) other promotional pricing.
 - (2) A discount or other form of pricing flexibility for a basic or nonbasic service may not be preferential, prejudicial, discriminatory, predatory or anticompetitive.
 - (3) This section does not prohibit a volume discount or other discount based on a reasonable business purpose.
 - (4) Notwithstanding PURA §58.052(b) or PURA, Chapter 60, Subchapter F, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate.
 - (5) An electing company may flexibly price a package that includes a basic network service in any manner provided by paragraph (1) of this subsection.
 - (6) An electing company may use pricing flexibility for a basic or nonbasic service.
- (d) **Pricing standards.** An electing company exercising pricing flexibility shall price its offerings pursuant to this subsection.
 - (1) The electing ILEC shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:
 - (A) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or
 - (B) the sum of tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.
 - (2) A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.
 - (3) The price of a package that combines regulated products or services with unregulated products or services shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.

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- (4) The price of a package that combines regulated products or services with the products or services of an affiliate shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the affiliate products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to the electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements and with paragraph (5) of this subsection. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, if any, and with paragraph (5) of this subsection.
 - (5) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.
- (e) **Requirements for customer-specific contracts.** Consistent with PURA §58.003, an electing ILEC may enter into customer-specific contracts for certain basic network services and certain nonbasic services as provided in this subsection. Additionally, for services listed in PURA §52.057(a), an electing ILEC may enter into customer-specific contracts pursuant to §26.211 of this title only if such customer-specific contracts are not inconsistent with the requirements of PURA, Chapter 58.
- (1) An electing company serving fewer than five million access lines may offer customer-specific contracts in accordance with this subsection.
 - (A) An electing company serving fewer than five million access lines shall not offer customer-specific contracts until it notifies the commission of the company's binding commitment to make the following infrastructure improvements consistent with PURA §58.003(b):
 - (i) install Common Channel Signaling 7 capability in each central office; and
 - (ii) connect all of the company's serving central offices to their respective local access and transport area (LATA) tandem central offices with optical fiber or equivalent facilities.
 - (B) The commitments described by subparagraph (A) of this paragraph do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.
 - (2) An electing company serving more than five million access lines may offer customer specific contracts in accordance with this subsection.
 - (A) Unless the other party to the contract is a federal, state, or local governmental entity, an electing company serving more than five million access lines may not offer in an exchange a service, or an appropriate subset of a service, listed in PURA §58.051(a)(1) – (4) or §58.151(1) – (4) in a manner that results in a customer-specific contract until the earlier of:
 - (i) September 1, 2003; or
 - (ii) the date on which the commission finds that at least 40% of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

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- (B) Pursuant to subparagraph (A)(ii) of this paragraph, the commission may find that the following subsets of services are served by an alternative provider that is not affiliated with an ILEC serving more than five million access lines:
- (i) flat residential rate local exchange telephone service;
 - (ii) residential primary directory listings;
 - (iii) residential tone dialing service;
 - (iv) lifeline and tel-assistance service;
 - (v) service connection for basic residential services;
 - (vi) flat business rate local exchange telephone service;
 - (vii) business primary directory listings;
 - (viii) business tone dialing service;
 - (ix) service connection for all business services;
 - (x) direct inward dialing for basic business services; and
 - (xi) receipt of a directory.
- (3) This subsection does not preclude an electing company from offering a customer-specific contract to the extent allowed by PURA as of August 31, 1999.