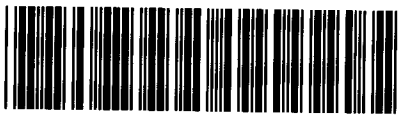


Control Number: 39585

Item Number: 36

Addendum StartPage: 0

AT&T Texas
January 6, 2012

PROJECT NO. 39585

RULEMAKING PROCEEDING TO AMEND SUBST. RULES RELATING TO TELECOMMUNCATIONS SERVICE TO CONFORM TO 2011 LEGISLATION, PARTICULARLY SENATE BILLS 980 AND 983 AND HOUSE BILL 3395	§ § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

COMMENTS OF AT&T TEXAS

COMES NOW, Southwestern Bell Telephone Company d/b/a AT&T Texas ("AT&T") and files its Comments in this proceeding.

I. INTRODUCTION

AT&T commends the Commission's very detailed effort to incorporate recent changes in the PURA into Chapter 26 of the Commission's substantive rules ("the rules" or "Chapter 26"). AT&T appreciates the opportunity interested parties were given to review the proposed rule in draft format and to provide comments, many of which were incorporated in the proposed rule. As reflected in its rule-by-rule comments below, AT&T largely agrees that the proposed rules accurately reflect recent legislative changes. But as noted in its preliminary comments on the draft rule, AT&T believes that both PURA and the rules need to continue to keep pace with rapid changes/developments in the highly competitive telecommunications industry.[1]

[1] In addition to this effort, there are a number of other rules that need to be updated or eliminated as AT&T Texas has urged in prior proceedings such as Project No. 38552.

30

The most streamlined way to update the rules would be the approach AT&T proposed in its comments on the draft rule: cross-reference the new statutory language rather than incorporate it into the rules. With such an approach, future statutory changes will not require a project of this magnitude. AT&T re-urges that labor-saving approach today.

Accordingly, AT&T suggests that the Commission eliminate unnecessary rules (particularly where the rules are identical to the associated PURA language) and allow the statutory language of PURA to "speak for itself." In many cases this can be accomplished simply by inserting qualifying language such as "except as provided in PURA § XX.XXX" into an existing rule. Such an approach would be consistent with the general powers of the Commission and the Legislature's express policy of reducing the costs and burden of regulation,[2] a burden that is borne equally by both the industry and the Commission. PURA § 14.001[3] provides that the "commission shall adopt and enforce rules ***reasonably required*** in the exercise of its powers and jurisdiction." (Emphasis added.) Where the plain language of PURA requires no rules for implementation, no Commission rules are "reasonably required."[4] This is particularly true where the rules simply mirror the relevant provisions of PURA. AT&T urges a simplified approach which would require rules only where necessary for proper implementation of a statutory revision. This approach would also facilitate rapid, efficient implementation of future changes to PURA and thus accommodate resource constraints.

---

2 PURA § 51.001(e)(1).

3 All statutory references herein are to sections of PURA unless otherwise noted.

4 For example, § 52.002(d) added language prohibiting the Commission from regulating VoIP rates, terms and conditions, but no rules have been recommended to implement this change. AT&T agrees with Staff that PURA speaks for itself and no new rule is needed.

To reduce possible confusion, particularly where in many cases both PURA and Chapter 26 contain similar and in some cases identical language, AT&T proposes that an additional sentence be added at the end of the current preface to Rule 26.5 (Definitions) such as: "To the extent there are any inconsistencies between PURA and these Rules, the terms of PURA shall control. Where a term has not been defined in these Rules, the meaning of the term shall be as provided in PURA."

III. COMMENTS

Rule 26.5 (67) – New Definition of Deregulated Company. The draft rule proposes adding a new definition of "Deregulated Company." The proposed definition is identical to that contained in PURA and therefore unobjectionable, but by the same token it is unnecessary. The ability of a transitioning company to become a deregulated company by deregulating all of its markets has existed since the passage of SB 5 and changes brought about by SB 980 do not necessitate the proposed change. In fact, § 65.052 refers to existing statutory definitions in § 65.002.

