

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

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

§26.467. Rates, Allocation, Compensation, Adjustments and Reporting.

- (a) **Purpose.** This section establishes the following:
 - (1) rates for categories of access lines;
 - (2) default allocation for municipalities;
 - (3) adjustments to the base amount and allocation;
 - (4) municipal compensation; and
 - (5) associated reporting requirements.
- (b) **Application.** The provisions of this section apply to certificated telecommunication providers (CTPs) and municipalities in the State of Texas, unless specified otherwise in this section.
- (c) **Rate determination.** The sum of the amounts derived from multiplying the rate for each category of access line by the total number of access lines in that category in a municipality shall be equal to the base amount. The rate for each of the access line categories established pursuant to §26.461 of this title (relating to Access Line Categories) shall be calculated using a 1998 access line count in general accordance with the following formula:

B =	Total base amount for 1998.
A1 =	Allocation by percentage to Category 1 access lines.
A2 =	Allocation by percentage to Category 2 access lines.
A3 =	Allocation by percentage to Category 3 access lines.
L1 =	Number of access lines in Category 1.
L2 =	Number of access lines in Category 2.
L3 =	Number of access lines in Category 3.
R1 =	Fee per access line rate for Category 1.
R2 =	Fee per access line rate for Category 2.
R3 =	Fee per access line rate for Category 3.
R1 =	$(A1*B)/L1$
R2 =	$(A2*B)/L2$
R3 =	$(A3*B)/L3$
B =	$(L1*R1) + (L2*R2) + (L3*R3)$

- (d) **Estimating a 1998 access line count.** If a CTP does not provide an actual 1998 access line count, the commission shall use the CTP's 1999 access line count, reported pursuant to §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers), to derive an estimated 1998 access line count.
 - (1) **Estimating access line count for category 1 (residential) access lines.** The estimated statewide growth rate for category 1 access lines in 1999 is 4.5%. This percentage is determined using the statewide growth rate for residential access lines as reported to the Texas Legislature in the 1997 and 1999 reports entitled "Scope of Competition in Telecommunications Markets." The commission shall estimate a municipality's 1998 access line count for category 1 by discounting 4.5% from the 1999 line count for category 1 lines reported by a CTP.
 - (2) **Estimating access line count for category 2 (non-residential) and category 3 (point-to-point) access lines.** The estimated statewide growth rate for category 2 and category 3 access lines in 1999 is 7.0%. This percentage is determined using the statewide growth rate for business access lines as reported to the Texas Legislature in the 1997 and 1999 reports

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entitled "Scope of Competition in Telecommunications Markets." The commission shall estimate a municipality's 1998 access line count for category 2 and category 3 by discounting 7.0% from the 1999 line count for category 2 and category 3 lines reported by a CTP.

- (3) **Municipal request for exception.**
- (A) No later than March 15, 2000, a municipality may request the use of a municipality-specific growth rate(s), by category, for estimating its 1998 access line count, instead of using the estimated statewide growth rates determined under paragraphs (1) and (2) of this subsection. The municipality's request shall include its proposed growth rates(s), along with proof and methodology for deriving the growth rate(s), from public and verifiable sources.
 - (B) No later than March 15, 2000, a municipality that requests to use a municipality-specific growth rate(s) shall provide a copy of its filing to all CTPs that have filed access line counts for the municipality.
 - (C) No later than March 31, 2000, any CTP that has filed access line counts for that municipality may file objections to the municipality's proposed growth rate(s), if any. In order to be considered, an objection must include actual 1998 line count data for that municipality.
 - (D) Until resolution of the request approval process, the estimated statewide growth rate(s) determined under paragraphs (1) and (2) of this subsection shall be used to determine the municipality's 1998 access line count. Upon resolution of any objections to the request approval process, the commission shall develop a new access line count for 1998 incorporating the new growth rate(s), by category, as appropriate.
- (e) **Default allocation.** The commission's default allocation shall be a ratio of 1:2.3:3.5 for access line categories 1, 2, and 3 respectively. This default allocation represents an average of all allocation ratios filed by municipalities with the commission pursuant to §26.463 of this title (relating to Calculation and Reporting of a Municipality's Base Amount).
- (1) The commission shall establish access line rates for municipalities using the default allocation unless a municipality has filed its own allocation pursuant to §26.463 of this title.
 - (2) The access line rates established by the commission for municipalities using the default allocation shall remain in effect until a municipality updates its initial allocation pursuant to subsection (g) of this section or revises its allocation pursuant to subsection (h) of this section.
- (f) **Initial rates.** No later than March 1, 2000, the commission shall establish rates for each category of access line in a municipality. These rates shall be considered to be initial rates. The initial rates shall be implemented no later than 90 days from the date the commission establishes the rates. These initial rates shall remain in effect until the rates are updated pursuant to subsection (g) of this section or revised pursuant to subsection (h) of this section.
- (g) **Updated rates.** No later than April 14, 2000, the commission shall establish updated rates for each category of access line in a requesting municipality. The initial rates established under subsection (f) of this section shall be updated to incorporate municipal filings pursuant to paragraph (1) of this subsection and/or CTP filings pursuant to paragraph (2) of this subsection, as appropriate. Subject to approval by the commission, the updated municipal and CTP information shall be used to establish

