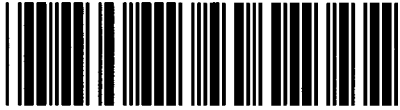
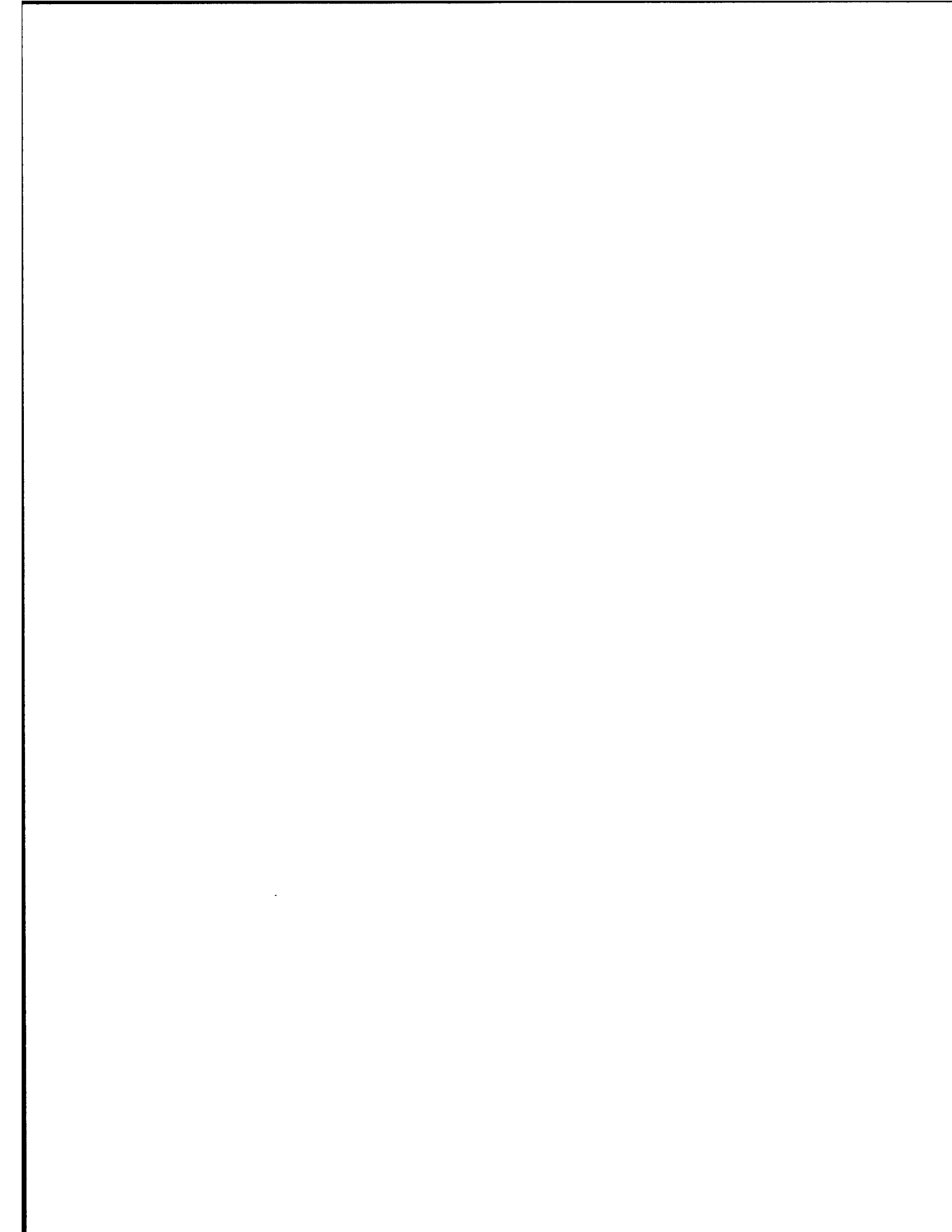


