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DOCKET NO. 50667

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APPLICATION OF TEXAS §
TELEPHONE ASSOCIATION FOR §
ADMINISTRATIVE APPROVAL OF §
ACCESS SERVICE TARIFF UNDER 16 §
TAC § 26.206 §

PUBLIC UTILITY COMMISSION
OF TEXAS

DOCKET NO. 50853

APPLICATION OF TEXAS §
STATEWIDE TELEPHONE §
COOPERATIVE, INC. FOR ITS §
ADMINISTRATIVE REVISIONS TO §
ITS INTRASTATE ACCESS SERVICES §
TARIFF §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER ON CERTIFIED ISSUES

This Order addresses the issues certified to the Commission related to whether a tariff may be issued in the name of a non-utility trade group and whether a utility must file its own tariff. For the reasons discussed in this Order, the Commission concludes that a tariff may not be issued in the name of a non-utility trade group and that a utility must file its own tariff with the Commission. Consequently, these two dockets should be dismissed.

However, to convert to a new tariff structure to reflect this decision and to expeditiously address necessary changes to intrastate access rates, the Commission determines that a two-step process should be used. In the first step, a Texas generic intrastate access tariff should be approved that will include all of the companies in these two dockets. The Commission will later determine how companies' intrastate access tariffs should be structured.

I. Background

The Texas Telephone Association (TTA) and Texas Statewide Telephone Cooperative, Inc. (TSTCI) are trade associations representing various companies in the telecommunications industry, including telecommunications providers and companies that provide products and services to those providers. TTA and TSTCI are not regulated entities and do not provide any type

of telecommunications service. The members of each trade group include a number of small and rural incumbent local exchange companies (ILECs) that provide service in Texas.

The companies identified as an issuing carrier in TTA's and TSTCI's access tariffs possess certificates of convenience and necessity (CCNs), provide local exchange telephone service and basic local telecommunications service, and own and operate for compensation in Texas facilities to convey, transmit, and receive communications over a telephone system. In addition, each of them provided local exchange telephone service in a certificated area on or before September 1, 1995. Accordingly, each is a dominant carrier,¹ a public utility,² a local exchange company,³ and an incumbent local exchange company.⁴ Each is also a certificated telecommunications utility⁵ and a dominant certificated telecommunications utility,⁶ usually referenced as a *DCTU* in the Commission's rules.

Currently, TSTCI has an intrastate access tariff on file with the Commission that identifies 39 ILECs as issuing carriers to the tariff. TSTCI states that its tariff has served as the intrastate access tariff for not only its members but also many other small and rural carriers in Texas.⁷ It appears that the Commission first approved such a tariff for TSTCI in 1992 in a proceeding addressing the revamping of access charges following the break-up of the AT&T system.⁸ The cooperative made filings on a regular basis to amend this access tariff over the following years.⁹

¹ Public Utility Regulatory Act, Tex. Util. Code § 51.002(2) (PURA).

² *Id.* § 51.002(8)

³ *Id.* § 51.002(4).

⁴ *Id.* § 51.002(3).

⁵ 16 Tex. Admin. Code § 26.5(38) (TAC).

⁶ *Id.* § 26.5(74)

⁷ Docket No. 50583, Joint Response of TSTCI and Commission Staff at 2 (Jun. 3, 2020).

⁸ *Petition of AT&T Communications of the Southwest, Inc. for Emergency and Other Relief Concerning Access Charges and Petition of the General Counsel for an Inquiry into a Flat Rate Plan for Access Charges*, Consolidated Docket Nos. 6106 and 7205, Order (Aug. 27, 1992).

⁹ *See Application of Texas Telephone Association for Administrative Approval of Access Service Tariff Under 16 TAC § 26.207*, Docket No. 50667, Joint Brief in Response to Order No. 1 at 2–3 n.3 (providing citations to access service tariff applications approved by the Commission before this proceeding).

Recently, 17 ILECs that were members of TSTCI left that organization and joined TTA. This change precipitated, at least in part, the filing by TTA for its own access tariff that included these 17 ILECs as issuing carriers to this new tariff.¹⁰ Similarly, TSTCI filed an application to amend its existing access-service tariff to remove these 17 ILECs as issuing carriers to its tariff.¹¹ Thus, there will be 22 small and rural ILECs that are members of TSTCI and would be issuing carriers in TSTCI's proposed tariff, if approved.¹² And there will be 17 small and rural ILECs that are members of TTA (and former members of TSTCI) and would be issuing carriers in TTA's proposed tariff, if approved.¹³ Currently, however, these 17 ILECs (and the other 22 ILECs) are providing access services under TSTCI access tariff, which was last approved in 2019.¹⁴

