

2. The efficiency and frequency of adjustment proceedings conducted under PURA § 56.032(h) and § 56.032(i);

The adjustment proceedings conducted under PURA § 56.032(h) and (i) to ensure small providers are afforded the opportunity to earn a reasonable rate of return provide an efficient process to adjust support amounts and are conducted on a proper frequency.

3. The frequency and efficiency of determinations made on reasonable and necessary expenses under PURA § 56.032(d)(4);

The process for determinations under PURA § 56.032(d)(4) is efficient as it affords small providers the opportunity to earn a reasonable rate of return but is too frequent for Commission Staff to adequately determine the reasonableness and necessity of expenses incurred by small providers.

4. The effect of changes in technology on regulated revenue and support needs or determinations made under PURA § 56.032; and

Changes in technology have had an indirect effect on regulated revenue and support needs or determinations made under PURA § 56.032.

5. Any other relevant information the Commission determines is necessary for inclusion in the report and is in the public interest.

Other than administrative efficiency issues related to applying the different rate of return methodologies to small providers, there is no other relevant information the Commission determines to be necessary or in the public interest for inclusion in this report.

Background—History of the TUSF

The Texas Universal Service Fund (TUSF) was established in 1987.⁵ The purpose of the TUSF is to implement a competitively neutral mechanism to enable all residents of the State to obtain basic local telecommunications services needed to communicate with other residents, businesses, and governmental entities.⁶ The TUSF is funded by a statewide uniform charge, or “assessment,” payable by each telecommunications provider that has access to the customer base.⁷ In most cases, the providers choose to recover their assessment via a fee to end users

⁵ See Act of May 23, 1987, 70th Leg., R.S., ch. 371 (SB 444), § 8, 70th Legislature, 1987 Tex. Gen. Laws 1809, 1813; repealed by Act of March 29, 1995, 74th Leg., R.S., ch. 9 (SB 319), § 2, 1995 Texas Gen. Laws 31, 87.

⁶ See 2013 *Commission Report to the 83rd Texas Legislature - Review and Evaluation of the Texas Universal Service Fund Pursuant to Senate Bill 980*, 82nd Legislature, Regular Session at 2 (“The TUSF accomplishes this purpose by assisting telecommunications providers in providing [basic local telecommunications service] at reasonable rates to customers in high-cost rural areas and to qualifying low-income and disabled customers. The TUSF also funds another program identified by the Legislature in PURA § 56.028, which supports certain telecommunications services for schools and libraries.”); *Id.*

⁷ See Tex. Util. Code § 56.022.

as part of the package of surcharges assessed on their bills.⁸ Telecommunications providers then receive distribution of the funds based on a rate of return prescribed by the Commission.⁹

Texas Universal Service is composed of 11 programs separated into three major categories: high-cost assistance programs, low-income or disability assistance programs, and schools and libraries assistance programs. Of the 11 programs, expenses for the High-Cost Support program and Small and Rural Incumbent Local Exchange Carrier program (Small and Rural Plan) comprise the greatest proportion, ranging between 60 to 90 percent of total expenditures from the fund. This report focuses solely on the rate of return mechanism for providers under the Small and Rural Plan.

In 1997, the Federal Communications Commission (FCC) established the federal Universal Service Fund (USF)¹⁰ following the directives of the 1996 Telecommunications Act (FTA).¹¹ Under the FTA, state regulations regarding universal service must not be inconsistent with FCC rules “to preserve and advance universal service”.¹²

In 2011, the FCC comprehensively reformed the USF and Intercarrier Compensation (ICC)¹³ through the issuance of the USF/ICC Transformation Order (Transformation Order).¹⁴ The same year, the Texas Legislature passed Senate Bill (SB) 2603, 82nd Regular Session, which codified a new rate of return methodology under PURA § 56.032. SB 2603, in accordance with the Transformation Order, required the Commission to consider the adequacy of basic rates to support universal services and authorized the Commission to revise monthly support amounts from the Small and Rural Plan.¹⁵

TUSF Support for Small Telecommunications Providers under PURA § 56.032

PURA § 56.032 – Rate of Return Adjustments

In 2017, the Legislature again changed the rate of return method that determines the amount of support to providers from the Small and Rural Plan.¹⁶ This new method, found in PURA § 56.032, is the current methodology and the subject of this report and is set to expire on

⁸ See 2013 *Commission Report to the 83rd Texas Legislature - Review and Evaluation of the Texas Universal Service Fund Pursuant to Senate Bill 980*, 82nd Legislature, Regular Session at 2.

⁹ See PURA § 56.023(a)(1); see also 16 TAC §§ 26.406 and 26.407.

¹⁰ See generally FCC 97-157.

¹¹ See generally 47 U.S.C. 254.

¹² 47 U.S.C. 254(f).

¹³ *Intercarrier Compensation*, FEDERAL COMMUNICATIONS COMMISSION, <https://www.fcc.gov/general/intercarrier-compensation-0> (last accessed August 26, 2022). (“Intercarrier compensation (ICC) is the system of regulated payments in which carriers compensate each other for the origination, transport and termination of telecommunications traffic.”).

¹⁴ See FCC 11-161.

¹⁵ 16 Tex. Admin. Code § 26.407.

¹⁶ 16 Tex. Admin. Code § 26.407.

September 1, 2023. The Legislature directed the Commission to review this mechanism and related rules prior to expiration.

Under the current methodology, a qualifying *small provider*¹⁷ may request that the Commission determine support in fixed monthly amounts based on an annualized support amount. The annualized support amount must be sufficient, when combined with regulated revenues, to allow the small provider to earn a return on invested capital that is reasonable.¹⁸ As required in the legislation, the Commission adopted new 16 Texas Administrative Code (TAC) § 26.407 in October 2018 to implement a mechanism to determine the annualized support amount. The mechanism was required to have the following elements:

- Require an annual filing to establish a continued level of support for the provider or eligibility for support adjustments and to determine whether support levels allow the opportunity to earn a reasonable return;
- Provide requirements for the annual filing, which may include annual earnings reports and any underlying data that the Commission determines to be reasonably necessary for the purposes of Subdivision (1);
- Provide requirements and procedures for adjustment proceedings to ensure small providers are afforded the opportunity to earn a reasonable return; and
- Provide a procedure for the Commission to assess, as necessary, whether the reported return of a small provider is based on expenses that are not reasonable and necessary.