Rule 26.5 (103) – New Definition for "Health Center." A new definition for "Health Center" has been proposed. While the proposed definition is identical to that contained in PURA § 58.252(1-a), it is unnecessary because the statutory definition controls. Accordingly, AT&T recommends that the proposed definition not be adopted.

Rule 26.5 (111) – Informational notice. The proposed rule does not address this definition. But in light of changes to § 65.152, which eliminate the obligation for transitioning companies to file informational notices, and the proposed changes to Rules 26.227 and 26.230, AT&T recommends that this definition be modified as follows:

26.5 (111) – Informational notice. That notice ~~required to be~~ which a company may choose or be required to ~~filed~~ in connection with nonbasic services, new service offerings, and pricing and packaging flexibility pursuant to Public Utility Regulatory Act Chapters 52, 58, ~~or~~ 59, or 65.

Rule 26.5 (120) – New Definition of Internet Protocol Enabled Service. A new definition of Internet Protocol enabled service has been proposed. The proposed definition is identical to the definition at § 51.002(3-a) and is therefore unobjectionable, but also unnecessary. The change to SB 980 was to make it clear that such services are not subject to the jurisdiction of the Commission.[5] Accordingly, introducing the concept into Commission rules is not required to keep abreast of statutory changes. AT&T recommends that the proposed definition not be adopted.

Rule 26.5 (142) – New Definition of Market. The proposed rule would add a definition of "Market." The proposed definition is identical to that contained in § 65.002(2), and therefore is not objectionable, but it is also not necessary. The Rules already rely on the PURA definition at Rule 26.134(c). AT&T recommends that the proposed definition not be adopted.

Rule 26.5 (252) – New Definition of Transitioning Company. The proposed rule proposes adding a definition of "Transitioning Company." The proposed definition is identical to that contained in § 65.002(5), and therefore is an accurate reflection of the legislative changes, but the proposed definition is also unnecessary.

Rule 26.5 (263) – New Definition of Voice Over Internet Protocol Service. The proposed rule proposes adding a new definition of Voice over Internet Protocol service. The proposed definition is identical to the new a PURA definition at

[5] PURA § 52.002(d).

§ 51.002(13) and is therefore an accurate reflection of the statutory changes, but is also unnecessary. AT&T recommends that the proposed definition not be adopted.

Rule 26.5 (266) – New Definition of Wireless Provider. The proposed rule proposes adding a new definition of "Wireless provider." The term requires no definition because § 65.052 uses the term interchangeably with "commercial radio service provider, as that term is defined in § 64.201," and therefore the proposed definition is unobjectionable, but is also unnecessary.

Rule 26.22(a)(1) – Request for Service. The proposed language seeks to implement SB 980 changes to §§ 65.102 and 65.151, which relieve deregulated companies and transitioning companies (in deregulated exchanges only) of the provider of last resort ("POLR") obligation. While the proposed language tracks SB 980, its placement in Rule 26.22(a)(1) creates an ambiguity by suggesting that the POLR relief applies only to the requirements of Subsection 22(a). POLR relief also applies to Rule 26.23(a) (refusal of service), as well. Moreover, the goals of administrative economy would be best served by implementing the statutory relief by replacing the proposed language with the following language in both Rules 26.22(a)(1) and 26.23(a)(1): "Except as otherwise provided in Chapter 65 of PURA,". This approach would insure that if there are any future changes to the POLR obligation, no additional conforming rule changes would be required.

Rule 26.23 - Refusal of Service. The proposed rule cleans up a referenced to tariffs "on file with the Commission." AT&T agrees with this change, but proposes that this rule be further modified to make it clear that a carrier which has been relieved of its

POLR obligation is exempt from this rule. That can be accomplished by adding the phrase "Except as otherwise provided in Chapter 65 of PURA," as a preface to (a)(1).