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**SPRINT COMMUNICATIONS COMPANY L.P.,  
TEXAS CABLE ASSOCIATION AND  
TW TELECOM OF TEXAS, LLC  
JANUARY 6, 2012**

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**PUC PROJECT NO. 39585**

**RULEMAKING PROCEEDING TO §  
AMEND SUBST. RULES RELATING TO §  
TELECOMMUNICATIONS SERVICE §  
TO CONFORM TO 2011 LEGISLATION §** **BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**JOINT COMMENTS OF  
SPRINT COMMUNICATIONS COMPANY L.P.,  
TEXAS CABLE ASSOCIATION AND TW TELECOM OF TEXAS, LLC**

**TO THE HONORABLE COMMISSION:**

On December 8, 2011, the Commission approved for publication a number of proposed amendments to its Substantive Telecommunications Rules to reflect changes to the Public Utility Regulatory Act (“PURA”) made in the most recent legislative session. Interested parties were directed to submit comments in this proceeding on January 6, 2011. Sprint Communications Company L.P. (“Sprint”), the Texas Cable Association (“TCA”) and tw telecom of Texas, llc (“TWTC”) (collectively the “Joint Commenters”) timely submit these comments.

**I. LRIC price floor for business and residential services  
Section 26.230(c)(2) and (3)**

**A. Subst. R. 26.230(c)(2)**

The proposed amendment to Subst. R. 26.230(c)(2) properly applies the statutory pricing standard applicable to residential services. However, with respect to “non-residential” services, i.e., business services, the proposed rule’s long run incremental cost (“LRIC”) language is internally inconsistent and conflicts with the LRIC price floor standard in PURA. Proposed

Subst. R. 26.230(c)(2) states:

- (2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:
- (A) for all services, other than residential—~~basic~~—~~local telecommunications~~ service, at a price equal to or higher than the service's long run incremental costs (LRIC); and
  - (B) for non-residential ~~basic local telecommunications~~ service, at any price equal to or higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated.

This language is internally inconsistent because subsections (2)(A) and (2)(B) conflict with one another, because “basic local telecommunications” was deleted from (2)(A) and (2)(B). As proposed, subsection (A) clearly and correctly requires that a “non-residential” service, (i.e., a business service) must be priced *above* LRIC, but subsection (B) expressly permits a “non-residential” service, (i.e., a business service) to be priced *below* LRIC if the tariff price was below LRIC on the deregulation date. More importantly, the above proposed language is contrary to PURA Sections 65.153(b) and 65.154 because it would allow non-basic business services provided by a transitioning company to be priced *below* LRIC in deregulated exchanges if the tariff price was below LRIC on the deregulation date. Because the LRIC price floor for business services was unchanged by SB 980 or other legislation, only a non-residential (business) *basic local telecommunications service*, as defined in PURA Section 51.002(1), may be lawfully priced below LRIC by a transitioning company if the tariff price was below LRIC on the date of deregulation.<sup>1</sup>

B. Subst. R. 26.230(c)(3)

Although ILECs are now permitted, upon submission of written notice to the Commission, to price retail residential service below LRIC,<sup>2</sup> PURA expressly requires that they

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<sup>1</sup> Tex. Util. Code Sec. 65.153(b)(2).

<sup>2</sup> Tex. Util. Code Sec. 65.154(a)(1).

must submit written notice to the Commission of their intent to do so. Specifically, PURA states that

(a) A transitioning company is not required to comply with the following requirements prescribed by this title on submission of a written notice to the commission:

- (1) 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
- (2) a requirement to file with the commission a long-run incremental cost study for residential or business services.<sup>3</sup>

The proposed rule, however, only requires written notice in the second instance, i.e. when a transitioning company wishes to cease filing LRIC *cost studies* for a service:

- (3) Notwithstanding any other long-run incremental cost filing requirements in this subchapter, a transitioning company, upon written notice to the commission, is not required to file with the commission a long-run incremental cost study for any service. ~~In each deregulated market, a transitioning company shall make available to all residential customers throughout that market the same price, terms, and conditions for all basic and non-basic retail telecommunications services, consistent with any pricing flexibility available to the company on or before August 31, 2005.~~

To be consistent with the law, the rule should be revised as suggested below in section C., to also require a transitioning company to submit written notice to the Commission that it plans to price a residential service below its long-run incremental cost.

