



Control Number: 50667



Item Number: 4

Addendum StartPage: 0



TARIFF CONTROL NO. 50667



**APPLICATION OF TEXAS
TELEPHONE ASSOCIATION FOR
ADMINISTRATIVE APPROVAL OF
ACCESS SERVICE TARIFF UNDER
16 T.A.C. § 26.207**

§
§
§
§
§

**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

JOINT BRIEF IN RESPONSE TO ORDER NO. 1

On March 16, 2020, the Texas Telephone Association (“TTA”) filed an application seeking approval of a proposed tariff under which certain of its members (the “TTA Issuing Carriers”)¹ will provide intrastate access services. At the time of filing, TTA respectfully requested administrative approval and an effective date of May 1, 2020.

On April 29, the administrative law judge (“ALJ”) issued Order No. 1, seeking briefing by May 15, 2020, on a number of issues generally relating to whether the Commission can accept and process such a tariff, and therefore, this joint brief is timely filed.

The Staff of the Public Utility Commission of Texas (“Commission”) has not yet filed its recommendation on the merits of TTA’s proposed tariff, but joins TTA on the threshold legal issues addressed herein.

I. INTRODUCTION

A. About TTA

Founded in 1905, TTA is the trade association that represents the incumbent local exchange telephone companies of Texas. TTA’s membership is composed mostly of relatively small and

¹ The TTA Issuing Carriers are: 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.

typically rural telephone companies or cooperatives; the majority of its members serve fewer than 5,000 customers each, with service territories including some of the most sparsely populated areas in Texas.

B. Factual and Procedural Background

As telephone service providers regulated by the Commission, the TTA Issuing Carriers are required to identify in writing to the Commission the rates, terms, and conditions under which they offer service to their customers – that is, make a tariff filing.² This requirement benefits the consumer because it creates a repository whereby a company or cooperative's customer can reference a written expression of the rights and obligations binding both the service provider and service customer in connection with the provision of telephone service. Such tariff filings also provide the Commission the opportunity to ensure that the regulated provider's rates, terms, and conditions are not unreasonably preferential, prejudicial, or discriminatory.

While a tariff filing is required, there is no requirement, either express or implied, that each regulated entity draft its own tariff “from scratch” without outside assistance. In fact, for decades smaller providers have adopted by reference tariffs filed by other entities; sometimes larger utilities, sometimes tariffs assembled by trade groups or associations.³ For example, in Docket

² See 16 Texas Administrative Code (“TAC”) § 26.207(d)(1); *see also* 16 TAC § 26.5(241) (“Tariff – 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”).

³ *Compliance Dkt. 10127 (Application of Southwestern Bell Telephone Company to Revise Section 2 of Its Intrastate Access Service Tariff)*, Docket No. 12024 (Sep. 20, 1993); *Appl. of Texas Statewide Telephone Coop., Inc. to Revise Intrastate Access Service Tariff. Pages 1, 1.1, 2-1.1, 3 And 2-55. Pursuant to Subst. R. 23.93*, Docket No. 12633 (Jan. 19, 1994); *Application of Texas Statewide Telephone Cooperative, Inc. to Revise Intrastate Access Service Tariff*, Docket No. 12716 (Feb. 24, 1994); *Application of Texas Statewide Tel Coop., Inc. to Revise Access Service Tariff. To Move and Renumber the Rate Pages of the Previous Alltel Texas, Inc. Into the TEXAS-Alltel, Rate Section of the Tariff*, Docket No. 13410 (Oct. 12, 1994); *Appl. Of Texas Statewide Telephone Cooperative, Inc. to Revise Intrastate Access Service Tariff; To Add Two New Issuing Carriers Brazos Telecommunications, Inc. & West Plains Telecommunications, Inc.*, Docket No. 15303 (Dec. 13, 1996); *Application of Texas Statewide Telephone Coop., Inc. for Approval of 800 Data Base Access Service in the Intrastate Access Service Tariff. Pursuant to Subst. R. 23.26*, Docket No. 11896, (Dec. 15, 1998); *Texas Universal Service Fund Notice Compliance Filing*, Docket No. 20094, Notice of Interim Approval (Dec. 21, 1998); *Compliance Docket No. 11896 (Application of Texas Statewide*

