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Donna L. Nelson  
Chairman

Kenneth W. Anderson, Jr.  
Commissioner

Brian H. Lloyd  
Executive Director



Rick Perry  
Governor

## Public Utility Commission of Texas

August 18, 2011

Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas 78701

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RE: **SOAH Docket No. 473-11-6824, P.U.C. Docket No. 38872** *Petition for Determination of Non-Eligibility for Texas Universal Service Fund Disbursements to Consolidated Communications of Texas Company Pursuant to PURA § 56.025 and P.U.C. SUBST. R. 26.406 and Refund of Disbursements; SOAH Docket No. 473-11-6825, P.U.C. Docket No. 39250, Petition for Determination of Non-Eligibility for Texas Universal Service Fund Disbursements to Consolidated Communications of Fort Bend Company Pursuant to PURA § 56.025 and P.U.C. SUBST. R. 26.406 and Refund of Disbursements.*

Dear Chairman Nelson and Commissioner Anderson:

This letter filing is intended to correct Staff's August 1, 2011 Brief on Threshold Legal Issues in the above-referenced proceedings (Brief). In its Brief, Staff characterized the Texas Universal Service Fund disbursements to Consolidated Communications of Texas Company and Consolidated Communications of Fort Bend Company (Respondents) that have been made pursuant to PURA § 56.025, and P.U.C. SUBST. R. 23.53, as having been *transitional from their inception*.<sup>1</sup> This was incorrect.

Staff based this interpretation on language in a 1992 Commission order establishing these disbursements.<sup>2</sup> However, upon further review of this order, Staff now understands that the Commission was not characterizing those disbursements as transitional at that time.

<sup>1</sup> Commission Staff's Brief on Threshold Legal Issues at 5-7 (August 1, 2011).

<sup>2</sup> *Petition of AT&T Communications of the Southwest, Inc. for Emergency and Other Relief Concerning Access Charges*, Docket No. 6106, and *Petition of General Counsel for an Inquiry into a Flat Rate Plan for Access Charges*, Docket No. 7205, Order at 6, Finding of Fact No. 25 (August 27, 1992) (referencing Westberry Revised Exhibit A) (HCAF Order) (establishing *transitional* Interexchange Carrier Access Charges (ICAC) and HCAF support amounts).



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Although the original High Cost Assistance Fund (HCAF) was, in fact, later replaced by the mechanism set out in PURA § 56.025, the HCAF was not initially created as a transitional fund. Therefore, although the HCAF ultimately was transitional, Staff incorrectly suggested that it was originally conceived as being transitional.

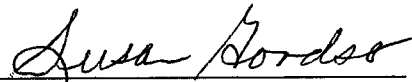
Staff stands by the remainder of its Brief. Staff apologizes for any inconvenience this error may have caused.

Because this matter involves complex legal issues and the positions of the parties are widely divergent, Staff suggests that the Commission would benefit from reply briefs of the parties to the previously approved List of Threshold Issues. Reply briefs would provide clarity and a useful presentation of each party's analysis of the opposing parties' arguments. Because the parties had already been preparing what would have effectively been briefs before the Administrative Law Judge at the State Office of Administrative Hearings, Staff believes the Commission could set an expedited deadline for such reply briefs.

Respectfully Submitted,

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