C. Recommended language

To address concerns raised in sections A. and B. above, the proposed rule should simply be amended to be consistent with the language in PURA Sections 65.153 and 65.154:

- (2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:
  - (A) for all services, other than basic local telecommunications service, at any price higher than the service's long run incremental cost; and

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<sup>3</sup> Section 65.154, emphasis added.

- (B) for non-residential basic local telecommunications service, at any price higher than the lesser of the service's long run incremental cost or the tariffed price on the date that market was deregulated.
- (3) Notwithstanding subsection (2), a transitioning ILEC may, upon submission of written notice to the commission, price a residential service below its long run incremental cost and/or cease filing long run incremental cost studies for a service.

## **II. Financial reports to be filed by ILECs that received High Cost USF Support** Section 26.73

The proposed amendment to Section 26.73 adds language eliminating the requirement that deregulated or transitioning ILECs file financial reports unless they receive support from the Texas High Cost Universal Service Fund. Joint Commenters urge adoption of two changes to the rule to properly implement the requirement in SB 980 that there be transparency and accountability with respect to universal service support.

First, recipients of support should be required to make public their financial reports, which is consistent with SB 980's directive in Section 56.023(d) that the Commission make the TUSF more transparent. The earnings reports serve as a Texas-specific indicator of a company's overall financial condition and are, therefore, relevant to the company's "need" for financial assistance from the TUSF, which is funded by all Texas telecom providers and, ultimately, by Texas telephone consumers. The public has a right to see whether they are subsidizing companies that are financially sound and would remain so without subsidy. In recent years, even publicly-held companies, which are required by the S.E.C. to publically file the same or similar information on a company-wide basis, have taken to filing their Texas earnings reports on a confidential basis. Thus, the following sentence should be added: "**Earnings reports filed by publicly-held companies pursuant to this Section 26.73 cannot be filed confidentially.**"<sup>4</sup>

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<sup>4</sup> Joint Commenters' proposed rule language is shown in bold italics to differentiate it from strike outs and underlining in the published amendments.

Second, the Joint Commenters propose that Staff's language be modified so that the obligation to provide financial reports exists for the immediately preceding year in which support was received even if in the current year the ILEC no longer receives support. Staff's proposed new language states that a deregulated or transitioning company is not required to file an earnings report with the commission "unless the company *is receiving* support from the Texas High Cost Universal Service Plan."<sup>5</sup> Joint Commenters urge that this language be modified as follows: "A deregulated or transitioning company is not required to file an earnings report with the commission unless the company "*received* support from the Texas High Cost Universal Service Plan *during the most recent calendar year.*" With this modification, the Commission will ensure publicly available earnings reports for any calendar year that a company received subsidy.

### **III. Implementation of Detariffing**

Sections 26.89, 26.208(i), 26.227(g), 26.229(h) and 26.230(h)

Several of the proposed rule amendments implement the legislative change that allows ILECs and CLECs to choose to post their retail rates and terms for residential and business services on their Internet websites, rather than continuing to file tariffs and price lists with the Commission. Joint Commenters generally agree with the proposed rule changes, but believe that some clarifications should be made to the rules.

In Section 26.89, the proposed amendment to subsection (a) would make optional the submission of the information on services and rates currently required of nondominant carriers.

All nondominant carriers, including those holding a certificate of operating authority or a service provider certificate of operating authority, may, but are not required to shall file the information set forth in paragraphs (1) - (3) of this subsection. This information shall be updated and kept current at all times.

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<sup>5</sup> Emphasis added.

At the same time, however, a nondominant carrier that chooses not to submit the service and rate information required by subsection (a) would have to file a letter saying that no changes have occurred or it will not be considered to be registered with the Commission.