To assist the Commission in its review and preparation of this report, the Commission requested public comment.¹⁹ Notice of the request was provided in the Texas Register.²⁰ The Commission received comments from Dialtone Services, L.P., AMA Techtel Communications, the Texas Cable Association, the Office of Public Utility Counsel, the Texas Telephone Association, Texas Statewide Telephone Cooperative, Inc., and CTIA-The Wireless Association.

Issue 1 – FCC Rate of Return

The continued appropriateness of using the FCC’s prescribed rate of return for the mechanism established under PURA § 56.032(d), if the FCC still prescribes a rate of return that may be used for that mechanism.

The Commission concludes that it is appropriate to continue to use the Federal Communications Commission’s (FCC’s) prescribed rate of return.

¹⁷ PURA § 56.032(a)(2) (*Small provider* defined as “an incumbent local exchange company or cooperative that, on September 1, 2013, together with all local exchange companies affiliated with the company or cooperative on that date, served 31,000 or fewer access lines in Texas; or a successor company.”).

¹⁸ PURA § 56.032(c).

¹⁹ *Review of Texas Universal Service Fund*, Project No. 53140.

²⁰ 47 *Texas Register* 1649 (Mar. 25, 2022).

The FCC's rate of return is used to determine whether a small provider's return is reasonable,²¹ and to separate a small provider into one of three categories under the Commission's rule as described below. As of August 2022, the FCC prescribed rate of return was set at 9.75%.

Category 1	A rate of return of more than three percentage points below the FCC rate of return. ²²
Category 2	A rate of return within two percentage points above or three percentage points below the FCC rate of return. ²³
Category 3	A rate of return of more than two percentage points above the FCC rate of return. ²⁴

Review of the 2020 reports filed in September 2021 by the 43 small providers receiving proceeds from the Small and Rural Plan resulted in Commission staff recommending:

- 32 small providers for placement in Category 1 (under-earning providers);
- 8 small providers for placement in Category 2 (providers receiving a reasonable rate of return); and
- 3 small providers for placement in Category 3 (over-earning providers).

Discussion

Removing the requirement to use the FCC rate of return would not provide any benefit to the adjustment mechanism. If the FCC rate of return is not used, a new rate of return methodology would have to be devised by the Commission. This would require the Commission to research and investigate alternative rate of return methodologies, adopt a new methodology, and subsequently implement that new methodology for all affected companies. Such an effort would take a substantial amount of time and resources for uncertain benefit. Moreover, in the interim period prior to implementation of the new methodology, the FCC rate of return would have to be utilized.

²¹ PURA § 56.032(f); 16 TAC § 26.407(f)(3).

²² A small provider whose return is more than three percentage points below the FCC's rate of return is classified as category 1 and may file an application to adjust its support or rates to a level that would bring the small provider's return into the reasonable range. *See* PURA § 56.032(h); 16 TAC § 26.407(f)(3), (g)(1).

²³ A small provider is classified as category 2 and the return is deemed reasonable if the return is within two percentage points above or three percentage points below the FCC's rate of return. A small provider placed into category 2 is not eligible to seek an adjustment to its support from the Small and Rural Plan and the Commission cannot institute a proceeding against it. *See* PURA § 56.032(f); 16 TAC § 26.407(f)(3), (g)(2).

²⁴ A small provider whose return is more than two percentage points above the FCC's rate of return is classified as category 3. Although they are not presumed to have an unreasonable return, the Commission may initiate a proceeding to review the small provider's support level and regulated revenues and adjust the provider's level of support or rates, if appropriate. *See* PURA § 56.032(i); *see also* 16 TAC § 26.407(h)(2)(C).

Issue 2 – Adjustment Proceedings

The efficiency and frequency of adjustment proceedings conducted under PURA § 56.032(h) and § 56.032(i).

The adjustment proceedings conducted under PURA § 56.032(h) and (i), to ensure small providers are afforded the opportunity to earn a reasonable rate of return, provide an efficient process to adjust support amounts and are conducted on a proper frequency.

The rate of return mechanism created by PURA § 56.032 requires two types of rate adjustment proceedings: one for small providers whose rate of return is below a low threshold and one for providers whose rate of return is above a high threshold. Under the first type, termed category 1, a small provider may seek an adjustment to its support from the Small and Rural Plan or an increase in its regulated rates. For category 3 providers, which have a rate of return above the high threshold, the Commission may review and, if necessary, reduce the provider's rate of return. In addition, under the Commission's rule, some providers may challenge a Commission staff adjusted rate of return and the underlying adjustments.

A small provider classified as a category 1 may apply to increase support such that the small provider would earn a reasonable rate of return. The increase is capped at 140% of the provider's earnings over the 12-month period prior to the application.²⁵ A rate increase must not adversely affect universal service.²⁶ Except for good cause, a small provider that files an application for adjustment may not file a subsequent application before the third anniversary of the original application.²⁷

If a small provider is classified as a category 3, the Commission may initiate a proceeding to review and potentially adjust the support and revenues of the provider.²⁸ The rate of return for such a provider is not unreasonable simply because it exceeds the high threshold.

As discussed under Issue 3 below, prior to an adjustment proceeding, Commission staff review a small provider's annual report and may recommend adjustments to the rate of return based on the financial and other information in that report.²⁹ After that review, Commission staff separated small providers into rate of return categories.³⁰ If Commission staff make any adjustments to that information, it will calculate an adjusted rate of return,³¹ which may place the provider in a different rate of return category. In certain instances, a provider may contest the adjusted rate.

