

**COMMENTS ON RECENT PUBLIC UTILITY COMMISSION RULE ON  
PROCEDURE FOR CONDUCTING AN AUTHORIZED REVIEW OF  
ACCESS LINE REPORTS**

**Presentation to Texas Association of Telecommunication  
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**COMMENTS ON RECENT PUBLIC UTILITY COMMISSION RULE ON  
PROCEDURE FOR CONDUCTING AN AUTHORIZED REVIEW OF ACCESS LINE  
REPORTS**

**New Public Utility Commission Substantive Rule Sec. 26.469 as to conducting an “authorized review” of access line reports-** Under Chapter 283 of the Local Government Code, a city may conduct what is called an “authorized review” of the access line reports as filed at the Public Utility Commission to determine whether the access line reports are in compliance with the reporting rules under both the statute and the rules promulgated by the Public Utility Commission. Since late fall of 2000, when the first access line reports were filed, there has not been a complete authorized review conducted of any provider. This is due to an array of reasons, some of which are: first of all, in the first year or two, until 2001 or 2002, there were no authorized reviews conducted as the rules were still being promulgated as to exactly what the reporting process would be, as it was not until 2001 that the electronic reporting system, the Municipal Access Line Reporting System (“MARS”), was established. Once the MARS system was established, cities were allowed access electronically to the reports as filed at the Public Utility Commission by a password. Then there was the issue as to uncollectables—and until that information was required to be provided it was not clear how the counts were being affected by uncollectables. Additionally, there were several problems with some of the initially filed reports, principally those of Verizon, which were corrected several times starting several years ago. That principally affected cities in the Dallas/Ft. Worth area. In 2002 and 2003, when authorized reviews were initiated by cities, frequently-if not always-- it was urged by the industry that the cities should wait until the Public Utility Commission had promulgated a rule on the procedure to conduct such a review. In fact, a few years ago, there was such a rulemaking initiated by the Public Utility Commission to promulgate an authorized review rule, but that rulemaking never promulgated a rule as the stakeholders, cities and the industry, in a rare show of agreement-collectively opposed the rule as proposed by the Commission. A year or so after that, there was a rulemaking request by the City of Dallas to adopt a rule, which was the result of a year long negotiation between SBC, the City of Dallas, and Verizon, with even that proposed rule having a few issues that were unresolved. The Public Utility Commission rejected that particular

rulemaking but opened its own rulemaking to promulgating an authorized review rule. That rulemaking resulted in the rule as adopted earlier this year as a “negotiated” rule. The rule is relatively general and fairly brief. Attached is the Public Utility Commission Order adopting that rule, and an edited version of the preamble discussing a few key issues.

The new rule (PUC Substantive Rule Sec. 26.469) provides that every 90-day period after an access line report has been filed, a city may give written notice by certified mail to the contact person at the certificated telecommunication provider that an authorized review is being commenced. That notice is to include a summary of the concerns and/or the reasons for the authorized review. It should be noted that this is a “summary” of the concerns and reasons for the authorized review-not a “specific” list of concerns, as those could not be known at the beginning of such a review. In the negotiations on the rule, it was requested by the industry that specific reasons be given prior to the initiation of the authorized review. As Chapter 283 has no “trigger” or threshold requirement prior to a city initiating an authorized review the request for a “specific” list of reasons or concerns was rejected and not included in the rule. As a matter of compromise, the “summary” of concerns was to be included in the rule to give the certificated telecommunication provider an idea of what might be looked at in such a review. Those concerns could be that not all services that have been provided by the certificated provider are being characterized correctly as access lines; or that not all customers within the municipal jurisdiction are being included; or thirdly, that payments have not been timely paid. As we all know, there has been a decrease in the growth of access lines over the last few years-and in some instances a decrease in the actual number of lines. Those changes could be caused by a variety of reasons. The industry has suggested that that is because there has been a migration to using wireless, and in more recent years, to the use of voice over internet protocol (“VoIP”) services. Of course, it could also be a result of miscounting of access lines or mischaracterization of services. The only way to verify the latter is in an authorized review.

Within 21 days from the receipt of the notice by the certificated telecommunication provider that an authorized review has been initiated, the certificated telecommunication provider is to provide to the city a list of the type’s of records it has that may satisfy and ensure compliance with the access reporting rules, with a brief description of those records. Once that list has been provided,

the city is to have access to the records in Texas for their review, even if the company records are located outside of Texas. As a practical matter, most companies that are outside of Texas will provide them electronically, subject to a confidentiality agreement, of course. There is no timeframe for completion of the review.

