

**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.**

**Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT.**

**§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.**

- (a) **Purpose.** This section establishes a uniform method for counting access lines within a municipality by category as provided by §26.461 of this title (relating to Access Line Categories), sets forth relevant reporting requirements, and sets forth certain reseller obligations under the Local Government Code, Chapter 283.
- (b) **Application.** This section applies to all certificated telecommunications providers (CTPs) in the State of Texas.
- (c) **Definitions.** The following words and terms when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.
  - (1) **Customer** – The retail end-use customer.
  - (2) **Transmission path** – A path within the transmission media that allows the delivery of switched local exchange service or provides voice service.
    - (A) Each individual switched service shall constitute a single transmission path.
    - (B) Where services are offered as part of a bundled group of services, each switched service in that bundled group of services shall constitute a single transmission path.
    - (C) Services that constitute vertical features of a switched service, *e.g.*, call waiting, caller-ID, do not constitute a transmission path.
    - (D) Where a service or technology is channelized by the CTP and results in a separate switched path for each channel, each such channel shall constitute a single transmission path.
    - (E) Voice service provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, switched or not, and including Internet protocol technology, shall constitute a single transmission path.
  - (3) **Wireless provider** – A provider of commercial mobile service as defined by §332(d), Communications Act of 1934 (47 U.S.C. §151 *et seq.*), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66).
- (d) **Methodology for counting access lines.** A CTP's access line count shall be the sum of all lines counted pursuant to paragraphs (1), (2), (3), and (4) of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.
  - (1) **Switched transmission paths and services.**
    - (A) The CTP shall determine the total number of switched transmission paths, and shall take into account the number of switched services provided and the number of channels used where a service or technology is channelized.
    - (B) All switched services shall be counted in the same manner regardless of the type of transmission media used to provide the service.
    - (C) If the transmission path crosses more than one municipality, the line shall be counted in, and attributed to, the municipality where the end-use customer is located. Pursuant to Local Government Code §283.056(f), the per-access-line franchise fee paid by CTPs constitutes full compensation to a municipality for all of a CTP's facilities located within a public right-of-way, including interoffice transport and other transmission media that do not terminate at an end-use customer's premises, even though those types of lines are not used in the calculation of the compensation.

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- (2) **Nonswitched telecommunications services or private lines.**
  - (A) Each circuit used to provide nonswitched telecommunications services or private lines to an end-use customer, shall be considered to have two termination points, one on each customer location identified by the customer and served by the circuit.
  - (B) The CTP shall count nonswitched telecommunications services or private lines by totaling the number of terminating points within a municipality.
  - (C) A nonswitched telecommunications service shall be counted in the same manner regardless of the type of transmission media used to provide that service.
  - (D) A terminating point shall be counted in, and attributed to, the municipality where that point is located. In the event a CTP is not able to identify the physical location of the terminating point, that point shall be attributed to the municipality identified by the CTP's billing systems.
  - (E) Where dark (unlit) fiber is provided to an end-use customer who then lights it, the line shall be counted as a private line, by default, unless it is evident that it is used for providing switched services.
- (3) **Central office based PBX-type services.** The CTP shall count one access line for every ten stations served.
- (4) **Voice service.**
  - (A) The CTP shall count each end-use customer provided voice service as one access line. Services that constitute vertical features of a voice service, or are bundled with the voice service shall not be counted as a separate access line.
  - (B) In the event a CTP is unable to identify the physical location of an end-use customer utilizing voice service, but that end-use customer's billing address, as identified in the CTP's billing system, is located inside the boundaries of a municipality, the end-use customer's access line shall be attributed to the municipality where such billing address is located.
- (e) **Lines to be counted.** A CTP shall count the following access lines:
  - (1) all access lines provided to a retail end-use customer;
  - (2) all access lines provided as a retail service to other CTPs and resellers for their own end-use;
  - (3) all access lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end-use;
  - (4) all access lines a CTP provides as employee concession lines and other similar types of lines;
  - (5) all access lines provided as a retail service to a CTP's wireless and IXC affiliates for their own end-use, and all access lines provided as a retail service to any other affiliate for their own end-use;
  - (6) dark fiber, to the extent it is provided as a service or is resold by a CTP and shall exclude lines sold and resold by non-CTPs;
  - (7) any other lines meeting the definition of access line as set forth in §26.461 of this title;
  - (8) Lifeline lines;
  - (9) all retail pay telephone access lines; and
  - (10) all lines that provide voice service delivered by means of owned facilities, unbundled network elements or leased facilities, or resale that are not otherwise counted under paragraphs (1)-(9) of this subsection.