Rule 26.27(b)(3)(A) & (B) – Billing Adjustments. The draft rule proposes deleting the reference to tariffs, schedules, or price lists being on file with the Commission from these subsections. AT&T agrees with these proposed deletions to comport with SB 980 changes to § 52.007 because a telecommunications provider is no longer required to maintain on file with the Commission tariffs, price lists, or customer service agreements ("CSAs") if the carrier files written notice of the withdrawal with the Commission and posts the tariffs, price lists, or generic CSAs on its Internet website.

Rule 26.29(k) – Tariff Compliance. The proposed rule would delete this subsection to comport with SB 980 changes to § 52.007. AT&T supports this rule change. As discussed herein, a telecommunications provider is no longer required to maintain its tariffs, price lists, or CSAs on file with the Commission if it files written notice of their withdrawal with the Commission and posts them on its Internet website.

Rule 26.54(a) – Service Objectives and Performance Benchmarks. The proposed language seeks to implement SB 980 changes to deregulated companies by § 65.102, as well as the relief provided to transitioning companies in deregulated exchanges under § 65.151. AT&T supports this change but would propose that the relief provided to both types of providers be addressed with reference to PURA to allow for any possible future changes to the statutes, by adding a new phrase at the end of the first sentence of 26.54(a) as follows: "(a) This section establishes service objectives that should be provided by a dominant certificated telecommunications utility (DCTU), as applicable, <u>except as otherwise provided in Chapter 65 of PURA</u>."

Rule 26.73 – Annual Earnings Report. The proposed rule addresses changes to §§ 65.102 and 65.152, which relieve certain providers from the obligation to file annual earnings reports except where they are receiving support from the Texas High Cost Universal Service Plan. AT&T does not oppose the proposed approach, but would recommend that a more efficient way to address those changes would be to add the following preface to the existing language of Rule 26.73: "Except as otherwise provided in Chapter 65 of PURA,". Such a preface would allow future changes to the annual report requirement, if any, to be implemented without additional rule changes.

Rule 26.89 – Information Regarding Rates and Services of Nondominant Carriers

and

Rule 26.208 – General Tariff Procedures pertaining to Dominant Carriers. AT&T supports the Commission's proposed resolution of the concerns raised by AT&T concerning the draft rule versions of these two rules.

Rule 26.124 - Pay-Per-Call Information Services Call Blocking. AT&T has no comment on this proposal, as this rule does not apply to AT&T.

Rule 26.128 – Telephone Directories. The proposed rule seeks to implement § 55.204, which offers telecommunications providers and utilities the option to publish their telephone directories on the Internet rather than physically distribute paper copies to the public. The proposal accurately reflects the new statutory requirements, but AT&T submits that the easiest and most efficient way of doing so would be to modify the first sentence of Subsection (a) of this rule as follows:

> **(a) Applicability.** Except as provided in PURA Section 55.204, ~~T~~the provisions of this section shall apply to all telephone directory providers to the extent outlined in this section.

Rule 26.134 – Market Test to be Applied. The proposed language seeks to overlay the new provisions of §§ 65.051 and 65.052 onto the existing rule. AT&T does not oppose these changes, which comport with SB 980. Alternatively, AT&T proposes that Rule 26.134 be deleted in its entirety because the statutory language is clear, unambiguous, and requires no implementing language.

Rule 26.141(a)(3) – New Definition for "Health Center." A new definition for "Health Center" is proposed in an apparent attempt to address the changes in law pursuant to SB 773 (which added "health care centers" as eligible entities to the discount program mandated under HB 2128 in 1995). However, it has not been made clear that Rule 26.141 actually relates to those school/library/hospital discounts in HB 2128 and now extended by SB 773; rather, it appears that Rule 26.141 relates to distance learning, information sharing programs and interactive multimedia communications addressed in Chapter 57 of PURA. Accordingly, AT&T is opposed to this proposed definition being included in this rule. AT&T recommends instead that Rule 26.141 be rewritten to address both the Chapter 57 distance learning and information sharing discounts as well as the discount program authorized in 1995 by Chapter 58 (Subchapter G) and Chapter 59 (Subchapter D) and now amended by SB 773.

