



Control Number: 44403



Item Number: 7

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2015 JUL 23 AM 11:51  
P. L. J. OLIVER

# OPEN MEETING COVER SHEET

**MEETING DATE:** July 30, 2015  
**DATE DELIVERED:** July 23, 2015  
**AGENDA ITEM NO.:** 15  
**CAPTION:** Project No. 44403 – Rule Review of Chapter 26 Substantive Rules Applicable to Telecommunications Service Providers pursuant to Texas Government Code § 2001.039  
**ACTION REQUESTED:** Discussion and possible action with respect to Proposal for Adoption

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# Public Utility Commission of Texas

## Memorandum

2015 JUL 23 AM 11:51

FILING CLERK

Date: July 23, 2015

To: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

From: Meena Thomas, Competitive Markets Division *M.T.*  
Jason Haas, Legal Division

Subject: **Item No. 15: Project No. 44403** – *Rule Review of Chapter 26 Substantive Rules Applicable to Telecommunications Service Providers Pursuant to Texas Government Code § 2001.039 – Proposal for Adoption*  
Staff's Draft Proposal for Adoption

Attached for your review is Staff's Proposal for Adoption to readopt Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, for the Commission's consideration at the July 30, 2015 open meeting.

Texas Government Code §2001.039 requires that each state agency to review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), the purpose of the review was to assess whether the reasons for adopting or readopting the rules continue to exist and whether any section of Chapter 26 needs to be repealed or amended.

The commission received comments from Network Communications International Corp. (NCIC) regarding inmate phone service. No other party filed comments. NCIC suggested that the commission propose a rulemaking project to address inmate telephone rate caps, provider assessed ancillary fees and single-payment products. Since NCIC's comments do not address the amendment or repeal of an existing rule, its recommendations fall outside the scope of this review. Staff has determined that the reasons for initially adopting Chapter 26 continue to exist.

Please contact Meena Thomas at (512) 936-7344 or Jason Haas at (512) 936-7295 or Liz Kayser at (512) 936-7390 with any questions.

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PROJECT NO. 44403

RULE REVIEW OF CHAPTER 26	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES APPLICABLE TO	§	
TELECOMMUNICATIONS SERVICE	§	OF TEXAS
PROVIDERS PURSUANT TO TEXAS	§	
GOVERNMENT CODE §2001.039	§	

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(STAFF RECOMMENDATION)  
ORDER READOPTING  
CHAPTER 26, SUBSTANTIVE RULES APPLICABLE TO  
TELECOMMUNICATIONS SERVICE PROVIDERS

9 The Public Utility Commission of Texas (commission) initiated a review for Texas  
10 Administrative Code (TAC), Title 16, Chapter 26, Substantive Rules Applicable to  
11 Telecommunications Service Providers, pursuant to Administrative Procedure Act (APA), Texas  
12 Government Code §2001.039, *Agency Review of Existing Rules*. The purpose of this review was  
13 to consider whether to re-adopt this Chapter. The notice of intention to review Chapter 26 was  
14 published in the Texas Register on March 20, 2015 (40 TexReg 1717). Project Number 44403 is  
15 assigned to this proceeding. Having completed this review, the commission finds that the  
16 reasons for initially adopting Chapter 26 continue to exist and re-adopts Chapter 26.

17

18 The commission received comments from Network Communications International Corp. (NCIC).  
19 The commission did not receive any written reply comments.

20

21 ***Comments on Inmate Phone Service***

22 NCIC submitted comments regarding inmate phone service but did not refer to an existing rule.  
23 NCIC suggested that the commission propose a rulemaking project to address inmate telephone  
24 rate caps, provider assessed ancillary fees and single-payment products. NCIC stated that most

1 states have implemented caps on inmate telephone rates over the years. However, according to  
2 NCIC, along with the transition from Traditional Collect Calling to Prepaid Collect Calling,  
3 where billing is done via a credit card rather than a LEC phone bill, providers are adding  
4 transaction/funding fees to their tariffs which allow them to assess ancillary fees in addition to  
5 the allowed per-minute rates. NCIC expressed concern that providers would use a third party  
6 billing service that is neither incorporated nor certified to operate in a state, to bill single payment  
7 products. Using these third party billing services would allow providers of inmate calling  
8 services to bypass regulations, sales and franchise taxes, state and federal required fees and USF  
9 as well as hide revenue from payment requirements in a contract as they are not revenues billed  
10 by such providers. NCIC cited the ruling by the Alabama Public Service Commission in January  
11 2015 which restructured inmate telephone rules. NCIC recommended that the commission take a  
12 similar approach and urged the commission to adopt rate caps proposed by NCIC for Collect and  
13 Prepaid calls, Ancillary Fees and Single Payment Products such as Text Collect and Single  
14 Payment Credit/Debit card calls for Inmate Telephone Calls.