²⁵ PURA § 56.032(h); 16 TAC § 26.407(h)(4).

²⁶ PURA § 56.032(h).

²⁷ PURA § 56.032(h).

²⁸ PURA § 56.032(i).

²⁹ 16 TAC § 26.407(f)(2)(A).

³⁰ See 16 TAC § 26.407(f)(3)(A)–(C).

³¹ 16 TAC § 26.407(f)(2)(B).

If a provider files an application for an adjustment proceeding, it must give notice to its customers.³² The Commission must grant or deny an application for an adjustment (including a challenge to a Commission staff adjusted rate of return) within 120 days of the date the application is deemed sufficient.³³ After the Commission issues an order in an adjustment

Original rate of return classification	Commission staff adjusted rate of return classification	May request for an adjustment to rate of return	May contest Commission staff adjusted rate of return
Category 1	Category 2 or 3	Yes	Yes
Category 2	Category 3	No	Yes
Category 3	n/a	No	No

proceeding, a subsequent adjustment proceeding may not be initiated before the third anniversary of the date on which the provider's most recent application is initiated, unless good cause is proven.³⁴

Discussion

According to data gathered by the Commission for the 2020-2021 period, 43 small providers participated in the Small and Rural Plan. Of that number, ten small providers are eligible for adjustment proceedings in 2022.

The adjustment proceedings conducted under the Commission's rule are administratively efficient for the Commission. The reviews are a straightforward matter of verifying the provider's reported or adjusted rate of return (associated placement into category) and assessing the application using basic accounting principles. Similarly, the three-year waiting period between adjustment proceedings permits sufficient time for Commission Staff to evaluate whether an adjustment proceeding is necessary. The three-year waiting period also assists the Commission in using its limited resources more efficiently than would be the case with a shorter waiting period.

Issue 3 – Determinations of Expenses

The frequency and efficiency of determinations made on reasonable and necessary expenses under PURA § 56.032(d)(4).

The process for determinations under PURA § 56.032(d)(4) is efficient as it affords small providers the opportunity to earn a reasonable rate of return but is too frequent for Commission Staff to adequately determine the reasonableness and necessity of expenses incurred by small providers.

³² 16 TAC § 26.407(h)(3).

³³ 16 TAC § 26.407(h)(5).

³⁴ 16 TAC § 26.407(h)(6).

A small provider is required to submit an annual report to the Commission that includes certain financial information as well as the small provider's full and complete cost allocation manual.³⁵ Commission staff review the annual report and recommends adjustments to a provider's rate of return if expenses are not reasonable or necessary, if there are inappropriate affiliate transactions or cost allocation, or for other reasons specified in the rule.³⁶ If Commission staff make any adjustments, it must recalculate the provider's reported rate of return and provide an adjusted rate of return as discussed above.³⁷

The annual report is due to the Commission by September 15 of each year for the previous calendar year.³⁸ Commission staff must complete the review of an annual report within 90 days of the date the annual report was filed.³⁹ During the 90-day period, Commission staff may send Requests for Information (RFIs) to small providers with a ten-day deadline to respond. If the provider does not timely submit requested information, it is deemed to be a category 3 provider.⁴⁰

At the conclusion of its review, Commission staff must make a final recommendation on the small provider's rate of return and placement into a rate of return category.⁴¹ Commission staff will classify a small provider into one of three rate of return categories discussed in Issue 1. A provider's annual report and any information the Commission requires from a small provider is confidential and not subject to disclosure under chapter 552 of the Texas Government Code.⁴² Third party access to such confidential information is subject to a protective order.

Discussion

The annual report and corresponding assessment of reasonable and necessary expenses require substantial engagement from Commission staff to obtain needed information. Specifically, the assessment of reasonable and necessary expenses entails the issuance of RFIs to small providers to determine whether a given provider should receive proceeds from the TUSF, and if so, how much. While adjustment proceedings are not administratively burdensome as discussed in the response to Issue 2, the reasonable and necessary expense assessment is considerably more onerous for Commission staff and more closely resembles a contested case than a rate disclosure of information.

Commission staff file approximately 20 to 35 RFIs per small provider within the 90-day period which historically can take weeks to prepare and to analyze responses. For 2020-2021, 43 small providers receive TUSF proceeds under the Small and Rural Plan, meaning that 43 separate reviews for reasonable and necessary expenses are required. The significant amount of discovery needed to make the recommendation is burdensome on Commission staff,

³⁵ 16 TAC § 24.407(e).

³⁶ 16 TAC § 26.407(f)(2).

³⁷ 16 TAC § 26.407(f)(2)(B).

³⁸ 16 TAC § 24.407(e)(1).

³⁹ 16 TAC § 26.407(f)(1)(B).

⁴⁰ 16 TAC § 26.407(f)(1)(A).

⁴¹ 16 TAC § 26.407(f)(4).

⁴² PURA § 56.032(k).

particularly given the 90-day review period. Additionally, most providers file their annual reports on or just before the annual September 15 deadline, resulting in a substantial number of reports that must be reviewed concurrently.

For comparison, electric utilities submit an annual earnings report with no specific action needed from Commission staff. Rather, Commission staff simply monitor the earnings levels of utilities with the option to engage in a more detailed analysis and potentially recommend a company file an application for a new rate proceeding.⁴³

A three-year, staggered report period would be more *administratively* efficient. As a point of comparison, the largest electric companies that the Commission regulates must apply for a rate review every **four** years. The smallest electric companies must provide some form of a rate filing every **eight** years.⁴⁴

While the small provider annual report reviews are not rate cases, they serve as a proxy for a rate case. Thus, reviews staggered in three-year intervals would be appropriate. Furthermore, reducing the number of reviews required each year would allow the Commission to review providers more thoroughly within the 90-day deadline.