Rule 26.141(f) – Customer Specific Contracts. The proposed rule regarding price for components of a service used predominantly for distance learning or an information sharing program seeks to remove the price floor of "no less than 105%" of the customer-specific long-run incremental cost and the inclusion of the phrase "including installation" apparently to address the changes in law pursuant to SB 773.

Again, as discussed above, existing Rule 26.141 does not appear to relate to the discounts or pricing of telecommunications infrastructure that interconnects eligible public entities under HB 2128. Accordingly, AT&T believes these proposed revisions do not add any clarity.

Alternatively, AT&T recommends instead that Rule 26.141 be rewritten to address both the Chapter 57 Distance Learning and information sharing discounts, as well as the discount program authorized in 1995 by Chapter 58 (Subchapter G) and Chapter 59 (Subchapter D) and now amended by SB 773. Accordingly, AT&T alternatively proposes that Rule 26.141 be revised to refer to PURA or in the alternative be reformatted and add a new subsection (c) to incorporate the applicable PURA language, as follows:

Rule 26.141 Distance Learning, Information Sharing Programs, Interactive Multimedia Communications And Private Network Services to Certain Entities.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Distance learning** – Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(2) **Educational institution** – Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(3) **Health Center** – A federally qualified health center delivery site.

(4)~~(3)~~ **Information sharing program** – Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(5)~~(4)~~ **Interactive multimedia communications** – Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(6)~~(5)~~ **Library** – Public library or regional library system as defined by Government Code, §441.122, or a library operated by an institution of higher education or a school district.

(b) **Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications**

(1)~~(b)~~ **Telecommunications services eligible for reduced rates.**

(A) ~~(1)~~Any tariffed service, if used predominantly for distance learning purposes by an educational institution or information sharing program purposes by a library, is eligible for reduced rates, as set forth in this section.

(B)~~(2)~~ A service is used predominantly for distance learning purposes by an educational institution or information sharing program purposes by a library when over 50% of the traffic carried, whether in video, data, voice, and/or electronic information, is identified for such use pursuant to the requirements of subsection (d) of this section.

(2)~~(c)~~ **Coordination with federal discounts.**

(A) ~~(1)~~For any discount received pursuant to §23.107 of this title (relating to Educational Percentage Discount Rates (E-Rates)), an eligible school, library or consortia may apply such discount prior to any discount received under subsection (d) or (e) of this section. Any subsequent discount received under this section shall apply to the discounted E-Rate and not the tariffed rate.

(B) ~~(2)~~Any discount received under §23.107 of this title will be applied subsequent to the rate obtained for services offered pursuant to subsection (f) of this section. For purposes of determining the rate to which a discount pursuant to §23.107 of this title will apply, the rates offered under subsection (f) of this section qualify as the lowest corresponding price.

(3)~~(d)~~ **Process by which an educational institution or library qualifies for reduced rates other than through a customer-specific contract.** To qualify for a discounted rate, an educational institution or library, as defined in subsection (a) of this section, must provide a sworn affidavit to the dominant certificated telecommunications utility account representative or, if no account representative is assigned, to the business office of the utility.

(A)~~(1)~~ The affidavit shall:

(i)~~(A)~~ specify the requested service(s) to be discounted;

(ii)~~(B)~~ quantify, if applicable, the requested service(s) to be discounted;

(iii)~~(C)~~ state that the discounted service(s) will be used predominantly for distance learning purposes or information sharing program purposes; and

(iv)~~(D)~~ specify the intended use(s) of the discounted service(s).

(B)~~(2)~~ The affidavit shall be signed by the administrative head of the institution (e.g., principal, president, chancellor) or library, or a designee given the task and authority to execute the affidavit on behalf of the educational institution or library requesting the discounted rates.
(C)~~(3)~~ No other special form needs to be provided as part of the application process.
(D)~~(4)~~ The educational institution or library shall provide an affidavit each time it orders services that will be used predominantly for distance learning purposes or information sharing program purposes.