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updated access line rates. The updated rates shall be in effect until revised pursuant to subsection (h) of this subsection.

- (1) **Updates to municipal base amount filings.** No later than March 31, 2000, a municipality may update its base amount and allocation filed with the commission pursuant to §26.463 of this title. No later than March 31, 2000, a municipality that filed a request to update its base amount and/or allocation shall forward a copy of its filing to all CTPs who have filed access line counts for the municipality.
 - (A) Updates to base amount. A municipal filing for updates to base amount shall use a methodology for calculating the base amount that is consistent with §26.463 of this title, and shall include appropriate justification for the update. Appropriate justification may include:
 - (i) receipt of late payments from CTPs attributable to 1998 usage of rights-of-way;
 - (ii) reduction to judgment of disputed payments attributable to 1998 usage of rights-of-way;
 - (iii) settlement of disputed payments attributable to 1998 usage of rights-of-way;
 - (iv) eligibility under effective agreements or ordinances to receive a known and measurable amount due to specifically prescribed fee rate escalations provisions for the period between January 1, 2000 and March 1, 2000; and
 - (v) an inadvertent base amount computational error.
 - (B) Updates to allocation. A municipality that has filed with the commission its own allocation pursuant to §26.463 of this title may file an updated allocation no later than March 31, 2000.
 - (2) **Updates to CTP access line counts.** No later than March 15, 2000, a CTP may request to update its access line count filed with the commission pursuant to §26.465 of this title. A CTP's request for updates to access line count shall use a methodology for counting access lines that is consistent with §26.465 of this title, and shall include appropriate justification for the update. Appropriate justification may include, but is not limited to:
 - (A) an inadvertent access line count computational error;
 - (B) reconciliation of reported retail and resold access line lines; and
 - (C) access line counting issues associated with merger, sale, or transfer of CTPs.
 - (3) **Choosing lower than maximum rate(s).** The rates obtained by applying the allocation to the base amount and dividing the amounts allocated to each category by the appropriate number of access lines in that category in a municipality shall be considered to be maximum rates for a municipality. No later than March 31, 2000, a municipality that wishes to choose lower access line rate(s) than the maximum initial rates established under subsection (f) of this section, shall notify the commission and all CTPs that filed access line counts for that municipality of the lower access line rate(s) it chooses. If a municipality's request to choose lower initial rate(s) is higher than its updated rates, the updated rates shall remain in effect until revised pursuant to subsection (h) of this section.
- (h) **Revised rates.** No later than October 15 of each calendar year, upon request from a municipality pursuant to paragraphs (1) and (2) of this subsection, the commission shall establish revised access line rates for each category of access line in a municipality, as applicable. A CTP shall apply the revised rates to access lines in a municipality in January of the next calendar year and compensate a municipality pursuant to the revised rates.