Procedurally, PURA § 56.032(d)(4) requires the Commission to “assess, as necessary” whether a small provider’s rate of return is based on reasonable and necessary expenses. This assessment results in Commission staff recommending a small provider be categorized as a Category 1, 2, or 3 provider as discussed in Issue 1. Although it is permitted to do so, to date, the Commission has not initiated a contested case proceeding for a Category 3 provider for the reasons explained below.

Books and Records Access and Prudence Review

Commission staff do not have access to the full books and records of small providers. Only the **intrastate** portion of a provider’s financial information is provided to the Commission. The **interstate** financial information is unavailable, making it impossible to perform a comprehensive review of the provider’s books and records. Similarly, Commission staff cannot perform a prudence review of a provider’s intrastate capital additions, which is a study of the underlying costs of capital improvements implemented by the small provider during the reporting period, without corresponding interstate information. It is difficult for Commission staff to determine whether the allocated portion of certain costs is reasonable and necessary

⁴³ See generally *Year-end 2020 Electric Utility Earnings Reports in Accordance with 16 TAC § 25.73*, Project No. 51718, Memorandum (Nov. 10, 2021) (Electric Earnings Reports); and *Year-end 2020 Telephone Utility Earnings Reports in Accordance with 16 TAC § 26.73*, Project No. 51719 (Telecommunications Earnings Reports).

⁴⁴ See generally *Rulemaking proceeding to amend 16 TAC 25.247 to establish a filing schedule for non-investor-owned transmission service providers operating within ERCOT*, Project 48377, Order Adopting Amendment to §25.247 (November 9, 2018).

without seeing the total costs and mechanics of the allocation.⁴⁵ For the same reason, the Commission staff do not perform prudence reviews of capital costs of small providers.

Cost-effectiveness of Small ILEC Base Rate Proceedings

In most cases, conducting a full base rate review of a small provider would not be cost effective because the cost of the rate case would likely exceed any rate reduction. Moreover, given limited resources, it is not feasible for Commission staff to conduct full rate reviews of small providers. The time and cost of these proceedings would not only burden the resources of the companies and the Commission, there would be a net loss for customers.⁴⁶

Commission Resources

Commission staff, particularly in the Rate Regulation and Legal Divisions, dedicate a significant portion of their time to electric utility base-rate proceedings and other contested cases. The limitations of interstate cost review and confidentiality, coupled with the likelihood that ratepayers' costs for a full base-rate proceeding could outweigh any cost savings, call into question the value of the considerable time resources that Commission staff must dedicate to the annual reviews.

Issue 4 – Changes in Technology

The effect of changes in technology on regulated revenue and support needs or determinations made under PURA § 56.032

Changes in technology have had an indirect effect on regulated revenue and support needs or determinations made under PURA § 56.032.

⁴⁵ See e.g., *Review of Telecommunications Providers Receiving Texas Universal Service Fund Support Under the Texas High Cost Universal Service Plan and Small and Rural Incumbent Local Exchange Company Universal Service Plan*, Project No. 51433, Eastex Telephone Cooperative, Inc.'s Response to Commission Staff's First Set of Requests for Information at 8-10 (Dec. 3, 2020). The responses to Commission staff's RFIs indicate that the company-specific cost allocation manuals and Part 36 cost separations study are the definitive authorities on compliance with applicable accounting and regulatory rules. See Project 51433, Item #26 at 8-10. Cost allocation procedures, which are documented in cost allocation manuals, are required by FCC rules and have been in place since at least the 1980s. Companies devote great time and expense to developing specific cost allocation procedures and associated cost allocation manuals to ensure compliance. Cost allocation manuals are subject to audit by the Universal Service Administrative Company and National Exchange Carrier Association and are reviewed annually by the Commission.

⁴⁶ Additionally, written testimony issued by Commission staff in support of settlements typically states "[Commission staff] believe[s] that implementation of the various terms in the Stipulation will result in a fair and reasonable outcome for [the utility] and other stakeholders. The Stipulation provides certainty on the resolution of a variety of issues, and it ensures an outcome that, in the aggregate, is at least equal to—and, in some instances, possibly better than—the outcome that would result from continued litigation of this proceeding."

Discussion

The transition from traditional landline telephone to internet and mobile wireless data has indirectly impacted the rate of return methodology. This impact is due to continuing investments in infrastructure and equipment that is not needed to provide “basic local telecommunications service”, but which small providers have invested in to provide internet and mobile wireless service. The scope of Commission Staff’s review of a small provider’s annual report does not allow for a determination of the prudence, reasonableness, or necessity of disclosed investments. Therefore, Commission Staff cannot draw any conclusions on whether expenses on such investments were reasonable and necessary, which, in turn, subverts a meaningful review on the reasonableness of the rate of return on those investments.

Issue 5 – Other Relevant Information

Any other relevant information the Commission determines is necessary for inclusion and is in the public interest.

Other than administrative efficiency issues related to applying the different rate of return methodologies to small providers, there is no other relevant information the Commission determines to be necessary or in the public interest for inclusion in this report.

APPENDIX

Funding Prior to Adoption of PURA § 56.032

1987: TUSF established.

1997: FUSF established.

1997-1998: The Commission establishes the Small and Rural Plan as part of the TUSF. Support amounts are based on wire line count based on the study area of each small and rural ILEC.

2005: The Commission is authorized to revise the monthly per-line support amounts for the High Cost and Small and Rural Plan.

2011: The FCC reforms FUSF and the Commission adds two alternative methodologies for ILEC providers participating in the High Cost and Small and Rural Plan:

- The 2010 methodology: TUSF support adjusted to fixed monthly amounts based on total support received by the provider in 2010.
- The CPI methodology: TUSF support changed to a fixed monthly amount based on total support received by the provider in the prior year adjusted by the percentage change in the CPI for the most recent 12-month period.

2011: The Commission adopts amendments to its rule for the Small and Rural Plan to determine whether an ILEC was charging a reasonable rate for basic local telecommunications service.