(4)~~(e)~~ **Interactive multimedia communications services.** Any dominant certificated telecommunications utility that provides interactive multimedia communications services may file a tariff to establish rates at levels necessary, using sound rate-making principles, to recover costs associated with providing such services to educational institutions or libraries. Those interactive multimedia communications services used predominantly for distance learning or information sharing program purposes, however, shall qualify for a 25% discount pursuant to subsection (d) of this section.

(5)~~(f)~~ **Customer-specific contracts**. When a service is provided to an educational institution or library pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), the dominant certificated telecommunications utility shall price those components of the service used predominantly for distance learning or an information sharing program no less than 105%, and no greater than 110%, of the customer-specific long-run incremental cost.

(6)~~(g)~~ **Cost determination.** Not withstanding subsections (d) and (e) of this section, once the commission develops cost determination rules for telecommunications services generally, a reduced rate approved under this section shall recover the service-specific long-run incremental costs. In the case of interactive multimedia communications services, however, the commission may allow a rate to be set lower than the long-run incremental cost of a specific service if such is determined to be in the public interest.

(c) **Private Network Services for Certain Entities.** A PURA Chapter 58 or 59 electing company shall provide private network services to those entities listed in PURA section 58.253(a).

(1) Priority shall be given to rural areas, areas designated as critically underserved either medically or educationally, and educational institutions with high percentages of economically disadvantaged students.
(2) An electing company shall provide private network services under a customer specific contract.
(3) An electing company shall offer private network service contracts under PURA Chapter 58, Subchapter G at 110 % of the long run incremental cost of providing the private network service, including installation.

(4) An electing company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits a second service. The tariff rate may not be distance sensitive or higher than 110 % of the service's statewide average long run incremental cost, including installation.
(5) On request of an entity listed in PURA section 58.253(a), an electing company shall provide point-to-point 45 megabits a second intraLATA services. The rate for the service may not be higher than 110 % of the service's long run incremental cost, including installation, and must be provided under a customer specific contract except that any interoffice portion of the service must be recovered on a statewide average basis that is not distance sensitive.
(6) An electing company shall provide to an entity listed in PURA section 58.253(a) broadband digital special access service to interexchange carriers, and the rate for the service may not be higher than 110 % of the service's long run incremental cost, including installation.
(7) On request of an entity listed in PURA section 58.253(a), an electing company shall provide expanded interconnection (virtual collocation).
(8) On request of an educational institution or library in an exchange of an electing company serving more than five million access lines in which toll-free access to the Internet is not available, an electing company shall make available a toll-free connection or toll-free dialing arrangement that the institution or library may use to obtain access to the Internet in an exchange in which toll-free access to the Internet is available at no charge until Internet access becomes available in the exchange of the requesting institution or library. The electing company is not required to arrange for Internet access or to pay Internet charges for the requesting institution or library.
(9) The private network services provided under PURA Chapter 58, Subchapter G may be interconnected with other similar networks for distance learning, telemedicine, and information-sharing purposes.

Rule 26.171 -- Small Incumbent Local Exchange Company Regulatory Flexibility. AT&T has no comment on this proposal, as this rule does not apply to AT&T.

Rule 26.205 – Rates for Intrastate Access Services. AT&T supports the proposed changes to this rule.

Rule 26.207 – Form and Filing of Tariffs. The proposed rule changes do not propose a change to this rule. However, as a result of newly enacted § 52.007, telecommunications providers are no longer required to maintain tariffs, price lists, or CSAs on file with the Commission. Instead, they now have the option to post these

documents on the Internet. Yet, Subsection (c) of Rule 26.207 states that no utility shall charge any rate or impose any terms or conditions different from those prescribed in its effective tariff "filed with the commission." In light of § 52.007's enactment -- and to prevent any confusion -- the phrase "filed with the commission" should be deleted from Subsection (c) of this rule.