By June 30 of each year, each nondominant carrier that during the previous 12 months has not filed changes to the information filed pursuant to subsection (a) of this section shall file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier failing to file either this letter or the updates pursuant to ~~required by~~ subsection (a) of this section during the 12-month period ending June 30 may no longer be considered to be registered with the commission.

Joint Commenters believe that the letter filing will have no relevance once a nondominant carrier ceases to file service and rate information and instead posts that information on its Internet website. A statement that no changes have occurred since a filing made months or years ago will be meaningless. Joint Commenters suggest that either the updating requirement be eliminated and subsection (a) deleted from the rule, or that it be changed to a notice filing that states that the carrier has posted on its website its services and rates, and sets forth the carrier's URL.

Also, with respect to the notice requirements applicable to ILECs in the proposed rule amendments, Joint Commenters recommend that they be modified so that it is clear that the tariff withdrawal is not effective until after the customer notice has been completed, and that the notice include the company's website URL so that customers can locate the service and rate information. Joint Commenters also recommend that the proposed rule language explicitly require that service offering and rate information be *prominently* displayed as a menu item on the home page of company websites so that the information can be easily found. This will help consumers and competitors who need to locate a tariff or price list or generic contract. Joint



Commenters also urge that the rule language require that the information posted on company websites be updated continually to reflect changes in service offerings, rates and terms.

**IV. Directory Distribution**  
Section 26.128(e)

HB 3395 amended Section 55.204 of PURA to allow a telecommunications provider or telecommunications utility to publish on the provider's or the utility's Internet website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing must provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility exercises this option, it must notify its customers that the provider or utility will provide the first print or digital copy requested by a customer in each calendar year at no charge to the customer.

As a result, the Commission proposes to allow dominant telecommunications utilities to distribute directories electronically. The Commission has proposed the following with regard to Section 26.128(e):

**Requirements for telecommunications utilities found to be dominant.** This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) (No change.)

(2) **Distribution.** Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically shall provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory listings electronically, it shall notify its customers that the first print or digital copy requested by a customer in each calendar year will be

provided at no charge to the customer. A printed or digital copy of each directory shall be furnished to the commission. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another CTU. ~~A copy of each directory shall be furnished to the commission.~~  
(3) - (6) (No change.)

There is a competitive impact, however, of the proposed amendments to Section 26.128(e) that has not yet been addressed. ILECs are obligated to provide directories to CLECs pursuant to existing interconnection agreements that require the ILECs to make directories available to CLEC customers in the same manner as the ILECs provide directories to their own customers — upon request and free of charge. There should be no distinction among customers who call an ILEC's designated contact number to request a printed directory, no subset of customers should be charged for a directory, and no attempts should be made to market or otherwise promote the telecommunications services of the ILEC in the course of handling these calls. In addition, unless dominant ILECs agree to accept electronic files identifying CLEC customers who request directories, CLEC customers will have no choice but to contact the number provided by the dominant ILEC to request a directory; and, in so doing, could be subjected to marketing or sales information on behalf of the ILEC.

Therefore, the proposed rule amendments should be revised to require the dominant carrier to (i) not engage in any sales or marketing (including Winback) efforts with respect to the ILEC's services; (ii) establish a process for these calls that is identical for all callers, whether they are a CLEC's customers or the ILEC's own customers; (iii) establish a toll free number for this purpose; and (iv) accept from the CLECs periodic submissions of an electronic file identifying which of the CLEC's customers wish to receive a directory. These same conditions have been recognized, for example, in states that have allowed limited waivers, subject to conditions, of requirements to distribute paper copies of residential white pages. *See Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Application for Waiver of the*

*General Distribution Requirement of White Page Directories Under 4 CSR 240-32.050(4)(B), Order Approving Unanimous Stipulation and Agreement, Case No. IE-2009-0357 (Mo. P.S.C. July 24, 2009); Petition of Verizon New York Inc. for Waiver of New York Code of Rules and Regulations, Title 16, § 602.10(b) Pertaining to the Distribution of Telephone Directories, Order Granting Waiver With Conditions, Case 10-C-0215 (N.Y. P.S.C. Oct. 15, 2010).*

Therefore, the Joint Commenters propose the following additional revisions (shown as bold italicized text) to Section 26.128(e):

**Requirements for telecommunications utilities found to be dominant.** This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) (No change.)