2013: PURA § 56.032 is amended by the Legislature allowing the Commission to adjust monthly support amounts by any method, including support reductions from rate rebalancing efforts by the Commission in 2011.

2017: PURA § 56.032 is amended again to adjust monthly support amounts based on the FCC prescribed rate of return used for the FUSF.



2022 Report to the Lieutenant Governor and the Speaker of the House of Representatives

Texas No-Call List

Public Utility Commission of Texas

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I. INTRODUCTION

In 2001, the 77th Legislature created the Texas No-Call List by adoption of the Texas Telemarketing Disclosure and Privacy Act (Act). The Act required the Public Utility Commission of Texas (Commission) to “provide for the operation of a database to compile a list of names, addresses, and telephone numbers of consumers in this state who object to receiving unsolicited telemarketing or telephone calls.”¹ The Act applies on a statewide basis to all telemarketers operating in Texas.

This report is filed pursuant to § 304.201 of the Texas Business and Commerce Code, which requires the Commission to provide a report to the lieutenant governor and speaker of the house of representatives on the Texas No-Call List on or before December 31 of each even-numbered year to report the following information for the two-year period ending on August 31 of that year:

- 1) a statement of the number of telephone numbers included on the Texas No-Call List, the number of lists distributed to telemarketers, and the amount collected from telemarketers for those requests and for distribution;
- 2) a list of complaints received by the Commission concerning activities regulated by this chapter² itemized by type;
- 3) a summary of any enforcement efforts made by the Commission; and
- 4) the Commission’s recommendations for any changes in the enabling legislation.

The reporting period for this report is from September 1, 2020 through August 31, 2022.

II. OVERVIEW OF TEXAS NO-CALL LIST REQUIREMENTS

The Texas No-Call List applies to all telemarketers, including Retail Electric Providers, calling a Texas residential or wireless number. The Texas No-Call List must contain telephone numbers of each consumer who has registered for the list. Wireless phone numbers became eligible to be added to the No-Call List on September 1, 2003. The Texas No-Call List is updated and republished on January 1, April 1, July 1, and October 1 of each year.

Since September 24, 2004, online registration for the Texas No-Call List has been free. Consumers registering by phone or by mail must pay a registration fee of \$2.25 for each residential or wireless phone number added to the list. Texas businesses can register for the Electric No-Call List at a cost of \$2.55. Registered phone numbers remain on the list for three years. Consumers who provide an email address when they register for the Texas No-Call list are notified when their registration is about to expire. Registration for phone numbers may be

¹ Tex. Bus. & Com. Code Ann. § 304.051 (West 2009 & Supp. 2014).

² The activities regulated under Chapter 304 of the Texas Business and Commerce Code are: 1) no call complaints, 2) facsimile solicitation complaints, and 3) complaints concerning interference with Caller Identification service.

renewed for successive three-year periods. A consumer may request deletion of his or her telephone number from the list in writing at any time.

The 79th Legislature enacted House Bill 210, which affected the Texas No-Call List in several ways. HB 210 re-defined the Texas No-Call List to include the names and telephone numbers of all consumers who have registered for the Texas No-Call List as well as the names and telephone numbers of all Texas consumers who have registered for the National Do Not Call Registry. This amendment enables the Commission to pursue enforcement under state law on behalf of any Texas resident that is improperly solicited regardless of whether the Texas resident had initially registered on the Texas No-Call List or the National Do Not Call Registry. HB 210 also allowed the Commission or its designee to share information on the Texas No-Call List with the administrator of the National Do Not Call Registry and permitted the names and telephone numbers on the Texas No-Call List to be placed on the National Do Not Call Registry. Finally, HB 210 codified free Internet registration for the Texas Do Not Call List, excepted from public disclosure under the Texas Public Information Act any information provided to or received from the administrator of the National Do Not Call Registry and amended Public Utility Regulatory Act § 39.1025 to reflect that the Electric No-Call List would apply only to nonresidential customers.

By statute,³ the Texas No-Call List restrictions do not apply to telemarketers contacting consumers:

- with whom they have an established business relationship;
- if the consumer requests the contact;
- if the call is between a telemarketer and a business, other than by a facsimile solicitation, unless the business informed the telemarketer that the business does not wish to receive telemarketing calls from the telemarketer;
- to collect a debt;
- on behalf of a non-profit organization or charity, provided the call does not meet the definition of a “telephone solicitation” by attempting to make a sale or gather information that will lead to a sale; or
- if the telemarketer is a state licensee (*i.e.*, insurance or real estate agent, etc.) and:
 - the call is not made by an automated dialing device;
 - the solicited transaction is completed with a face-to-face presentation to finalize a sales transaction and make payment; and
 - the consumer has not previously told the licensee that the consumer does not wish to be called.

³ Tex. Bus. & Com. Code Ann. § 304.004 (2-5) (West 2009 & Supp. 2014).

III. NUMBER OF PHONE NUMBERS REGISTERED, NUMBER OF LISTS DISTRIBUTED, AND AMOUNTS COLLECTED

A. Phone Numbers Registered on No-Call List

From September 1, 2020 through August 31, 2022, there were 116,847 telephone numbers submitted to the Texas No-Call.

B. Distribution

Pursuant to P.U.C. SUBST. R. 26.37, telemarketers are required to purchase the Texas No-Call List. During the reporting period, 512 No-Call Lists were purchased by telemarketers.

The Texas No-Call List is updated on a quarterly basis. Telemarketers that subscribe to the list have 60 days from the date the list is revised to update their internal databases and to stop calling customers who have registered in the database.