Rule 26.208 – General Tariff Procedures. The proposed rules proposes to incorporate newly enacted § 52.007 (pertaining to withdrawal of tariffs, price lists, or CSAs on file at the Commission) as a new Subsection (i) to Rule 26.208. However, the proposed rule changes omit the language of Subsection (b)(2) of § 52.007. If § 52.007 is to be incorporated into Rule 26.208, <u>all</u> of its provisions should be included. Alternatively, for the reasons discussed above in Section I, AT&T recommends that Subsection (a) of this rule instead be modified in the following manner:

> **(a) Application.** <u>Except as provided in PURA Section 52.007, T</u>~~t~~<u>t</u>his section applies to dominant certificated telecommunications utilities (DCTUs), as that term is defined by §26.5 of this title (relating to Definitions). In addition, the services to which this section applies are those that are a subset of a service for which the utility is dominant.

Rule 26.211(b) & (c)(1)(B) & (c)(7)(B) – Customer Specific Contracts Related to Pricing Flexibility. The Commission has proposed deleting Rule 26.211(c)(1)(B) and certain language in Rule 26.211(b) and Rule 26.211(c)(7)(B) to comport with SB 980, and, more specifically, its elimination of the requirement for companies operating under Chapters 58 and 59 of PURA to file customer specific contracts with the Commission for approval. AT&T agrees with the Commission's proposed changes to the rule.

Rule 26.211(d)(2) – Customer Specific Contracts. AT&T supports the Commission's proposed resolution of the concerns raised by AT&T concerning the draft rule version of this rule.

Rule 26.217 – Administration of Extended Area Service (EAS) Requests. Newly enacted § 55.026 prohibits the Commission from requiring telecommunications providers to provide EAS on or after September 1, 2011. The proposed amendment to the rule incorporates the statutory language. For the reasons discussed above in Section I, AT&T recommends instead that Subsection (a) instead be modified as follows:

> **(a) Purpose.** Except as provided in PURA Section 55.026, ~~T~~this section establishes procedures for processing requests for extended area service (EAS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B.

Alternatively, and perhaps more appropriately, because a telecommunications provider can no longer be required to provide new EAS plans, Rule 26.217 should be repealed in its entirety.

Rule 26.219 – Administration of Expanded Local Calling Service (ELCS) Requests. Newly enacted § 55.049 prohibits the Commission from requiring telecommunications providers to provide ELCS on or after September 1, 2011. The proposed rule change would incorporate this new law into Subsection (a) of Rule 26.219. For the reasons discussed above in Section I, AT&T recommends that instead Subsection (a) instead be modified as follows:

> **Purpose.** Except as provided in PURA Section 55.049, ~~T~~the purpose of this section is to describe the process used to administer requests from telephone service subscribers for two-way toll-free expanded local calling service (ELCS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C.

Alternatively, and perhaps more appropriately, because the Commission can no longer require a telecommunications provider to provide ELCS, Rule 26.219 should be repealed in its entirety.

Rule 26.226(e) – Requirements of Customer-Specific Contracts. The Commission has proposed adding a sentence to this Subsection that provides: "Customer-specific contracts are not required to be filed with the Commission." While the proposed sentence is consistent with the change in the law pursuant to SB 980, which repealed the requirement for companies operating under Chapters 58 and 59 of PURA to file customer specific contracts with the PUC, the proposed sentence is unnecessary; no change is required to effect SB 980 changes to this rule.

Rule 26.227 – Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies. AT&T supports the Commission's proposed resolution of the concerns raised by AT&T concerning the draft rule version of this rule.