The removal of these 17 ILECs from TSTCI's tariff appears to be the only reason for TTA's tariff filing as each trade group wants its own tariff for its members. TTA states that the "proposed tariff will not result in any changes to the issuing carrier's revenues or company-specific access-services rates and will not substantially affect the customers receiving the affected services from the issuing carriers. It is a consolidated tariff under which the issuing carrier companies who are currently providing the affected services under a separate tariff will transition to the new tariff

¹⁰ Docket No. 50667, Application of Texas Telephone Association for Administrative Approval of Access Service Tariff Under 16 T.A.C. § 26.207 (Mar. 16, 2020) (TTA's Application)

¹¹ *Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Revisions to its Intrastate Access Services Tariff*, Docket No. 50853, Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Revisions to its Intrastate Access Services Tariff (May 15, 2020) (TSTCI's Application).

¹² Alenco Communications, Inc.; Brazos Telephone Cooperative, Inc., Cameron Telephone Company, Cap Rock Telephone Cooperative, Inc.; Coleman County Telephone Cooperative, Inc.; Colorado Valley Telephone Cooperative, Inc.; Cumby Telephone Cooperative, Inc.; Dell Telephone Cooperative, Inc.; ENMR Telephone Cooperative, Inc.; Electra Telephone Company; Five Area Telephone Cooperative, Inc.; Industry Telephone Company; La Ward Telephone Exchange, Inc.; Lake Livingstone Telephone Company, Lipan Telephone Company; Livingstone Telephone Company; Mid-Plains Rural Telephone Cooperative; Pola Lambro Telephone Cooperative, Inc.; South Plains Telephone Cooperative, Inc.; Southwest Arkansas Telephone Cooperative, Tatum Telephone Company; Taylor Telephone Cooperative, Inc.; Wes-Tex Telephone Cooperative, Inc.; XIT Rural Telephone Cooperative, Inc.; West Plains Telecommunications, Inc.; and Border to Border Communications, Inc.

¹³ Big Bend Telephone Company, Inc. d/b/a BBT; Blossom Telephone Company; Brazoria Telephone Company; Central Texas Telephone Cooperative, Inc. d/b/a Central Texas TeleCommunications; Community Telephone Company; Eastex Telephone Cooperative, Inc.; Etex Telephone Cooperative, Inc.; Ganado Telephone Company, Inc. d/b/a YK Communications; Guadalupe Valley Telephone Cooperative, Inc.; Hill Country Telephone Cooperative, Inc.; Muenster Telephone Corporation of Texas d/b/a Nortex Communications, North Texas Telephone Company; Peoples Telephone Cooperative, Inc., d/b/a Peoples; Riviera Telephone Company; Santa Rosa Telephone Cooperative, Inc.; Totelcom Communications, LLC; and West Texas Rural Telephone Cooperative, Inc.

¹⁴ *Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Revisions to its Intrastate Access Services Tariff*, Tariff Control No. 49545, Notice of Approval (Jun. 21, 2019).

without effect to current rates and services.”¹⁵ Apparently, the two trade-group tariffs will be identical except for the company-specific areas of the tariffs.

In addition to the removal of the 17 ILECs, TSTCI states that its filing is necessary to change the intrastate access rates to maintain parity with interstate access rates, which TSTCI stated would be reduced in a future filing by the National Exchange Carrier Association.¹⁶ Further, TSTCI states that additional changes are needed in its access tariff because two of the issuing ILECs in its tariffs are changing their interstate access rate tariffs.¹⁷

Further, under FCC rules, the ILECs are required to reduce their access rates to bill and keep.¹⁸ Rate regulated carriers were given a nine-year transition period to file a tariff reflecting this change.¹⁹ TTA filed revised tariff pages on June 8, 2020 to comply with Federal Communications Commission requirements.

II. Relevant Statutes and Rules

In the context of the Public Utility Regulatory Act (PURA)²⁰ and the Commission’s telecommunications rules, the term *tariff* has two distinct but related meanings. A tariff is a fee, charge, rate, duty, tax, etc. that is charged for a service, product, or activity;²¹ and a tariff is a schedule listing the fees, charges, rates, etc. of a utility.²² Both meanings are used in the utility arena. The term *tariff* is defined in the Commission’s rules as follows:

¹⁵ Docket No. 50667, TTA’s Application at 1–2 (with corrections)

¹⁶ Docket No. 50853, TSTCI’s Application at 1 (stating that NECA will make its filing on June 16, but not explaining how it is addressing the changes in a filing that has not yet been made).

¹⁷ *Id.* (appearing, again, to be reflecting future changes that had not been made at the time of TSTC’s filing in this docket).

¹⁸ See *Connect America Fund; A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, (2011) (USF/ICC Transformation Order), *aff’d sub nom In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

¹⁹ *Id.*, para. 801; see also 47 C.F.R. § 51.909(j).

²⁰ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66 016 (PURA).