In the event there are issues that cannot be resolved informally between the certificated telecommunication provider and the city conducting the review, the rule provides that there can be mediation with the Public Utility Commission staff to try to resolve those issues. In the event that the disputed issues are not resolved at the staff level, a formal complaint can be filed. This complaint initiates a contested administrative proceeding, in which all municipalities and all certificated telecommunication providers are to be given notice and are allowed to participate in the proceeding. Such a formal complaint at least as to the characterization of certain services by providers was anticipated when the rule was adopted.

Two earlier PUC rules may also affect the authorized review. Earlier rules required that the overall billing system must be “sufficient to substantiate compliance with the access line reporting requirements” and that the records themselves “allows for easy identification and review” of the records. The two rules are:

P.U.C. Subst. R. §26.467(k)(2) entitled, “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 must be sufficient to substantiate compliance with the access line reporting requirements in this section.”

P.U.C. Subst. R. §26.465(i) entitled, “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.”

**Note- In SB 5 (79<sup>th</sup> Legislative session, 2<sup>nd</sup> Called session)–Non-certificated wireline “voice service” added to Chapter 283 as an access line--** The change will specifically include any

voice line, when it is provided over a wire line in the public rights-of-way and a provider of that voice service need not be certificated by the Public Utility Commission. This will include voice over Internet protocol (VoIP) services when provided over a wireline. (It does not appear to include “software” VoIP services.)

**Changes to Chapter 283 and definition of an “access line” to include wireline VoIP (Voice over Internet Protocol)**

Section 283.002, Local Government Code, was amended in Subdivision (2) on "certificated telecommunications provider" by adding “voice service” and adding a new Subdivision (7), which defines a "voice service." as follows:

**"Voice service" means 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).”

Thus any wireline voice service would be included as an “access line” under Chapter 283 for which municipal compensation will be paid-whether or not if they are certificated by the PUC.

**PROJECT NO. 29719**

**RULEMAKING TO ADDRESS § PUBLIC UTILITY COMMISSION  
MUNICIPAL AUTHORIZED REVIEW §  
OF ACCESS LINE REPORTING § OF TEXAS**

**ORDER ADOPTING NEW §26.469  
AS APPROVED AT THE MARCH 31, 2005, OPEN MEETING [edited]**

The Public Utility Commission of Texas (commission) adopts new §26.469, relating to Municipal Authorized Review of a Certificated Telecommunication Provider’s Business Records ..... The new rule will define the scope and procedures attendant to an authorized review of a provider’s business records by a municipality pursuant to Texas Local Government Code §283.056(c)(3). This new rule is adopted under Project Number 29719.

[Rule Preamble]

[Sprint request deletion of the part of the rule that requires that records be made available in Texas]

***Commission response*** [to records being made available in Texas by out of state CTPs]

**The commission did not receive comments from any other party [other than Sprint] which participated in the negotiation of this rule voicing any concerns regarding the requirement of having an authorized review held at the CTP’s principal Texas office. The commission notes that under P.U.C. Subst. R. §26.465(i), relating to Methodology for Counting Access Lines, and Reporting Requirements for Certificated Telecommunications Providers, a CTP is required to 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 commission finds that in order to provide easy identification and review for the commission and the**

**municipalities, it is incumbent upon the CTP to provide access to all records, books, accounts, or memoranda at the principal Texas office of the CTP. The commission therefore, declines to adopt Sprint’s recommendation to remove the word “Texas” from P.U.C. Subst. R. §26.469(c)(4)(b).**

**Comments on Preamble Language**

*Business Records*

The Coalition argued that the preamble should provide clarity as to the types of CTP business records which are subject to access by having commission staff list examples of types of business records that should be available for access. The Coalition suggested that the following business records be included in the preamble: (1) List of Services; (2) Procedure(s) used to determine classification of products and services as access lines and identification of categories of access lines; (3) Street address guide (SAG); (4) Adequate proof agreements; (5) Samples of billing records or invoices to customers; (6) Underlying records to support uncollectible customer accounts; and (7) Records as to lines added or dropped relevant to the reviewing period. The Coalition stated that the CTP’s billing system should be sufficient to substantiate compliance with the access line reporting requirements pursuant to P.U.C. Subst. R. §26.467(k)(2). Moreover, the Coalition noted that records are to be maintained in a manner which allows for easy identification and review consistent with P.U.C. Subst. R. §26.465(i). The Coalition further argued that a list of all services that the CTP provides is necessary to ensure that all services have been characterized properly, categorized correctly, and that they have been designated as an access line.