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- (f) **Lines not to be counted.** A CTP shall not count the following lines:
- (1) all lines that do not terminate at an end-use customer's premises;
  - (2) lines used by providers who are not end-use customers such as CTP, wireless provider, or IXC for interoffice transport, or back-haul facilities used to connect such providers' telecommunications equipment;
  - (3) lines used by a CTP's wireless and IXC affiliates who are not end-use customers, for interoffice transport, or back-haul facilities used to connect such affiliates' telecommunications equipment;
  - (4) lines used by any other affiliate of a CTP for interoffice transport; and
  - (5) any other lines that do not meet the definition of access line as set forth in §26.461 of this title.
- (g) **Reporting procedures and requirements.**
- (1) **Who shall file.** The record keeping, reporting and filing requirements listed in this section or in §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting) shall apply to all CTPs in the State of Texas.
  - (2) **Initial reporting requirements.**
    - (A) No later than January 24, 2000, a CTP shall file its access line count using the commission-approved *Form for Counting Access Line or Program for Counting Access Lines* with the commission. The CTP shall report the access line count as of December 31, 1998, except as provided in subparagraph (C) of this paragraph.
    - (B) A CTP shall not include in its initial report any access lines that are resold, leased, or otherwise provided to a CTP, unless it has agreed to a request from another CTP to include resold or leased lines as part of its access line report.
    - (C) A CTP that cannot file access line count as of December 31, 1998 shall file request for good cause exemption and shall file the most recent access line count available for December, 1999.
    - (D) A CTP shall not make a distinction between facilities and capacity leased or resold in reporting its access line count.
- (h) **Exemption.** Any CTP that does not terminate a franchise agreement or obligation under an existing ordinance shall be exempted from subsequent reporting pursuant to §26.467 of this title unless and until the franchise agreement is terminated or expires on its own terms. Any CTP that fails to provide notice to the commission and the affected municipality by December 1, 1999 that it elects to terminate its franchise agreement or obligation under an existing ordinance, shall be deemed to continue under the terms of the existing ordinance. Upon expiration or termination of the existing franchise agreement or ordinance by its own terms, a CTP is subject to the terms of this section.
- (i) **Maintenance and location of records.** A CTP shall maintain all records, books, accounts, or memoranda relating to access lines deployed in a municipality in a manner which allows for easy identification and review by the commission and, as appropriate, by the relevant municipality. The books and records for each access line count shall be maintained for a period of no less than three years.
- (j) **Proprietary or confidential information.**
- (1) The CTP shall file with the commission the information required by this section regardless of whether this information is confidential. For information that the CTP alleges is confidential and/or proprietary under law, the CTP shall file a complete list of the information that the

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CTP alleges is confidential. For each document or portion thereof claimed to be confidential, the CTP shall cite the specific provision(s) of the Texas Government Code, Chapter 552, that the CTP relies to assert that the information is exempt from public disclosure. The commission shall treat as confidential the specific information identified by the CTP as confidential until such time as a determination is made by the commission, the Attorney General, or a court of competent jurisdiction that the information is not entitled to confidential treatment.

- (2) The commission shall maintain the confidentiality of the information provided by CTPs, in accordance with the Public Utility Regulatory Act (PURA) §52.207.
  - (3) If the CTP does not claim confidential treatment for a document or portions thereof, then the information will be treated as public information. A claim of confidentiality by a CTP does not bind the commission to find that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue.
  - (4) Information provided to municipalities under the Local Government Code, Chapter 283, shall be governed by existing confidentiality procedures which have been established by the commission in compliance with PURA §52.207.
  - (5) The commission shall notify a CTP that claims its filing as confidential of any request for such information.
- (k) **Report attestation.** All filings with the commission pursuant to this section shall be in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to Be Filed With the Commission). The filings shall be attested to by an officer or authorized representative of the CTP under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties). The filings shall include a certified statement from an authorized officer or duly authorized representative of the CTP stating that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry.
- (l) **Reporting of access lines that have been provided by means of resold services or unbundled facilities to another CTP.** This subsection applies only to a CTP reporting access lines under §26.467 of this title, that are provided by means of resold services or unbundled facilities to another CTP who is not an end-use customer. Nothing in this subsection shall prevent a CTP reporting another CTP's access line count from charging an appropriate, tariffed administrative fee for such service.
- (m) **Commission review of the definition of access line.**
- (1) Pursuant to the Local Government Code §283.003, not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of "access line" provided by §26.461 of this title. The commission may not begin a review authorized by this subsection before March 1, 2002.
  - (2) As part of the proceeding described by paragraph (1) of this subsection, and as necessary after that proceeding, the commission by rule may modify the definition of "access line" as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines and consumer price index, as applicable, to the municipalities.
  - (3) After September 1, 2002, the commission, on its own motion, shall make the determination required by this subsection at least once every three years.