(2) **Distribution.** Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically shall provide a print or digital copy of the directory or listing to a customer on request. For such requests the provider or utility shall establish a toll-free telephone number. If a provider or utility chooses to publish its telephone directory or directory listings electronically, it shall notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory shall be furnished to the commission. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another CTU. ~~A copy of each directory shall be furnished to the commission.~~ *Such distribution shall be made available to CTU customers in the same manner as the telecommunications utility provides to its own customers, and no sales or marketing of the telecommunications utility's services shall be made to the CTU's customers if and when they call the toll-free telephone number. The CTU shall be permitted to periodically submit to the telecommunications utility an electronic file identifying which of the CTU's customers wish to receive a printed directory. These requirements shall also apply in the event the telecommunications utility uses any affiliated or other publisher to provide directories.*

(3) - (6) (No change.)

**V. Definitions of Packaged Service and Promotional Service**  
Section 26.5(166) and (188)

The Commission's rules have addressed ILEC packages and promotions for several years without the apparent need for definitions for "packaged service" and "promotional service." To the extent that definitions for those terms now are deemed necessary, it is essential that they do not inadvertently or unnecessarily limit the Commission's jurisdiction regarding the possible types of packages and promotions. Therefore, the Joint Commenters suggest that "or rates" be added to the end of the proposed definition of "packaged service" in Section 26.5(166). ), and that the proposed definition of "promotional service" in Section 26.5(188) be amended to refer to "a service offered to customers at promotional rate *or rates*, ~~terms or conditions.~~"

**VI. Rural Exemption**  
Section 26.134(e)

Section 26.134(d) presently requires the Commission to remove the exemption of 47 U.S.C. § 251(f)(1) from an ILEC that seeks "deregulation" pursuant to Chapter 65 of PURA for a market area with a population of less than 30,000. 47 U.S.C. § 251(f)(1) provides a "rural telephone company"<sup>6</sup> with an exemption from the obligation of an ILEC to interconnect pursuant to 47 U.S.C. § 251(c). Pursuant to Section 251(f)(1), the exemption applies unless the

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<sup>6</sup> 47 U.S.C. 153(37) defines a "rural telephone company" as a local exchange carrier operating entity to the extent that such entity—  
(A) provides common carrier service to any local exchange carrier study area that does not include either—  
(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or  
(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;  
(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;  
(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or  
(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

Commission determines that a bona fide request to interconnect is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. § 254 (universal service).

Prior to the enactment of SB 980, Section 65.052(b) of PURA prevented the Commission from refusing to deregulate a market whose population was at least 100,000 or, if the population was less than 100,000 but was at least 30,000, had three (3) competitors other than the ILEC. SB 980 revised Chapter 65 of PURA to further limit the Commission's ability to refuse deregulation of a market. Section 65.052(b) now prevents the Commission from refusing to deregulate a market whose population is at least 100,000 or, if less than 100,000, has at least two (2) competitors other than the ILEC. Accordingly, Staff proposes to amend Section 26.134(d) so that mandatory removal of the Section 251(f)(1) exemption would apply to deregulation of a market area whose population is less than 100,000.

The Joint Commenters agree that, given the expanded opportunities conferred by SB 980 for ILECs to seek Chapter 65 deregulation, it is appropriate to concomitantly remove barriers to competitive entry into such markets. However, given that the Commission no longer may prevent deregulation of a market based on its population, it no longer makes sense as a matter of public policy for the Commission's rules to condition mandatory removal of the Section 251(f)(1) exemption on the population of a deregulated market. Although as a practical matter there will be few, if any, "rural" markets having a population of 100,000 or more, no rural telephone company under any circumstance should be able to claim the benefit of the Section 251(f)(1) exemption and at the same time circumvent the ILEC obligations set forth in Section 251(c). Thus, the Joint Commenters recommend the deletion of "with a population of less than 30,000" from the current rule and that no reference to a population of less than 100,000 be added.