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*Commission response*

The commission finds that the proposed new section sets forth very general guidelines. In addition, the commission recognizes that the parties reached an agreement on the basic terms of the proposed new section with the understanding that further issues could be worked out cooperatively during the authorized review process. During such a process, the parties could determine the significance of various issues and identify those issues that continue to be in dispute. The commission believes that it is premature to place stipulations or numerous clarifications on this rule prior to the parties conducting a number of authorized reviews to determine what areas of dispute require resolution in the form of an amendment to this rule. However, the commission also believes that it would be in the best interest of the parties for the commission to communicate what it views as examples of business records that may be utilized during an authorized review. These examples are not intended to be all-inclusive nor an indication that such business records must be produced by a CTP if not currently generated in its normal course of business. Since the types of business records necessary to conduct an authorized review may vary with each CTP, the commission finds it is not possible to identify a comprehensive list of business records in the preamble. The commission notes that the Coalition has suggested numerous types of business records as examples to be placed in the preamble. It is reasonable to expect that some of the business records listed by the Coalition would vary by company, consequently, the commission chose not to include those records in the examples below; however, the commission expects the parties to work cooperatively to determine the additional business records that will be reviewed.

**The commission agrees with SBC Texas that the release of customer billing statements that contain Customer Proprietary Network Information (CPNI) is of significant concern. Pursuant to Section 222 of the 1996 Federal Telecommunications Act (FTA), the commission determines that CTPs shall not be required to provide customer billing statements. On the other hand, examples of different types of business records that may be provided by the CTP are:**

- 1. List of services that are being provided by the CTP including a brief description of each service. The commission agrees with the Coalition that the list of services is required by the municipalities to determine if services have been categorized correctly by the CTPs.**
- 2. Street address guide (SAG). The commission notes that street address information is initially provided by the municipalities to the CTPs to be entered into the SAG. The commission agrees with the Coalition that a SAG would enable the municipalities to compare what addresses the CTP shows to be in the city limits as to what addresses the municipality actually has in the city limits to ensure that access lines have been reported correctly.**
- 3. Support documentation for write-offs or uncollectible accounts. The commission notes that §26.467(k)(3)(A)(iii) states that if a CTP deducts or includes a direct write-off pursuant to §26.467(m)(2), 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. The commission finds that since this report should already be submitted as part of the quarterly access line report filing under**

**§26.467(k)(3)(A)(iii), it should be made available to the municipalities during the authorized review.**

- 4. Adequate proof agreements. The commission notes that §26.467(k)(4)(H) states that 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. The commission finds that since adequate proof agreements are currently required under §26.467(k)(4)(H), such agreements should be made available to the municipalities during the authorized review.**

**The commission has the expectation that the CTP and the municipality will work together to identify business records necessary to successfully complete the authorized review. Such cooperative effort should ultimately provide assurance to the municipalities that the CTPs have been correctly and accurately categorizing, reporting and submitting compensation to the municipalities for all access lines that are being served within the municipalities' city limits.**

*Time Period of Records Subject to Review*

The Coalition argued that Texas Local Government Code §283.056(c)(3) mandates that an authorized review must be commenced within 90 days after the filing of a CTP's access line report, however, it does not restrict the time period for which the records may be examined. The Coalition stated that when no previous examination of the initial access line reports and supporting documents has been performed, it is paramount that these records be examined to determine the initial characterization of services and the designation of access line categories.

The Coalition cited P.U.C Subst. R. §26.465(i) that states, in part, "...The books and records for each access line count shall be maintained for a period of at least three years," as evidence that the commission intended for the municipalities to have access to CTP records for this period of time. The City of Garland concurred with the Coalition's comments.

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*Commission response*

**The commission finds that, pursuant to Texas Local Government Code §283.056(c)(3), a municipality may perform an inspection of a provider's business records to the extent necessary to conduct an authorized review, if commenced within 90 days *after the filing of a certificated telecommunications provider's report of access lines*. Since CTPs file access line reports on a quarterly basis, the commission finds that the only access line report which shall be subject to an authorized review by the municipalities is the access line report for the quarter for which a municipality initiated an authorized review within the 90 day time limit imposed by Texas Local Government Code §283.056(c)(3). The commission determines that the computation of the 90-day filing deadline, for the purpose of municipal authorized review, should commence on the first day of the access line reporting period for the next quarter. This practice shall allow a CTP an opportunity to file any amendments or corrections to a previously filed access line count for the quarter for which a municipality seeks authorized review. Moreover, it will eliminate any possible confusion as to what point the 90-day clock would commence for a municipality to file an intent to conduct an authorized review, in the event that a CTP filed modifications to its quarterly access line report prior to the start of the next reporting period. The commission recognizes that a CTP shall maintain the books and records for each access line count for a**