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16 ***Commission Response***

17 The Commission appreciates the comments submitted by NCIC regarding regulation of inmate  
18 phone service. The Commission notes that the purpose of the review of Chapter 26 rules is to  
19 assess whether the reason for adopting or readopting the rules continues to exist and whether any  
20 section of Chapter 26 needs to be repealed or amended. NCIC's comments do not address the  
21 amendment or repeal of an existing rule and therefore fall outside the scope of this review.

22

1 The commission readopts Chapter 26 pursuant to the Public Utility Regulatory Act, Texas  
2 Utilities Code Annotated §14.002 (West 2007 & Supp. 2014), which provides the Public Utility  
3 Commission with the authority to make and enforce rules reasonably required in the exercise of  
4 its powers and jurisdiction; and Texas Government Code §2001.039 (West 2008 & Supp. 2014)  
5 which requires each state agency to review its rules every four years.

6

7 Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory  
8 Act, §14.002; Texas Government Code §2001.039.

9

1 **CHAPTER 26 - SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS**  
2 **SERVICE PROVIDERS**  
3

4 **SUBCHAPTER A. GENERAL PROVISIONS.**

5 §26.1. Purpose and Scope of Rules.

6 §26.3. Severability Clause.

7 §26.4. Statement of Nondiscrimination.

8 §26.5. Definitions.

9 §26.6. Cost of Copies of Public Information.

10 §26.7. Local Exchange Company Assessment.

11 §26.9. Classification System for Violations of Statutes, Rules, and Orders Applicable to  
12 Telecommunications Service Providers.

13 **SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION.**

14 §26.21. General Provisions of Customer Service and Protection Rules.

15 §26.22. Request for Service.

16 §26.23. Refusal of Service.

17 §26.24. Credit Requirements and Deposits.

18 §26.25. Issuance and Format of Bills.

19 §26.26. Foreign Language Requirements.

20 §26.27. Bill Payment and Adjustments.

21 §26.28. Suspension or Disconnection of Service.

22 §26.29. Prepaid Local Telephone Service (PLTS).

23 §26.30. Complaints.

24 §26.31. Disclosures to Applicants and Customers.

25 §26.32. Protection Against Unauthorized Billing Charges ("Cramming").

26 §26.33. Prompt Payment Act

27 §26.34. Telephone Prepaid Calling Services.

28 §26.37. Texas No-Call List.

29 **SUBCHAPTER C. QUALITY OF SERVICE.**

30 §26.51. Reliability of Operations of Telecommunications Providers.

31 §26.52. Emergency Operations.

32 §26.53. Inspections and Tests.

- 1        §26.54. Service Objectives and Performance Benchmarks.  
2        §26.55. Monitoring of Service.  
3        §26.57. Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its  
4            Provider of Last Resort Obligation.

5        **SUBCHAPTER D.     RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION.**

- 6        §26.71. General Procedures, Requirements and Penalties.  
7        §26.72. Uniform System of Accounts.  
8        §26.73. Annual Earnings Reports.  
9        §26.74. Reports on Sale of Property and Mergers.  
10       §26.75. Reports on Sale of 50% or More of Stock.  
11       §26.76. Gross Receipts Assessment Report.  
12       §26.78. State Agency Utility Account Information.  
13       §26.79. Equal Opportunity Reports.  
14       §26.80. Annual Report on Historically Underutilized Businesses.  
15       §26.81. Service Quality Reports.  
16       §26.85. Report of Workforce Diversity and Other Business Practices.  
17       §26.87. Infrastructure Reports.  
18       §26.89. Nondominant Carriers Obligations Regarding Information on Rates and Services.

19       **SUBCHAPTER E.     CERTIFICATION, LICENSING AND REGISTRATION.**

- 20       §26.101. Certification of Convenience and Necessity Criteria.  
21       §26.102. Registration of Pay Telephone Service Providers.  
22       §26.107. Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other  
23            Nondominant Telecommunications Carriers.  
24       §26.111. Certificate of Operating Authority (COA) and Service Provider Certificates of Operating  
25            Authority (SPCOA) Criteria.

26       **SUBCHAPTER F.     REGULATION OF TELECOMMUNICATIONS SERVICE.**

- 27       §26.121. Privacy Issues.  
28       §26.123. Caller Identification Services.  
29       §26.124. Pay-Per-Call Information Services Call Blocking.  
30       §26.125. Automatic Dial Announcing Devices (ADADs).  
31       §26.127. Abbreviated Dialing Codes.



- 1 §26.128. Telephone Directories.
- 2 §26.129. Standards for Access to Provide Telecommunications Services at Tenant Request.
- 3 §26.130. Selection of Telecommunications Utilities.
- 4 §26.131. Competitive Local Exchange Carrier (CLEC)-to-CLEC and CLEC-to-Incumbent Local  
5 Exchange Carrier (ILEC) Migration Guidelines.
- 6 §26.133. Business and Marketing Code of Conduct for Certificated Telecommunications Utilities  
7 (CTUs)
- 8 §26.134 Market Test to be Applied in Determining if Markets with Populations Less than 30,000  
9 Should Remain Regulated on or After January 1, 2007.

