

**PROJECT NO. 31973**

<b>RULEMAKING TO IMPLEMENT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SENATE BILL 5 AMENDMENTS TO</b>	<b>§</b>	
<b>LOCAL GOVERNMENT CODE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CHAPTER 283</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §26.461 and §26.465  
AS APPROVED AT THE FEBRUARY 9, 2006, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.461, relating to Access Line Categories, and §26.465, relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers. These amendments are necessary to address the impact of Senate Bill 5 on the commission's telecommunications right-of-way rules under Subchapter R, Provisions Relating to Municipal Regulation and Rights-of-way Management. Additional amendments to §26.465 are also necessary to remove outdated reporting deadlines and reporting requirements.

Senate Bill 5 amended §283.002, of the Local Government Code, by amending subsection (2) and adding subsection (7), which resulted in an expanded definition of the term "certificated telecommunications provider." The commission is amending §26.461 and §26.465 to implement this amendment. SB 5 also amended the Public Utility Regulatory Act (PURA) by adding §55.1735, relating to Charge for Pay Phone Access Line. The commission is amending §26.465, relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Provides, to clarify that payphones lines are classified as Category 2 access line. Finally, the commission is deleting §26.465(g), relating to reporting procedures and requirements, as the deadlines regarding initial reporting in that section are no longer relevant.

Elango “Raj” Rajagopal, Senior Policy Analyst, Infrastructure and Reliability Division, and Andrew Kang, Staff Attorney, Legal Division, have determined that for each year of the first five-year period the proposed amended sections are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section.

Mr. Rajagopal and Mr. Kang have determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of enforcing these sections will be an equitable assessment of municipal access line fees from certificated telecommunications providers and voice service providers in a technology neutral manner. In doing so, the amendments recognize the changes in telecommunication technology.

Mr. and Mr. Kang have determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is some anticipated economic cost to persons who are required to comply with the amended sections as proposed. However, the public benefit of imposing municipal fees in a non-discriminatory manner should outweigh those costs.

Mr. Rajagopal and Mr. Kang have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under §2001.022 of the Administrative Procedure Act (APA).

The commission staff will conduct a public hearing on this rulemaking, if interested parties request a hearing pursuant to §2001.029 of the APA, or if a public hearing is deemed necessary by commission staff. The request for a public hearing must be received within 20 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments, if any, are due 45 days from the date of publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of the commission's rules. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amended sections. The commission will consider the costs and benefits in deciding whether to adopt the amended sections. In addition, staff seeks comments from interested parties on whether the proposed definition of "voice service" in §26.465 should also include a reference to 911 capabilities as suggested by the State of Texas as follows:

Voice services would mean services using a physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, between an end user customer's premises and a service provider's network that, when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network.

All comments should refer to Project Number 31973.

These amendments are proposed under the PURA §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. These amended sections are also proposed under the Texas Local Government Code §§283.056(c)(3) and 283.058, which grant the commission the jurisdiction over municipalities, certificated telecommunications providers, and voice service providers, necessary to enforce Chapter 283 and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner. The amendments are necessary to implement Texas Local Government Code §283.002(2) and (7).

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Local Government Code §§283.056, 283.058, 283.002(2) and (7).

**§26.461. Access Line Categories.**

(a)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Certificated telecommunications provider (CTP)** – A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

(3)-(5) (No change.)

(6) **Voice service** – Voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

(d) **Access line categories.** There shall be three categories of access lines. The three categories shall be as follows:

(1) Category 1 shall include both analog and digital residential switched access lines and any residential voice service. It shall also include point-to-point private lines, whether residential or non-residential, only to the extent such lines provide burglar alarm or other similar security services.

- (2) Category 2 shall include all analog and digital non-residential switched access lines and any non-residential voice service.
- (3) (No change.)

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

(a)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Transmission path** — A path within the transmission media that allows the delivery of switched local exchange service or provides a voice service.

(A)-(B)(No change.)

(C) Services that constitute vertical features of a switched local exchange service or a voice service, such as call waiting, caller-ID, etc., ~~that do not require a separate switched path~~, do not constitute a transmission path.

(D) (No change.)

(E) Packet voice services, without regard to the delivery technology, switched or not, and including Internet protocol technology, shall constitute a single transmission path.

(3) **Voice service** — voice communications services provided through wireline facilities located at least in part in the public rights-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332 (d).

(4)(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), ~~and (3), and (4)~~ of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.

(1)-(3) (No change.)

- (4) **Voice service.**

(A) The CTP shall count each end-use customer provided voice service as one access line. Services that constitute vertical or optional 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 not able to identify the physical location of the end-use customer, that physical location shall be attributed to the municipality identified by the CTP's billing systems as the end-use customer's billing address.

- (e) **Lines to be counted.** A CTP shall count the following access lines:

(1)-(6) (No change.)

(7) any other lines meeting the definition of access line as set forth in §26.461 of this title; ~~and~~

(8) Lifeline lines;:-



(9) all voice service access lines provided to end-use customers that allow such end-use customers to receive calls that originate through or on the public switched telephone network and/or that allow such end-use customers to send calls that terminate on the public switched telephone network; and

(10) all retail pay telephone access lines.

(f) **Lines not to be counted.** A CTP shall not count the following lines:

(1)-(3) (No change.)

(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;

(6) all voice service access lines provided to end-use customers which are offered at no cost or which do not allow such end-use customers to receive calls that originate through or on the public switched telephone network and/or that do not allow such end-use customers to send calls that terminate on the public switched telephone network, such as personal computer-to-personal computer voice connectivity; and

(7) Services that constitute vertical or optional features of a voice service, or are bundled with the voice service.

~~(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.~~

~~(g)(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.

~~(h)(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.

~~(i)(i)~~ **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 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.

~~(j)(4)~~ **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.

~~(k)~~(4) **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 (relating to Rates, Allocation, Compensation, Adjustments, and Reporting) 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.

~~(l)~~(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 within 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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 10th DAY OF FEBRUARY 2006 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**