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- (1) **Adjustments within established rates.** No later than September 1 of each calendar year, a municipality may change its rates within the maximum rates by notifying the commission and all CTPs in that municipality that it wishes to revise its access line rate for the next calendar year. In its notification to the commission and the CTPs, the municipality shall indicate the rates that it wishes to have the commission apply in the next calendar year. Upon such notification, the commission shall revise the rates accordingly.
 - (2) **Revising allocation formula.** No later than September 1 of each calendar year, and not more than once every 24 months, a municipality may petition a modification of the default allocation or its own allocation by notifying the commission and all affected CTPs in the municipality. In its notification to the commission and the CTPs, the municipality shall designate the allocation that it wishes to have the commission apply in the next calendar year.
- (i) **Resolution of municipal allocations.**
- (1) The commission shall implement a municipality's allocation unless, the commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory.
 - (2) No later than March 15, 2000 any affected CTP may complain regarding a municipality's initial allocation filed pursuant to §26.463 of this title. No later than April 7, 2000 any affected CTP may complain regarding a municipality's updated allocation filed pursuant to subsection (g)(1)(B) of this section. No later than September 15 of any calendar year any affected CTP may complain regarding a municipality's revised allocation filed pursuant to subsection (h)(2) of this section.
 - (3) Where the market price of a telecommunications service is less than or equal to the amount derived from multiplying the access line rates with the number of access lines used to provide that service, the allocation used to develop the access line rate shall be presumed to be discriminatory, not just and reasonable and not competitively neutral.
- (j) **Consumer price index (CPI) adjustment to commission-established rates.** Beginning 24 months after the commission establishes access line rates, the commission shall annually adjust the rates per access line by category for each municipality by an amount equal to one-half the annual change, if any, in the most recent consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics.
- (k) **CTP implementation of commission-established rates.** The requirements listed in this subsection shall apply to all CTPs in the State of Texas, except those exempted pursuant to §26.465 of this title.
- (1) **Interim compensation.** CTPs shall continue to compensate municipalities at the rates required under the terms of the expired or terminated agreements or ordinances until the CTP implements the commission-established rates. A CTP not subject to an existing franchise agreement or ordinance that wants to construct facilities to offer telecommunications services in the municipality shall pay fees that are competitively neutral and non-discriminatory, consistent with the charges of the most recent agreement or ordinance between the municipality and the CTP serving the largest number of access lines within the municipality until the right-of-way fees established by the commission take effect.
 - (2) **Billing systems.** A CTP shall develop and maintain billing systems as necessary to implement access line rates, by category, as established by the commission. These systems

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must be sufficient to substantiate compliance with the access line reporting requirements in this section.

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- (3) **Quarterly compensation and reporting.** All CTPs are responsible for reporting to the commission their own quarterly access line count report and compensating each municipality, absent a reporting arrangement as described in subsection (l) of this section. All CTPs shall implement commission-established rates for each quarter. Unless otherwise specified, periodic reporting shall be consistent with this subsection and §26.465 of this title.
- (A) **Quarterly access line count report.**
- (i) No later than 45 days from the end of the preceding calendar quarter, a CTP shall file a quarterly access line count report for the preceding calendar quarter with the commission.
 - (ii) The quarterly access line count report shall include a count of the number of access lines, by category, by municipality, for the end of each month of the preceding quarter.
 - (iii) If a CTP deducts or includes a direct write-off pursuant to subsection (m)(2) of this section, the CTP shall complete a reconciliation report, showing a monthly delineation of the amount added to the total payment due to previously uncollectible direct write-offs, and the amount deducted from the total payment due to direct write-offs. This report shall be part of the quarterly access line count report filing.
 - (iv) The report shall exclude lines that are resold, leased or otherwise provided to other CTPs unless the CTP is reporting on behalf of another CTP pursuant to subsection (l) of this section.
 - (v) The CTP contact person listed in the Municipal Access Line Reporting System (MARS) at the time that the quarterly access line counts are entered for each quarter shall be the duly authorized representative of the CTP who certifies that the information contained in the report is based upon personal knowledge and is true and correct.
 - (vi) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.
 - (vii) Reports required under this subsection may be used by the commission only to verify the number of access lines that serve customer premises within a municipality.
 - (viii) On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.
- (B) **Compensation.**
- (i) All CTPs shall apply the most recent commission-established rates to access lines in a municipality.
 - (ii) The municipal compensation shall be an amount equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality at the end of each month in a calendar quarter as reflected in reports filed pursuant to subparagraph (A) of this paragraph.
 - (iii) All payments for calendar quarters shall be made no later than 45 days from the end of that quarter.
- (4) **Adequate proof of reporting and compensation responsibilities.**
- (A) Definition of "underlying CTP" and "reselling CTP."
- (i) An underlying CTP is a CTP that owns facilities or provides facilities or capacity to another CTP in the rights-of-way of municipalities.