No. 6106, after acknowledging that Texas Statewide Telephone Cooperative, Inc. (“TSTCI”) had filed “complete new access tariffs . . . on behalf of many companies” and that numerous companies had revised their tariffs “to reflect their concurrence with the new TSTCI Intrastate Access Service Tariff,” the Commission then found the Local Exchange Carriers’ (“LECs”) “revised access tariffs and other related tariff revisions . . . should be approved” and ordered that “[t]he revised tariffs . . . are APPROVED effective September 1, 1992.”⁴

This practice of using shared or joint tariffs has its roots in the fact that, while well-tested and user-friendly, telephone service is nonetheless technologically complex. Drafting tariffs that comprehensively cover the provision of telephone service in all its intricate detail are necessarily hundreds of pages long, whether the provider serves a few hundred customers or a few million. Keeping up with the necessary revisions year after year is a painstaking and, consequently, expensive prospect. This can be disproportionately expensive for the smallest companies. This difficulty and expense may be experienced by the Commission as well, as it must likewise dedicate

Telephone Cooperative, Inc. for 800 Data Base Access Service in the Intrastate Access Service Tariff Pursuant to Subst. R. 23.26, Docket No. 20295 (Jan. 21, 1999); Application of Texas Statewide Telephone Cooperative, Inc. for an Administrative Update to the Intrastate Access Service Tariff, Docket No. 30133 (Nov. 22, 2004); Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Revision Access Service Tariff, Pages 10th Page 1; 5th Page 1.9; and Original Page 17-54, Docket No. 33867 (Mar. 13, 2007); Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Approval of Revisions to Its Intrastate Access Services Tariff Pursuant to P.U.C. Subst. R. § 26.208, Docket No. 42076 (Dec. 30, 2013); Application of Texas Statewide Telephone Cooperative, Inc. to Revise Tariff Pages Pursuant to P.U.C. Subst. R. §26.208, Docket No. 42554 (Jun. 16, 2014); Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Approval of Revisions to Its Intrastate Access Services Tariff Pursuant to P.U.C. Subst. R. § 26.208, Docket No. 47209 (Jun. 21, 2017); Application of Texas Statewide Telephone Cooperative, Inc. to Revise the Access Service Tariff in Compliance with the Requirement to Maintain Parity with Interstate Switched Access Rates, Docket No. 48374 (Jun. 27, 2018); Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Revisions to Its Intrastate Access Services Tariff, Docket No. 49162 (Feb. 20, 2019); Application of Texas Statewide Telephone Cooperative, Inc. for Administrative Revisions to Its Intrastate Access Service Tariff, Docket No. 49545 (Jun. 21, 2019).

⁴ *Petition of AT&T Communications of the Southwest, Inc., For Emergency and Other Relief Concerning Access Charges and Petition of General Counsel for an Inquiry into a Flat Rate Plan for Access Charges, Order, Consolidated Docket Nos. 6107 and 7205, Findings of Fact Nos. 17-18, Conclusion of Law No. 6, and Ordering Paragraph No. 1 (Aug. 27, 1992).*

commensurate staff resources to review and approve changes and revisions to tariffs, whether that near-1000-page tariff affects millions of customers or just a few hundred.

In light of the administrative burden of drafting and reviewing a complete telephone tariff, the Commission has historically approved tariff filings where smaller providers have either adopted by reference larger carriers' tariffs or bound together to form associations that can prepare and maintain a common tariff for the group collectively, dedicating specific pages or sections to specific carriers as necessary to ensure complete compliance with all statutes and rules.⁵ Further, consistent with PURA⁶ § 53.251, the Texas Legislature has recognized the need for flexibility in the Commission's regulation of small certificate of convenience and necessity ("CCN") holders and granted the Commission the authority "to provide incentives and flexibility to allow an incumbent local exchange company that serves rural areas to: (A) provide existing services; and (B) introduce new technology and new services in a prompt, efficient, and economical manner."