10 **SUBCHAPTER G. ADVANCED SERVICES.**

- 11 §26.141. Distance Learning, Information Sharing Programs, and Interactive Multimedia  
12 Communications.
- 13 §26.142. Integrated Services Digital Network (ISDN).
- 14 §26.143. Provision of Advanced Services in Rural Areas.

15 **SUBCHAPTER I. ALTERNATIVE REGULATION.**

- 16 §26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.
- 17 §26.172. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of  
18 Telephone Cooperatives.
- 19 §26.175. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange  
20 Companies (ILECs).

21 **SUBCHAPTER J. COSTS, RATES AND TARIFFS.**

- 22 §26.201. Cost of Service.
- 23 §26.203. Rate Policies for Small Local Exchange Companies (SLECs).
- 24 §26.205. Rates for Intrastate Access Services.
- 25 §26.206. Depreciation Rates.
- 26 §26.207. Form and Filing of Tariffs.
- 27 §26.208. General Tariff Procedures.
- 28 §26.209. New and Experimental Services.
- 29 §26.210. Promotional Rates for Local Exchange Company Services.
- 30 §26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.
- 31 §26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain  
32 Incumbent Local Exchange Companies (ILECs).

- 1 §26.215. Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications  
2 Utility (DCTU) Services.
- 3 §26.216. Educational Percentage Discount Rates (E-Rates).
- 4 §26.217. Administration of Extended Area Service (EAS) Requests.
- 5 §26.219. Administration of Expanded Local Calling Service Requests.
- 6 §26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.
- 7 §26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.
- 8 §26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.
- 9 §26.225. Requirements Applicable to Nonbasic Services For Chapter 58 Electing Companies.
- 10 §26.226. Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies.
- 11 §26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and  
12 Nonbasic Services for Chapter 58 Electing Companies.
- 13 §26.228. Requirements Applicable to Chapter 52 Companies.
- 14 §26.229. Requirements Applicable to Chapter 59 Electing Companies.
- 15 §26.230. Requirements Applicable to Chapter 65 One-day Informational Notice Filings.

16 **SUBCHAPTER L. WHOLESALE MARKET PROVISIONS.**

- 17 §26.271. Expanded Interconnection.
- 18 §26.272. Interconnection.
- 19 §26.274. Imputation.
- 20 §26.276. Unbundling.
- 21 §26.283. Infrastructure Sharing.

22 **SUBCHAPTER M. OPERATOR SERVICES.**

- 23 §26.311. Information Relating to Operator Services.
- 24 §26.313. General Requirements Relating to Operator Services.
- 25 §26.315. Requirements for Dominant Certificated Telecommunications Utilities (DCTUs).
- 26 §26.317. Information to be Provided at the Telephone Set.
- 27 §26.319. Access to the Operator of a Local Exchange Company (LEC).
- 28 §26.321. 9-1-1 calls, "0-" calls, and End User Choice.

29 **SUBCHAPTER N. PAY TELEPHONE SERVICE.**

- 30 §26.341. General Information Relating to Pay Telephone Service (PTS).
- 31 §26.342. Pay Telephone Service Tariff Provisions.



1 §26.423. High Cost Universal Service Plan for Uncertificated Areas where an Eligible  
2 Telecommunications Provider (ETP) Volunteers to Provide Basic Local  
3 Telecommunications Service.

4 §26.424. Audio Newspaper Assistance Program.

5 **SUBCHAPTER Q. 9-1-1 ISSUES.**

6 §26.433. Roles and Responsibilities of 9-1-1 Service Providers.

7 §26.435. Cost Recovery Methods for 9-1-1 Dedicated Transport.  
8

9 **SUBCHAPTER R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND**  
10 **RIGHTS-OF-WAY MANAGEMENT.**

11 §26.461. Access Line Categories.

12 §26.463. Calculation and Reporting of a Municipality's Base Amount.

13 §26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated  
14 Telecommunications Providers.

15 §26.467. Rates, Allocation, Compensation, Adjustments and Reporting.

16 §26.468. Procedure for Standardized Access Line Reports and Enforcement Relating to Quarterly  
17 Reporting.

18 §26.469. Municipal Authorized Review of a Certificated Telecommunication Provider's Business  
19 Records.  
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This agency hereby certifies that the rules in Chapter 26, as readopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, is hereby readopted pursuant to Texas Government Code 2001.039.

SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**DONNA L. NELSON, CHAIRMAN**

\_\_\_\_\_  
**KENNETH W. ANDERSON, JR., COMMISSIONER**

\_\_\_\_\_  
**BRANDY MARTY MARQUEZ, COMMISSIONER**