C. Amounts Collected

The Commission was not appropriated funds to operate the Texas No-Call List and, therefore, relies on consumer fees and distribution fees to operate the registry. State law allows the Commission to charge a reasonable amount not to exceed \$3, for a request to place a telephone number on the list or to renew an entry on the list. During the reporting period the registration fee was \$2.25 per registered residential or wireless telephone number. Texas businesses can register for the Electric No-Call list at a cost of \$2.55. Since September 24, 2004, online registration for the Texas No-Call List has been free. In addition, the Commission may charge a fee, not to exceed \$75, to distribute the Texas No-Call List to telemarketers. During the reporting period, a quarterly fee of \$75 applied to telemarketers requesting the current version of the published Texas No-Call List. Telemarketers may also choose to receive a geographically customized list from the Texas No-Call List database for a charge of \$75 per quarter. All fees collected for registration and distribution of the Texas No-Call List go directly to the database administrator to cover the costs associated with operating the list.

▪ Total Amount Collected from Telemarketers	\$271,350.00
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IV. COMPLAINTS

A. Texas No-Call Complaints

Consumers may file complaints for violations of the Texas No-Call List with the Customer Protection Division (CPD) of the Commission. Consumers may file complaints by

phone, fax, mail, or email, or through a complaint form available online at <http://www.puc.texas.gov/consumer/complaint/complaint.aspx>. Consumers can also file complaints with the Office of the Attorney General of the State of Texas (OAG).

Typically, if the Commission receives a complaint via telephone, Commission Staff asks questions to elicit the necessary company contact information. However, in some instances, complainants were unable to provide sufficient information because, for example, they did not answer the call or failed to remember the specifics of their conversation with the telemarketer. No further action was taken on complaints with insufficient company contact information.

From September 1, 2020 through August 31, 2022, the Commission received 4,031 consumer complaints related to the Texas No-Call List. The Commission received 19% fewer complaints than were received over the previous reporting period of FY 2018-2020.

B. Facsimile solicitation complaints

During the reporting period the Commission received 3 consumer complaints regarding facsimile (fax) solicitations. All of the fax solicitation complaints were referred to the OAG.

C. Interference with caller ID service complaints

During the reporting period, the Commission received 549 complaints concerning interference with Caller ID service. Pursuant to Tex. Bus. & Comm. Code Ann. § 304.151, telemarketers may not block the identity of the telephone number from which the telephone call is made to evade devices designed to identify telephone callers.

V. ENFORCEMENT

Chapter 304 of the Business and Commerce Code authorizes the Commission to investigate companies and assess administrative penalties for violations of that chapter except those involving licensees of other state agencies.⁴ Additionally, Chapter 304 authorizes the Office of the Attorney General (OAG) to investigate complaints and file civil enforcement actions seeking injunctive relief, attorneys' fees and civil penalties for violations involving all entities except state licensees and telecommunications providers.⁵

Potential telemarketing violations under Chapter 304 of the Business and Commerce Code include Texas No-Call List violations, facsimile solicitation violations, and interference with caller ID service violations.

⁴ While the Commission does not have jurisdiction over other state licensees violating the Texas No-Call List, those agencies issuing licenses to violators may initiate enforcement proceeding. Section 304.253 (a) of the Texas Business and Commerce Code provides that "[a] state agency that issues a license to a state licensee shall receive and investigate complaints concerning violations of Subchapters B and C by the state licensee."

⁵ Tex. Bus. & Com. Code Ann. § 304.252 (West Supp. 2014)

A. Cooperation with the Attorney General

The Commission and the OAG have concurrent jurisdiction to handle No-Call List, facsimile solicitation, and interference with caller ID service violations in cases where the violator is not licensed by another Texas state agency or is a telecommunications provider. The Commission and OAG cooperate on these potential violations pursuant to a Memorandum of Understanding (MOU). Under this MOU, the Commission and OAG have agreed to cooperate, assist one another, and share information regarding these potential violations. Staff from the Commission communicate and coordinate regularly with the OAG Staff on Texas No-Call enforcement issues.

The Commission provides the OAG with a monthly summary of all telemarketing complaints, including the No-Call List complaints. The facsimile solicitation complaints and the interference with caller ID service complaints were referred to the OAG.

B. Commission processes for telemarketing (including the No-Call list) investigations and enforcement

Using the Customer Protection Division database, the Commission Staff runs queries each quarter to identify the number of Texas No-Call complaints for that quarter. For each of the companies having met the threshold for No-Call complaints in a quarter, the Commission Staff opens an investigation and determines which companies are licensed by another Texas state agency. Those that are licensed by another agency are referred to that agency.

For those not licensed by another agency, the Commission Staff investigates to determine the status and history of the company for the Texas No-Call complaints for the current quarter and past quarters. Based on the results of this analysis, the Commission Staff may send the company an information letter regarding Texas No-Call laws and rules, investigate whether the company has purchased the required No-Call list, or flag the company for additional review and potential enforcement action.

For the period of 09/01/2020 through 08/31/2022, one No-Call investigation was opened by Commission Staff. Of the one, it resulted in the Commission referring it to the OAG for further development, Commission staff was unable to locate the company.



PUCT Approved ERCOT Revision Requests
2021-2022

Public Utility Commission of Texas

Load Profiling Guide Revision Request (LPGRR)	
LPGRR069	Add Lubbock Zip Codes and Clarify BUSIDRRQ/BUSLRG (DG) Assignments