In this instance, all of the TTA Issuing Carriers are currently adopters (or "issuing carriers") of the TSTCI Access Service Tariff. TSTCI does not serve end users directly; it, like TTA, is a statewide association representing telephone cooperatives and other rural independent telephone companies in Texas. The TSTCI tariff to which the TTA Issuing Carriers in this case currently subscribe goes back to at least 1992.⁷ The Commission has effectively approved this practice of carriers adopting a collective tariff filed by an association over a dozen times with regards to the

⁵ See *id.*

⁶ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.01.

⁷ See *Appl. of Texas Statewide Telephone Coop., Inc. to Revise Intrastate Access Service Tariff*, Pages 1, 1.1, 2-1.1, 3 and 2-55. Pursuant to Subst. R. 23.93, Docket No. 12633 (Jan. 19, 1994) (Although this is as far back in time as the PUC Interchange goes, it is obvious from this docket's title that the underlying tariff being revised is necessarily older.).

TSCTI tariff alone.⁸ Because this practice preserves the resources of both the small carriers and the Commission, it should be followed in this case as well. The TTA Issuing Carriers intend to withdraw from any other intrastate access tariffs in which they participate upon Commission approval of the proposed TTA tariff.

Consistent with the Commission precedent approving the TSCTI tariff, the TTA Issuing Carriers, working together through the association to which they belong, wish to substitute a new joint tariff for the TSCTI tariff in which they currently participate.

SPECIFIC ISSUES TO BE ADDRESSED

1. Under the Commission's rules, "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 certificate of convenience and necessity to operate as a public utility. It shall also file five copies of each subsequent revision."⁹ Does TTA's application comply with the Commission's rules,¹⁰ which appears to require each public utility to file a tariff or tariff revision on an individual basis?

Yes, TTA's application complies with the Commission's rules. Although 16 TAC § 26.207(d) requires that every CCN holder file a tariff, it does not require that tariff to be separate and distinct from every other CCN holder's tariff nor does it require such tariffs to be filed on an individual basis. The rule does not prohibit a utility from adopting and designating all or part of an existing tariff as its own.

⁸ See *id.* and Docket No. 12633, Notice of Approval; Docket No. 12716, Notice of Approval; Docket No. 13410, Notice of Approval; Docket No. 15303, Notice of Approval; Docket No. 11896, Final Order; Docket No. 20295, Notice of Approval; Docket No. 30133, Notice of Approval; Docket No. 33867, Notice of Approval; Docket No. 42076, Notice of Approval; Docket No. 42554, Notice of Approval; Docket No. 47209, Notice of Approval; Docket No. 48374, Notice of Approval; Docket No. 49162, Notice of Approval; Docket No. 49545, Notice of Approval.

⁹ 16 TAC § 26.207(d)(1) (emphasis added).

¹⁰ *Id.*

The purpose of tariffs is to be able to direct a reader to the place where the carrier's rates, terms, and conditions of service can be read. Adopting a joint tariff accomplishes this purpose while streamlining and facilitating the work of both the Commission's and the small carrier's staff.

In regard to the proposed tariff in this proceeding, the first 14 sections of the tariff (approximately 650 pages) reflect terms and conditions that are identical for all of the TTA Issuing Carriers, while the remainder of the tariff (approximately 800 pages) contains individual company-specific rate pages that are unique to each company.

2. Does any statute or rule authorize a representative to file on behalf of multiple CCN holders a proposed tariff that is applicable to multiple CCN holders?

The practice of joint tariff filing or group tariff filing as presented in this case is implicitly allowed by the rules and statutes, as illustrated by the fact that this practice has been previously approved by the Commission.¹¹ The purpose of having a tariff on file is accomplished when a utility files its own "homemade" tariff or when a utility adopts an existing Commission-approved tariff created by another utility or group of utilities acting in association. Historically, the latter method of tariff filing has been approved by the Commission and has proven administratively efficient for both the regulated entity and the regulator.