## VII. Technical Changes to the Proposed Rule Amendments

Sections 26.22(a)(1), 26.23(b), 26.27(b)(3), 26.54(a), 26.208(i) and 26.229(b) and (i)

### A. Subst. R. 26.23(b)(3)

Section 26.23(b) pertains to NCTUs, not DCTUs. In addition, SB 980 authorizes permissive tariffing for telecommunications providers not subject to rate of return regulation. Therefore, if a customer fails to pay a charge that is in a schedule, price list, contract, or some other permitted by law, an NCTU should be able to refuse service. Therefore, the Joint Commenters suggest that Section 26.23(b)(3) be amended to state:

Insufficient grounds for refusal to serve. The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by an NCTU:

(A) (No change.)

(B) failure to pay for any charges that are not provided in the *NCTU's* ~~*DCTU's*~~ tariffs, schedules, price lists, terms and conditions or service, or customer specific contracts.

### B. Subst. R. 26.229(b) and (i)

The purpose of Section 26.229 is not limited to electing ILECs that “choose to provide an information notice.” Therefore, that phrase in Section 26.229(b) should be deleted. With respect to Section 26.229(i), SB 980 limits the right to withdraw a tariff, price list or agreement to providers that are not subject to rate of return regulation. Therefore, the Joint Commenters request that Section 26.229(i) be amended to apply to a telecommunications provider “that is not subject to rate of return regulation under PURA Chapter 53.”

### C. Subst. R. 26.22(a)(1), 26.27(b)(3), 26.54(a), 26.208(i)

Finally, for clarification the Joint Commenters also suggest the following minor revisions to the proposed amendments (shown in bold italicized text):

Section 26.22(a)(1)

(1) Every DCTU shall provide local telecommunications service to each qualified applicant for service and to each of its customers within its certificated

area in accordance with §26.54(c)(1) of this title (relating to Service Objectives and Performance Benchmarks). A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market.

Section 26.27(b)(3)

(A) Overbilling. If charges are higher than the NCTU's tariff, schedule, *price* list, terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer:

(i) - (iv) (No change.)

(B) Underbilling. If charges are found to be lower than authorized by the NCTU's tariff, schedule, *price* list, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

(i) - (iv) (No change.)

Section 26.54(a) This section establishes service objectives that should be provided by a dominant certificated telecommunications utility (DCTU), as applicable. A deregulated company that holds a certificate of operating authority and a transitioning company in a market that is deregulated are is-exempt from complying with the retail quality of service standards and reporting requirements in this section in-a-market-that-is-deregulated. The section outlines performance benchmark levels for each exchange. If service quality falls below the applicable performance benchmark for an exchange, ~~that indicates a need for the utility to~~ must investigate, take appropriate corrective action, and provide a report of such activities to the commission. The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. DCTUs shall make measurements to determine the level of service quality for each item included in this section. Each DCTU shall provide the commission with the measurements and summaries for any of the items included herein on request of the commission. Records of these measurements and summaries shall be retained by the DCTU as specified by the commission.

Section 26.208(i) A DCTU that is not subject to rate-of-return regulation under Public Utility Regulatory Act, Chapter 53:

(1) may, but is not required to maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates;

(3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:

(A) files written notice of the withdrawal with the commission; and

(B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

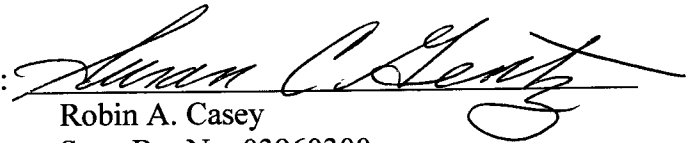
## Conclusion

The Joint Commenters appreciate the opportunity to submit these comments and the Staff's continuing efforts to revise the Commission's Substantive Rules appropriately to reflect the most recent changes to PURA.

Respectfully submitted,

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