**period, at minimum, of three years in accordance with P.U.C. Subst. R. §26.465(i). The business records from other quarters may be utilized to determine the accuracy of the access line count report for the quarter subject to the authorized review. However, the municipalities may not challenge the accuracy of access line reports for quarters in which a municipality failed to initiate an authorized review within the time limit imposed by Texas Local Government Code §283.056(c)(3).**

**The commission recognizes that a CTP is not required to maintain such historical business records beyond the three year mandate. However, the commission expects that a CTP should, to the extent practicable, provide any and all pertinent historical business records in excess of three years of age in its care, custody or control. The commission believes that such cooperative effort between the CTP and municipality is consistent with the provisions of this new rule and the underlying purposes of Texas Local Government Code, Chapter 283 in assuring accurate and efficient municipal authorized access line count reviews.**

**The commission may revisit the record retention provisions in P.U.C. Subst. R. §26.465(i) in the event that a three-year review of pertinent historical business records is insufficient to establish appropriate accuracy or if collaborative efforts fail to produce additional relevant business records within the care, custody or control of the CTP.**

#### *Administrative Remedy*

The Coalition maintained that Texas Local Government Code §283.051(b) does not affect the right of a municipality to initiate legal action against a CTP that uses the public right-of-way to

provide local exchange telephone service within a municipality and has not compensated the municipality in accordance with Texas Local Government Code Chapter 283. The City of Garland concurred with the Coalition's comments.

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*Commission response*

**The commission acknowledges the filed comments of the parties on the issue of exhaustion of administrative remedies related to the application of municipal authorized reviews of access line reports pursuant to Local Government Code, Chapter 283. However, at this time, the commission declines to express comment on this issue but reserves the right to address it in the event of a subsequent relevant case, controversy or court decision.**

**§26.469. Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records.**

(a) **Purpose.** This section establishes uniform guidelines for a municipal authorized review of a certificated telecommunications provider's (CTP) access line reports, pursuant to Texas Local Government Code §283.056(c)(3).

(b) **Application.** This section applies to all municipalities and CTPs in the State of Texas except to the extent exempt under §26.468(c) of this title (relating to Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting).

(c) **Municipal Authorized Review Procedural Guidelines.**

(1) Municipalities are encouraged to informally ask questions about access line counts or municipal fee payments with the appropriate CTP in a timely manner. CTPs are encouraged to provide reasonable answers to access line count and municipal fee payment questions of the municipalities in a timely manner.

(2) Not later than 90 days after the filing of a CTP's quarterly report of access lines, as required by §26.468 of this title, a municipality shall notify a CTP of its intent to conduct an authorized review of the CTP's business records to ensure compliance with access line reporting requirements. This notification shall be in writing and sent via certified mail to the CTP contact person named on the commission's Municipal Access Line Reporting System (MARS) website and shall include a summary of the municipality's concern(s) and/or reason(s) for the review. Such notice may be modified and amended in a subsequent written notice

using the same process.

- (3) Not later than 21 days from the CTP's receipt of notice under paragraph (2) of this subsection, the CTP shall provide to the requesting municipality a written list of the types of business records that are necessary to conduct an authorized review as requested in the notice, with brief descriptions for identification purposes.
- (4) The municipality shall determine which business records from the list provided by the CTP will be subject to review and provide written notice to the CTP. The CTP shall provide the requested business records within 30 days from the municipality's written request. The CTP shall provide the business records to the municipality in the following manner:
  - (A) The CTP shall provide access to the requested business records on its premises.
  - (B) The on-premises review shall be conducted at the principal Texas office of the CTP, unless otherwise agreed by the CTP and the municipality.
  - (C) Business records shall remain the property of the CTP and may not be removed or reproduced without the express written permission of the CTP.
  - (D) Business records may be produced in a compatible electronic format or paper copy at the discretion of the CTP.
- (5) A CTP may redact customer-specific proprietary information as necessary for compliance with federal or state law. Information deemed confidential or proprietary by the CTP must be so noted, and each participating party and its

representative(s) shall protect such confidential or proprietary information as provided in Texas Local Government Code §283.005. CTPs may require all persons participating in the authorized review to execute a non-disclosure agreement prior to providing access to documents or other information.

(d) **Commission Resolution of Disputed Issues.**

(1) **Informal dispute resolution.** If cooperative efforts between the parties have failed to resolve all issues related to the authorized review, the commission staff may mediate any dispute(s) filed by the CTP or the municipality.

(2) **Formal complaint to the commission.** A formal complaint may be filed with the commission by either a CTP or Municipality to resolve remaining disputed issues not settled by informal dispute resolution pursuant to paragraph (1) of this subsection. The commission shall provide notice of the filing of a formal complaint to all municipalities and all CTPs in accordance with established commission procedural rules.