Nodal Protocol Revision Requests (NPRRs)	
NPRR995	RTF-6 Create Definition and Terms for Settlement Only Energy Storage
NPRR1005	Clarify Definition of Point of Interconnection (POI) and Add Definition Point of Interconnection Bus (POIB)
NPRR1058	Resource Offer Modernization
NPRR1063	Dynamic Rating Transparency
NPRR1073	Market Entry/Participation by Principals of Counter-Parties with Financial Obligations
NPRR1077	Extension of Self-Limiting Facility Concept to Settlement Only Generators (SOGs) and Telemetry Requirements for SOGs
NPRR1078	Clarification of Potential Uplift
NPRR1079	Day-Ahead Market RRS / ECRS 48-Hour Report Clarification
NPRR1080	Limiting Ancillary Service Price to System-Wide Offer Cap
NPRR1081	Revisions to Real-Time Reliability Deployment Price Adder to Consider Firm Load Shed
NPRR1082	Emergency Response Service (ERS) Test Exception for Co-located ERS Loads
NPRR1083	Modification of Uplift Allocation Rules to Address Role of Central Counter-Party Clearinghouses
NPRR1084	Improvements to Reporting of Resource Outages, Derates, and Startup Loading Failures
NPRR1085	Ensuring Continuous Validity of Physical Responsive Capability (PRC) and Dispatch through Timely Changes to Resource Telemetry and Current Operating Plans (COPs)
NPRR1086	Recovery, Charges, and Settlement for Operating Losses During an LCAP Effective Period
NPRR1087	Prohibit Participation of Critical Loads as Load Resources or ERS Resources
NPRR1090	ERS Winter Storm Uri Lessons Learned Changes and Other ERS Items
NPRR1091	Changes to Address Market Impacts of Additional Non-Spin Procurement
NPRR1092	Reduce RUC Offer Floor and Limit RUC Opt-Out Provision
NPRR1093	Load Resource Participation in Non-Spinning Reserve
NPRR1094	Allow Under Frequency Relay Load to be Manually Shed During EEA3

NPRR1095	Texas SET V5.0 Changes
NPRR1096	Require Sustained Two-Hour Capability for ECRS and Four-Hour Capability for Non-Spin
NPRR1097	Create Resource Forced Outage Report
NPRR1098	Direct Current Tie (DC Tie) Reactive Power Capability Requirements
NPRR1099	Managing Network Operations Model Resource Nodes
NPRR1100	Allow Generation Resources and Energy Storage Resources to Serve Customer Load When the Customer and the Resource are Disconnected from the ERCOT System
NPRR1101	Create Non-Spin Deployment Groups made up of Generation Resources Providing Off-Line Non-Spinning Reserve and Load Resources that are Not Controllable Load Resources Providing Non-Spinning Reserve
NPRR1102	ERCOT Discretion for Adjusting Non-Interval Data Recorder (NIDR) Backcasted Load Profiles,
NPRR1103	Securitization –PURA Subchapter M Default Charges
NPRR1104	As-Built Definition of Real Time Liability Extrapolated (RTLE)
NPRR1105	Option to Deploy Distribution Voltage Reduction Measures Prior to Energy Emergency Alert (EEA)
NPRR1106	Deployment of Emergency Response Service (ERS) Prior to Declaration of Energy Emergency Alert (EEA)
NPRR1107	Addition of Weatherization Inspection Fees to the ERCOT Fee Schedule and Clarification of Generation Interconnection Request Fees
NPRR1108	ERCOT Shall Approve or Deny All Resource Planned Outage Requests
NPRR1109	Process for Reinstating Decommissioned Generation Resources
NPRR1110	Black Start Requirements Update
NPRR1111	Related to SCR819, Improving IRR Control to Manage GTC Stability Limits
NPRR1112	Elimination of Unsecured Credit Limits
NPRR1113	Clarification of Regulation-Up Schedule for Controllable Load Resources in Ancillary Service Imbalance
NPRR1114	Securitization – PURA Subchapter N Uplift Charges
NPRR1115	Administrative Changes for February 1, 2022 Nodal Protocols - Update ERCOT Austin Office Address
NPRR1116	Remove Obsolete Reference to Market Information System (MIS)
NPRR1117	Related to SMOGRR025, Modifications to Line Loss Compensation Requirement for EPS Metering

NPRR1118	Clarifications to the OSA Process
NPRR1119	Removal of Extraneous Language Pertaining to the Calculation of Weekly Generation and Load Resource Capacity Forecasts
NPRR1120	Create Firm Fuel Supply Service
NPRR1121	Add a Posting Requirement to the Exceptional Fuel Cost Submission Process
NPRR1122	Clarifications for PURA Subchapter M Securitization Default Charges
NPRR1123	Clarifications for PURA Subchapter N Securitization Uplift Charges
NPRR1124	Recovering Actual Fuel Costs through RUC Guarantee
NPRR1125	Use of Financial Security for Securitization Default Charge and Securitization Uplift Charge Invoices and Escrow Deposit Requests
NPRR1127	Clarification of ERCOT Hotline Uses
NPRR1129	Posting ESI IDs of Transmission-Voltage Customer Opt-Outs
NPRR1130	Weatherization Inspection Fees Sunset Date Extension
NPRR1131	Controllable Load Resource Participation in Non-Spin
NPRR1133	Clarify Responsibilities for Submission of Planning Model Data for DC Ties
NPRR1134	Related to RMGRR168, Modify ERCOT's Mass Transition Responsibilities
NPRR1135	Add On-Line Status Check for Resources Telemetering OFFNS for Ancillary Service Imbalance Settlements
NPRR1136	Updates to Language Regarding a QSE Moving Ancillary Service Responsibility Between Resources
NPRR1137	Updates to Section 1.1 to Modify the OBD List Review Timeline and Other Clarifications
NPRR1139	Adjustments to Capacity Shortfall Ratio Share for IRRs
NPRR1140	Recovering Fuel Costs for Generation Above LSL During RUC-Committed Hours
NPRR1142	ERS Changes to Reflect Updated PUCT Rule Changes re SUBST. R. 25.507

Nodal Operating Guide Revision Requests (NOGRRs)	
NOGRR210	Related to NPRR1005, Clarify Definition of Point of Interconnection (POI) and Add Definition Point of Interconnection Bus (POIB)
NOGRR223	Add Phasor Measurement Recording Equipment Requirement to Modified Generating Facilities in Interconnection Process
NOGRR227	Add Phasor Measurement Recording Equipment Location for Main Power Transformer for Intermittent Renewable Resource (IRR)