²¹ *Tariff*, Black’s Law Dictionary (7th ed. 1999).

²² *Id.*

The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.²³

While the term *tariff* is not explicitly defined in PURA, it is used with the sense defined by the rule: a schedule of all the charges for the utility's services.²⁴ Although several provisions in PURA discuss the requirements of tariff filings for telecommunications services, PURA § 52.251 is perhaps the most relevant here. In its entirety, PURA § 52.251 states that:

- (a) A *public utility* shall file with the commission a tariff showing each rate that is:
 - (1) subject to the commission's jurisdiction;
 - (2) in effect for a utility service, product, or commodity offered by the utility.
- (b) The *public utility* shall file as a part of the tariff required under Subsection (a) each rule that relates to or affects:
 - (1) a rate of the utility; or
 - (2) a utility service, product, or commodity furnished by the utility.²⁵

In comparison with PURA § 52.251, the Commission's rules provide more granular information such as when utilities must file tariffs with the Commission, what information a utility must include in a tariff filing, the effectiveness of a tariff filing, and procedures for processing tariff filings.²⁶ Under the Commission's rules, an application for approval of a proposed tariff is to be approved by the Commission if the application passes an administrative review and meets the requirements of 16 TAC §§ 26.207 and 26.208(c).²⁷

To obtain Commission approval of a proposed tariff or proposed tariff revision, a public utility must file with the Commission an application for approval of a proposed tariff revision and

²³ 16 Tex. Admin. Code § 26.5(241) (TAC).

²⁴ See PURA § 52.25(a) ("A public utility shall file with the commission a tariff showing each rates subject to the commission's jurisdiction that . . . is in effect for a utility service, product, or commodity offered by the utility . . ."); cf. *id.* § 32.101(a) (discussing electric utilities); Tex. Water Code § 13.136(a) (discussing water and sewer utilities).

²⁵ PURA § 52.251 (emphasis added).

²⁶ 16 TAC §§ 26.207–.208.

²⁷ *Id.* § 26.208

five copies of its proposed tariff revision.²⁸ The application must include public notice plans that accord with the requirements of 16 TAC § 26.208(c). The proposed tariff revision must contain all of the utility's rates, tolls, charges, rules, and regulations pertaining to all of its utility service, meet the formatting requirements of 16 TAC § 26.207(d)(1), and contain the sections listed under 16 TAC § 26.207(e).

Additionally, the Commission rule that speaks to intrastate access service, while focused on the rates for this service, does contain language relevant here. The rule states that "each DCTU's tariff must include" rates for certain specified services.²⁹ In addition, a "DCTU is not required to include in its access tariff any access service that its network is technologically incapable of providing."³⁰ Further, "a DCTU must include in its access tariff" certain specified services.³¹ Finally, "[t]he intrastate access service tariff of all DCTUs must contain" certain minimum requirements.³²

III. Answers to Certified Issues

The four issues certified to the Commission are best condensed into two issues:

1. May a tariff be issued in the name of a non-utility trade group?
2. Must each utility file its own tariff?

A. May a tariff be issued in the name of a non-utility trade group?

The Commission concludes that a tariff may not be issued in the name of a non-utility trade group. PURA and the Commission's rules state that a utility is required to have a tariff, that a utility applies for a tariff, and that a tariff is approved for the rates and rules of a utility. It is true that the Commission's rules do not explicitly state that a tariff must be in the name of a utility and cannot be in the name of a trade group. But an analysis of the language used throughout PURA

²⁸ See *id.* § 26.207(d)(1) ("Every public utility shall file with the commission filing clerk five copies of *its* tariff containing schedules of all *its* rates, tolls, charges, rules, and regulations pertaining to all of *its* utility service when *it* applies for a [CCN] to operate as a public utility. *It* shall also file five copies of each subsequent revision."); *id.* § 26.208(c), (f).

²⁹ *Id.* § 26.205(b)

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

and the Commission's rules indicates that, in spite of that, it is proper to infer that the rules require a tariff to be filed in the name of a utility.³³

TSTCI and TTA emphasize that the Commission approved a consolidated tariff in 1992 and has approved amendments to that tariff over the succeeding time period. This is the extent of their legal analysis. Neither TSTCI nor TTA provide an analysis of the current statute or explain how changes made to the Commission's rules and PURA over the last 18 years might bear on this issue. And while TSTCI emphasizes findings in Consolidated Docket Nos. 6106 and 7205 recognizing the filing and approval of a consolidated tariff, it fails to address a finding in the same order that states that short time limits prevented the Commission from performing a thorough review of the access tariffs to ensure they were in complete compliance with the Commission's rules.³⁴ Such a finding undercuts TSTCI's assertion that the approval of the consolidated tariff demonstrates compliance with Commission rules.