Rule 26.230 – Requirements Applicable to Chapter 65 One-Day Informational Notice Filings. For all the reasons discussed in AT&T's comments on the draft rule version of this rule, AT&T continues to believe that Rule 26.230 should be repealed in its entirety. Alternatively, AT&T is not opposed to the Commission's proposed resolution of the concerns raised by AT&T concerning the draft rule version of this rule, with the following noteworthy exceptions:

First, the proposed amendment to Subsection (c)(3) of this rule incorporates Subsection (a)(**2**) of PURA § 65.154 but does not incorporate Subsection (a)(**1**) of § 65.154. That provision states that, upon written notice, transitioning companies are

not required to comply with long run incremental cost ("LRIC") pricing standards for residential services.

Second, AT&T does not support changing "basic local telecommunications service" to "residential service" and "non-residential service" [sic] in Subsections (c)(2)(A) and (c)(2)(B) of this rule. Such changes would conflict with the express language of Subsections (b)(1) and (b)(2) of PURA § 65.153.

Third, AT&T does not support insertion of the words "equal to or" in Subsections (c)(2)(A) and (c)(2)(B) of this rule. These additional words are not contained in Subsections (b)(1) and (b)(2) of PURA § 65.153.

Fourth, at a minimum the reference to "non-residential services" in Subsection (c)(2)(B) should be changed to "residential services" in order to correct an apparent typographical error. Otherwise, Subsection (c)(2)(B) would be internally inconsistent with Subsection (c)(2)(A), which pertains to "all services, other than residential services" (*i.e.*, non-residential services).

In sum, AT&T would propose the following amendments to the existing rule to fully implement the changes to PURA § 65.153:

(c) **Pricing standards.**

(2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:

(A) [no change]

(B) for non residential basic local telecommunications service, at any price higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated~~,~~. ~~provided that the company does not increase rates for stand-alone residential local exchange voice service as defined in PURA §65.002(4) before the date that the commission revises, or declines to revise, monthly per line support under the Texas High Cost Universal Service Plan pursuant to PURA §56.031, regardless of whether the company is an electing company under PURA Chapter 58.~~

(3) Notwithstanding any other long-run incremental cost filing requirements in Subchapter J, a transitioning company, on submission of a written notice to the commission, is not required to comply with a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services or a requirement to file with the commission a long-run incremental cost study for any service.

Rule 26.401 – Texas Universal Service Fund (TUSF). The Commission proposes to incorporate new § 56.032 (pertaining to TUSF support in deregulated markets) into the rules by adding a new Subsection (c) to Rule 26.401 that would reproduce all of the language in § 56.032 verbatim. However, for the reasons set forth in Section I above, AT&T instead recommends that § 56.032 be incorporated into the Commission's rules as a modification to the first sentence of Rule 26.403, as follows:

> **Rule 403(a). Purpose.** Except as provided in PURA § 56.032, ~~T~~this section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

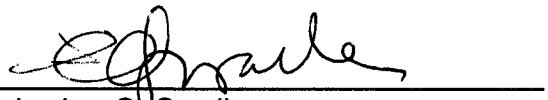
IV. CONCLUSION

For the reasons stated herein, AT&T urges the Commission to adopt changes to Chapter 26 as advocated herein. In many cases, that purpose can best be accomplished by adding a reference to PURA rather than incorporating PURA language verbatim into the rules. This more efficient approach may also reduce the need for future rulemakings as PURA continues to evolve in this rapidly changing technological and competitive era. Finally, AT&T again urges, as it has in previous proceedings, a close review of other Chapter 26 rules that have become outdated or obsolete but that

were not directly affected by recent legislation. A failure to affirmatively address such rules could create unintended implications for future interpretation of the Rules.

Respectfully submitted,

JOSEPH E. COSGROVE, JR.
General Attorney and Associate General Counsel



Katherine C. Swaller
General Attorney
State Bar Number 24077420
katherine.swaller@att.com

Thomas Ballo
General Attorney
State Bar Number 24006622
thomas.ballo@att.com

816 Congress, Suite 1100
Austin, Texas 78701
(512) 457-2302
(512) 870-3420 (Fax)

ATTORNEYS FOR AT&T TEXAS