NOGRR229	Alignment Changes for September 1, 2021 Nodal Operating Guide – NPRR995
NOGRR231	Update ERCOT Regional Map
NOGRR232	Related to NPRR1093, Load Resource Participation in Non-Spinning Reserve
NOGRR233	Related to NPRR1094, Allow Under Frequency Relay Load to be Manually Shed During EEA3
NOGRR234	Related to NPRR 1098, Direct Current Tie (DC Tie) Reactive Power Capability Requirements
NOGRR235	Combining Greyboxes and Other corrections
NOGRR236	Related to NPRR1105, Option to Deploy Distribution Voltage Reduction Measures Prior to Energy Emergency Alert (EEA)
NOGRR237	Related to NPRR1106, Deployment of Emergency Response Service (ERS) Prior to Declaration of Energy Emergency Alert (EEA)
NOGRR238	Alignment Changes for December 17, 2021 Nodal Operating Guide – NPRR1094, NPRR1105, NPRR1106
NOGRR239	WAN Data Protection Responsibilities
NOGRR240	Direct Current Tie (DC Tie) Ride-Through Requirements
NOGRR241	Related to NPRR1127, Clarification of ERCOT Hotline Uses
NOGRR242	Update POIB References
NOGRR244	Alignment Changes for December 1, 2022 Nodal Operating Guide – NPRR1127

Other Binding Document Revision Requests (OBDRRs)	
OBDRR030	Related to NPRR 1080, Limiting Ancillary Service Price to System-Wide Offer Cap
OBDRR031	Change Non-Spinning Reserve Service Deployment
OBDRR032	Non-Spin Changes Related to NPRR1093, Load Resource Participation in Non-Spinning Reserve
OBDRR033	ORDC Changes Related to NPRR1093, Load Resource Participation in Non-Spinning Reserve
OBDRR034	Related to NPRR 1099, Managing Network Operations Model Resource Nodes
OBDRR035	Related to NPRR1101, Create Non-Spin Deployment Groups made up of Generation Resources Providing Off-Line Non-Spinning Reserve and Load Resources that are Not Controllable Load Resources Providing Non-Spinning Reserve
OBDRR036	Related to NPRR1106, Deployment of Emergency Response Service (ERS) Prior to Declaration of EEA
OBDRR037	Power Balance Penalty and Shadow Price Cap Updates to Align with PUCT Approved High System-Wide Offer Cap

OBDRR038	Minimum Contingency Level Updates to Align with PUCT Order
OBDRR039	ORDC Changes Related to NPRR1120, Create Firm Fuel Supply Service
OBDRR040	ORDC Changes Related to NPRR1131, Controllable Load Participation in Non-Spin
OBDRR042	Related to NPRR1142, ERS Changes to Reflect Updated PUCT Rule Changes re SUBST. R. 25.507

Planning Guide Revision Requests (PGRRs)	
PGRR089	Planning Data and Information Updates for Planning Posting
PGRR091	FIS Application Completion 60-Day Limit
PGRR092	Related to NPRR1077, Extension of Self-Limiting Facility Concept to Settlement Only Generators (SOGs) and Telemetry Requirements for SOGs
PGRR093	Replace Inadvertent Deletions in Section 5
PGRR094	Clarify Notification Requirement for Generator Construction Commencement or Completion
PGRR095	Establish Minimum Deliverability Criteria
PGRR096	Achieve Consistent Representation of Distributed Generation in Steady-State Models
PGRR098	Consideration of Load Shed in Transmission Planning Criteria
PGRR099	Revise GIM Process to Ensure Compliance with the Lone Star Infrastructure Protection Act
PGRR100	Steady-State Case Building Timeline Update
PGRR101	Related to NPRR1133, Clarify Responsibilities for Submission of Planning Model Data for DC Ties

Retail Market Guide Revision Requests (RMGRRs)	
RMGRR165	Modify ERCOT Pre-Launch Responsibilities in a Mass Transition
RMGRR166	Revising Timing for Switch Hold Extract Availability
RMGRR167	Switch Hold Removal Documentation Clarification
RMGRR168	Modify ERCOT's Mass Transition Responsibilities
RMGRR169	Related to NPRR1095, Texas SET V5.0 Changes
RMGRR170	Inadvertent Gain Process Updates

Resource Registration Glossary Revision Requests (RRGRRs)	
RRGRR025	Related to NPRR1005, Clarify Definition of Point of Interconnection (POI) and Add Definition Point of Interconnection Bus (POIB)
RRGRR028	Transformer Impedance Clarifications
RRGRR029	Related to NPRR1077, Extension of Self-Limiting Facility Concept to Settlement Only Generators (SOGs) and Telemetry Requirements for SOGs
RRGRR030	Allow New Voltage Levels in Resource Registration Information
RRGRR031	Related to NPRR995, RTF-6 Create Definition and Terms for Settlement Only Energy Storage

System Change Requests (SCRs)	
SCR813	NMMS Jointly-Rated Equipment Coordination Confirmation
SCR814	Point-to-Point (PTP) Obligation Bid Interval Limit
SCR815	MarkeTrak Administrative Enhancements
SCR816	CRR Auction Bid Credit Enhancement
SCR817	Related to NPRR1095, MarkeTrak Validation Revisions Aligning with Texas SET V5.0
SCR818	Changes to Incorporate GIC Modeling Data into Existing Modeling Applications
SCR819	Improving IRR Control to Manage GTC Stability Limits
SCR820	Operator Real-Time Messaging During Emergency
SCR822	Create Daily Energy Storage Integration Report and Dashboard
SCR823	ERCOT Mass System “County Name” File Updates for Texas SET V5.0 Implementation

Verifiable Cost Manual Revision Request (VCMRR)	
VCMRR032	Calculation of Average Running Hours per Start when Determining the Variable O&M for QSGRs

Settlement Metering Operating Guide Revision Request (SMOGRR)	
SMOGRR025	Modifications to Line Loss Compensation Requirement for EPS Metering