Consequently, the Commission determines that neither PURA nor the Commission's rules allow a tariff to be issued in the name of a non-utility trade group. This determination does not, however, preclude TTA or TSTCI from aiding its members regarding their tariffs. TTA and TSTCI may track for their members changes in law that require tariff changes, advise their members on the language of the tariff, and prepare tariff filings for their members. In summary, such trade associations may assist their members but they cannot apply for and have a tariff issued in their names.

³³ See PURA § 51.002(8) (defining *public utility* or *utility* as “a person or river authority that owns or operates for compensation in [Texas] equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier.”); *id.* § 52.251(a) (“A *public utility* shall file with the commission a tariff”); 16 TAC §§ 26.5(241) (defining *tariff* as the “schedule of a *utility* containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the *utility* stated separately by the type or kind of service and the customer class”); *id.* § 26.205(b) (“Each *DTCU*'s tariff must include [certain] charges for all access services offered by the *DCTU*. . . . A *DCTU* is not required to include in its access tariff [certain services]”); *id.* § 26.207(d)(1) (“Every *public utility* shall file with the commission . . . its tariff”); *id.* § 26.207(h) (“Each *utility* shall make available . . . at each of its business offices . . . its tariffs . . . , and its employees shall” assist a “person seeking information on its tariffs” and “shall provide copies of any portion of its tariffs.”); *id.* § 26.208(c)-(d) (“The *DCTU* shall include public notice plans in its application” and the “*DCTU* shall file a statement . . . proof of such notice.”).

³⁴ *Petition of AT&T Communications of the Southwest, Inc for Emergency and Other Relief Concerning Access Charges and Petition of the General Counsel for an Inquiry into a Flat Rate Plan for Access Charges*, Consolidated Docket Nos. 6106 and 7205, Finding of Fact No. 33 (Aug. 27, 1992).

B. Must each utility file its own tariff?

The Commission concludes that each utility must file its own tariff. The concept in PURA and the Commission's rules is that a utility will have a tariff "containing all rates" for each service it provides, broken down by the type of service and customer class.³⁵ Accordingly, it is inconsistent with PURA and the Commission's rules for the rates and rules of a utility to be found in separate tariffs issued to different entities.

There are two approaches the Commission could take to addressing this issue. First, the Commission could require each of the ILECs to file an amendment to its tariff to include the rates and rules regarding intrastate access service. Second, the Commission could adopt a pro forma tariff for intrastate access service and amend the current access rate rule to allow incorporation of that pro forma tariff into each ILEC's tariff by reference. This rule currently allows an ILEC's access tariff to cross-reference its federal tariff if the access rates for both are the same.³⁶

Regardless of which approach the Commission ultimately chooses to follow, there is a current need to update the access rates of the ILECs. Transitioning to utility-specific tariffs, whether the Commission employs a pro forma tariff or not, will require some amount of time and cannot stand in the way of updating the ILEC's access rates in a tariff. Therefore, the Commission will use a two-step approach to resolve this issue.

First, the Commission will convert TSTCI's current consolidated tariff into a generic Texas Intrastate Access Tariff that can be revised to reflect the new access rates required by Federal Communications Commission rules. Accordingly, the Commission directs the member ILECs of TTA and TSTCI to create this new generic Texas access tariff, based on TSTCI's current access tariff, to reflect the new intrastate access rates as of July 1, 2020 for each ILEC. This new generic tariff will also need to reflect changes to the existing tariff to address the two TSTCI members exiting the NECA interstate access tariff. This new generic Texas access tariff should be filed in

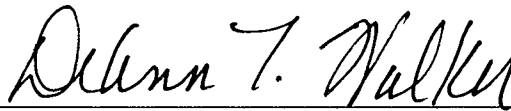
³⁵ See PURA § 52.251 ("a *public utility* shall file with the commission a tariff."); *id.* § 55.004 ("To make a change in an [ILEC's] tariffed rules or practices that does not affect the company's charges or rates, *the company* must file the proposed change with the commission at least 35 days before the proposed change."); 16 TAC § 26.5(241) (defining *tariff* as "the schedule of a *utility* containing *all* rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of *the utility* stated separately by type or kind of service and the customer class."); *id.* § 26.207 ("Every *public utility* shall file with the commission . . . five copies of *its* tariff.").

³⁶ 16 TAC § 26.205(b).


a new control number and Commission Staff should review this new generic tariff, giving attention to the rates but also to the portions of the tariff that are revised. After the new generic Texas access tariff is approved, the Commission will decide how to approach the second step, primarily whether to adopt a pro forma tariff or a schedule for individual companies' tariff filings.

Signed at Austin, Texas the 31st day of July 2020.

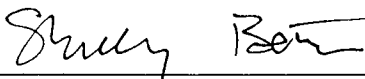
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