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- (ii) A reselling CTP is a CTP to whom an underlying CTP resold, leased or otherwise provided access lines that extend to the end-use customer's premises.
 - (B) For the purposes of this paragraph, "adequate proof" shall consist of a written agreement that specifically cites, and assigns responsibility for compliance with, the Texas Local Government Code, Chapter 283, and the reporting and compensation requirements of this subchapter.
 - (C) To ensure that each CTP reports and compensates municipalities for those lines that it uses to serve end-use customers, underlying CTPs and their reselling CTPs shall, as part of their business relationship, enter into an agreement that meets the adequate proof standard of this paragraph.
 - (D) An underlying CTP shall obtain adequate proof that the reselling CTP will directly report its lines and remit the related payments to municipalities.
 - (E) A reselling CTP must provide adequate proof to the underlying CTP upon request.
 - (F) The underlying CTP must acquire this adequate proof within 90 days of the effective date of this section, at the time of the signing of an initial interconnection agreement, or at the time of signing its agreement for the provision of services if the parties do not have an interconnection agreement
 - (G) If the underlying CTP fails to obtain adequate proof that the reselling CTP will include the access line in its monthly count and remit payment on those access lines to the municipality, the underlying CTP must include such lines in its monthly count of access lines and remit a right-of-way fee to the municipality.
 - (H) A CTP, whether an underlying CTP or reselling CTP, shall make its adequate proof agreements available for review by municipalities and the commission upon request.
- (l) **Alternate reporting and compensation arrangements.** Notwithstanding any other subsection, a CTP shall be subject to the following terms when making alternate reporting and compensation arrangements.
- (1) For the purposes of this subsection, "underlying CTP" and "reselling CTP" shall have the same meanings as assigned in subsection (k) of this section.
 - (2) **Designated reporting party.** A CTP may reach a written agreement separate from any other agreement, including the adequate proof agreement, to have a designated reporting party fulfill the reporting and compensation requirements of this section on its behalf. If the CTP is a reselling CTP, the designated reporting party may be the underlying CTP.
 - (A) If such an agreement is reached, the designated reporting party shall file the quarterly access line count report in each municipality, by category, on behalf of the CTP, and also compensate the municipality for those lines.
 - (B) The designated reporting party shall file the quarterly access line count report for each municipality, by category, with the commission on a disaggregated basis by CTP.
 - (C) Nothing in this subsection shall prevent a designated reporting party from charging a reasonable administrative fee for reporting and compensating a municipality on behalf of a CTP.
 - (D) Nothing in this subsection shifts the liability from a CTP, reselling or otherwise, for non-payment of municipal compensation and failure to report pursuant to this section.

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- (3) **Affiliates.** A CTP may file access line reports and remit payments for itself and its affiliates that are CTPs on an aggregated basis. If the CTP does so, the CTP shall include a list of the affiliates and their certification numbers in its quarterly access line count report.
- (m) **Pass-through.** A CTP recovering its municipal compensation from its customers within the boundaries of a municipality shall not recover a total amount greater than the sum of the amounts derived from the multiplication of access line rates by the number of lines, per category, for that municipality. Pass-through of the commission's rates established under this chapter shall be considered to be a pro rata charge to customers.
- (1) Where a CTP chooses to pass through the municipal fee to its customers such CTP shall not pass through any costs associated with its administration of municipal fees. The pass-through amount shall not exceed the access line rate, by category, established by the commission for that municipality.
- (2) A CTP shall be allowed to deduct from its current payment any amounts that are direct write-offs as a result of its collection efforts. Any amounts subsequently recovered from the customer after the direct write-offs shall be included in the amounts payable to each affected municipality in the month(s) received. There shall be no reduction in payment for any estimated uncollectible allowances reported for financial purposes by the CTP.
- (3) Beginning January 1, 2001, on request from the commission, a CTP shall report the amounts collected in municipal fees from customers and the municipal fees paid to municipalities for a period determined by the commission. This report shall be filed with the commission by the CTP no later than 60 days from the date the CTP receives this request.
- (n) **Compensation from customers of lifeline or other low-income assistance programs.** A municipality may choose to forgo municipal compensation from access lines serving Lifeline customers or customers of other similar low-income assistance programs. A municipality electing this option shall notify all CTPs in the municipality of this decision before September 1 on any given year. Upon receipt of such notification, CTPs shall exclude such end-use customers from their quarterly access line count, not pass through a municipal fee to such end-use customers for the next calendar year, and shall be relieved of any obligation to pay fees on such access lines to the municipality.