

PROJECT NUMBER 36830

INQUIRY TO DETERMINE WHETHER THE	§	PUBLIC UTILITY COMMISSION
DEFINITION OF "ACCESS LINE" SHOULD	§	
BE MODIFIED FOR MUNICIPAL	§	OF TEXAS
RIGHT OF WAY	§	

COMMENTS OF TEXALTEL

TEXALTEL is a trade association of competitive telecommunications providers in Texas. TEXALTEL thanks the Commission for the opportunity to participate in this inquiry.

The Commission's inquiry, while required, is also timely given the constant evolution of the communications industry. For example, under today's municipal access line fee rules, a medium business customer may pay \$400 for a service provided over a DS1 (with up to 24 POTS lines) *plus* \$144 in municipal fees. This equates to a thirty-six percent fee on a service that consumers in Texas are paying today. Add to that sales taxes, USF fees, 911 fees – we assume that the picture is obvious. Additionally, newer technologies may allow a greater number of lines to be provided over a DS1, which could then arguably incur municipal line fees alone of more than \$500 per month, possibly exceeding the retail price of the service. These fees are so onerous that they encourage customers to move outside of cities or to find services of providers who are exempt from the fees. Ultimately, the rules need to apply fees consistently and be clear and enforceable. Otherwise, we will never reach the point where we have a level playing field with competition based on the service alone. Our conclusion is that the present system is badly broken and in severe need of major modification.

Even though some of the modifications to the present system that other interested parties will likely propose may be beyond the legal reach of the Commission, TEXALTEL urges the Commission to take a leadership role to suggest to the legislature that this problem needs

legislative action. However, there are actions that the Commission can take within its authority, and we urge the Commission to address the problems that it can.

First, not all providers are required to pay municipal access line fees. While the Commission cannot, we believe, address wireless services, it could address “over the top” VOIP services. These providers are presently exempted from payment of fees by the Commission’s rules; not by statute. There is absolutely no justification for this exclusion, and it only serves to give one class of providers a tremendous financial advantage over other communications carriers (e.g., landline and interconnected VoIP carriers).

Second, there is a high level of uncertainty and lack of clarity regarding application of municipal access line fees to business VOIP services. Litigation by the City of Houston is the result of this ambiguity, and the pleadings in that proceeding highlight the dilemma and, thus, pose the problem to be addressed. To underscore the uncertainty, there are allegations that some providers are (a) paying no fees on VOIP services provided over DS1s, (b) paying a Category 3 fee, or (3) paying only one Category 2 fee. Unfortunately, the current rule promotes the confusion. Present rules refer to the counting of Category 2 access lines based on “channelized” services. Technically speaking, VOIP services are not “channelized”, as that term that is not clear nor relevant to the provision of VoIP services today. The term “channelized” is relevant only to TDM-based (Time Division Multiplexing) transmission, which is not necessarily applicable to the technologies and facilities used to provide VoIP services. Thus, the argument arises that Category 2 rates do not apply to VOIP services provided over DS1 connections.

While IP platforms do offer some improvements over older technologies, most of the services received by the customer are the same or similar regardless of the platform used. Therefore, the rules should be clarified to apply municipal fees in a neutral and reasonable manner so that simply because of the technology used to provide a service, a carrier is financially and competitively disadvantaged.

For the reasons above, TEXALTEL proposes the following:

1. Place a cap on the number of line charges that can be assessed over a DS1. The present system unreasonably taxes local exchange services provided over DS1 channels. As shown in the example above, municipal access line fees can range from a 36% to over 100% of the retail rate for the service; whereas the typical residential municipal access line fee is less than 10% of the retail rate. With many small businesses struggling to survive in today's economy, there is no justification for a difference in treatment or increased burden on business customers. We urge that there be a cap on the number of local exchange service lines per DS1. Our suggestion is that a reasonable cap is 8 – which would put the municipal fee at about 10% of the retail rate for a DS1 based service. Such a cap will reduce fees paid by some customers but will also disincite customers from finding service alternatives that would lead to avoiding all ROW fees.
2. Change the rules so that “over the top” VOIP providers no longer get a free ride.
3. Clarify/Modify the rules on a going forward basis to answer the questions regarding fees applicable to business VOIP services. Ultimately, the goal is to have a level playing field across services and providers to the extent possible given the current statutory language. Moreover, to the extent such clarifications/changes broaden the providers or services paying, this revenue will help offset any revenue reductions that may result from the imposition of the cap proposed above.
4. There have been occasions in the past when there were disagreements over what services are subject to what fees. Efforts to seek guidance from the Commission have produced disappointing results. The primary reason is that while staff may

venture an opinion on a subject, such an opinion carries minimal legal weight and is usually only available to or applicable the complainant, not to all stakeholders. TEXALTEL has urged that there be a process by which ambiguities in rules/law or disagreements over interpretations can be brought for Commission action. Absent leadership by the Commission, disagreements can fester until they become big and ugly lawsuits involving a lot of money – as has the Houston issue. Working from the premise that the goal is to have competitively neutral application of the ROW fees, there needs to be a process allows stakeholder input and that leads to an enforceable Commission order that would have a general application. So long as an interpretation is applied to all carriers, carriers will be acting under the same rules.

We again thank the Commission for this opportunity to participate in development of important public policy.

Sincerely

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(note – questions below have been left in for drafting purposes. They will be deleted before filing.)

Responses to this notice may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 21 days of the date of publication of this notice.

All responses should reference Project Number 36830. This notice is not a formal notice of a proposed rulemaking, but the parties' responses to the questions will assist the commission in determining the necessity for a related rulemaking. Questions concerning this notice should be referred to John Costello, Rate Regulation Division, at (512) 9367377 or Jeff Stuart, Legal Division, at (512) 936-7442. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

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