In this proceeding, the TTA Issuing Carriers are asking to discontinue being issuing carriers in the TSTCI Intrastate Access Services Tariff and to become issuing carriers in the TTA Intrastate Access Services Tariff because they are no longer members of TSTCI and wish to chart their own course. Stated simply, they are requesting to move from one existing Commission-approved association tariff to another new tariff.

Like TSTCI, TTA does not serve end users directly. Instead, TTA is bearing the administrative burden of managing the joint tariff on behalf of the TTA Issuing Carriers, who are

¹¹ See *supra* n3.

attempting to offer Intrastate Access Services pursuant to the rates, terms, and conditions within the tariff.

3. Under PURA § 52.251(a), “A public utility shall file with the commission a tariff showing each rate that is: (1) subject to the commission’s jurisdiction; and (2) in effect for a utility service, product, or commodity offered by the utility.”¹² Does TTA’s requested tariff comply with state law if it contains rates for services, products, or commodities that are not uniformly applicable to all of the CCN holders listed in the tariff?

Yes. The test for compliance with PURA § 52.251 is whether the tariff on file for a utility contains “... each rate that is... in effect for a utility service, product, or commodity offered by the utility.” Accordingly, so long as the tariff cited by a utility contains the rates for all of the services, etc. *that that utility offers*, then its tariff complies with the statute. Whether the tariff also contains surplus information not applicable to the utility or service in question does not controvert a utility’s ability to comply with the statute.¹³ Again, this is borne out by the fact that Commission has historically approved such tariffs.¹⁴

The proposed tariff in this proceeding shows each rate that is subject to the Commission’s jurisdiction within the company-specific rate sections of the tariff that is in effect for each service, product, or commodity offered by each of the TTA Issuing Carriers related to Intrastate Access Services. The proposed tariff also provides the terms and conditions for each service, product, or commodity offered by each of the TTA Issuing Carriers related to Intrastate Access Services, and therefore fully complies with express requirements of PURA § 52.251(a).

¹² Emphasis added.

¹³ That a tariff contains information irrelevant to any one customer cannot of itself constitute a statutory violation because it is not possible for a single customer to take every permutation of services offered under a tariff that describes mutually exclusive offerings. Choosing a service necessarily results in those portions of the tariff not connected with the service chosen being inapplicable to the customer. For example, tariffs commonly contain rates, terms, and conditions applicable to residential and business customers, but a business customer is not subject to the rates, terms, and conditions specific to residential services.

¹⁴ See *supra* n3.

4. Does any statute or rule authorize the Commission to issue a tariff to be held by a representative, in the representative's name, on behalf of multiple CCN holders who would then charge various different rates for services, products, or commodities on an individual basis?

The applicable statutes and rules implicitly allow the practice of joint tariff filing or group tariff filing as discussed above. The test is whether the Issuing Carrier's tariff contains "... each rate that is ... in effect for a utility service, product, or commodity offered by the utility." So long as the tariff contains all the adopting utility's relevant terms and rates for the service at issue, it meets the statute. Accordingly, the Commission has consistently approved such tariff filings.¹⁵

Please note that no objections or comments have been made in this proceeding since TTA's proposed tariff was filed on March 16, 2020.

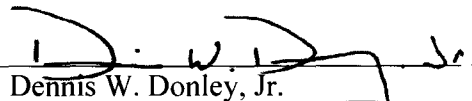
PRAYER

For the aforementioned reasons, TTA respectfully requests that notice of its filing be published in the *Texas Register*, if necessary, and that if eligible for administrative approval, that its tariff be deemed effective as soon as possible.

Respectfully submitted,

NAMAN, HOWELL, SMITH & LEE, PLLC
8310 N. Capital of Texas Highway, Ste. 490
Austin, Texas 78731
Telephone: (512) 479-0300
Facsimile: (512) 474-1901

By: _____


Dennis W. Donley, Jr.
Texas Bar Number 24004620
Christopher Malish
Texas Bar No. 00791164
Stephanie S. Potter
Texas Bar Number 24065923

*ATTORNEYS FOR THE TEXAS TELEPHONE
ASSOCIATION*

¹⁵ See *id.*