PROJECT NO. 24105

RULEMAKING TO AMEND SUBST. R. 26.315 TO DISCOURAGE THE PRACTICE OF UNSCRUPULOUS COLLECT CALLS	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AN AMENDMENT TO §26.315 AS APPROVED AT THE FEBRUARY 7, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §26.315, relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs), with changes to the proposed text as published in the November 9, 2001 *Texas Register* (26 TexReg 8962). The purpose of this rule is to promote the commission public policy goal of protecting retail consumers from fraudulent, unfair, misleading, deceptive, and anticompetitive practices of unscrupulous third parties by way of the regulated billing process. This amendment is adopted under Project Number 24105.

The commission received comments on the proposed amendment from AT&T Communications of Texas, LP (AT&T), Office of the Attorney General of Texas (OAG), Southwestern Bell Telephone Company (SWBT), Verizon Southwest (Verizon), TelOne Telecommunications, Inc. (TelOne), USLD Communications, Inc. (USLD) and WorldCom, Inc. (WCom).

I. General Comments

SWBT stated that the full implications of adding the termination option to the proposed rule change became apparent with the complaint filed on August 30, 2001 by TelOne Telecommunications, Inc. et al (TelOne) against SWBT (Docket Number 24575, *Complaint of TelOne Telecommunications, Inc., TelCam Telecommunications Company of the Americas, Inc., and CQ International Communications, Inc. Against Southwestern Bell Telephone Company*). Given that SWBT's actions (termination of the Billing and Collection Agreement "B&C Agreement") in Docket Number 24575 would be required by the proposed changes to §26.315, SWBT believes the implications involved in this project have taken on a much broader scope.

WCom supports the proposal to educate Texas consumers about collect call scams. WCom believes, however, that the other two substantive additions made to §26.315 are unworkable.

TelOne urged the commission to continue (as in the Preliminary Order, October 23, 2001, Docket Number 24575) carefully balancing the need to fight abusive practices with the need to maintain pro-competitive policies that do not unduly advantage incumbent providers and their affiliates.

While the commission agrees with SWBT that the scope of Project Number 24105 has somewhat broadened, the broadened scope of the amendments are well within the commission's authority to address in this rulemaking. Moreover, the commission maintains that the core issues have remained the same. Contrary to WCom's general

comments, as discussed below, the commission believes that the proposed amendments are workable. The commission agrees with TelOne's position regarding competitive safeguards and has modified the proposed rule to address those concerns.

II. Section 26.315(c)(1) related to DCTU edits to ensure calls less than five minutes and more than $35 are not billed.

Without taking a direct position on this issue, WCom stated that commenters have advised this option is expensive and will take time to implement. WCom concurs with SWBT that adding the "edits" function to DCTUs systems is expensive (up to half a million dollars) and therefore, not justified when weighed against the harm the commission seeks to address. Additionally, WCom relies on SWBT's DCTU experience to assert that implementation of bill edits would take months or even up to a year to complete. WCom further explained that if the commission revises §26.315, as proposed, the commission should acknowledge that DCTUs will gravitate to the B&C/audit method of verification, since the "edits" method requires capital expense and time to implement.

WCom argued that no evidence has been offered which justifies concluding that the "proposed amendments are the least intrusive and most cost effective approach within the commission's jurisdiction to implement."

While the commission appreciates concerns related to cost, the priority of customer protection weighed against cost burdens is a routine task undertaken and resolved by the

commission on a daily basis. A major commission consideration is whether the cost burden can actually be translated into a long-term investment. This can also be said with the time factor and meanwhile, if necessary, interim resolutions can be considered and implemented by the DTCU. In response to WCom's request that the commission acknowledge the DCTUs tendency to opt for one method over another, since this rule is an option of one method over another, the commission does not see the need to comment on which option each carrier may take. Some carriers, for example, may already have an "edits" method of verification in place (as discussed by SWBT during the public hearing on July 24, 2001). Others may pursue implementation of the "edits" method in the near future to comply with the rule, and still other carriers may find it in the best interest of their organization to implement the "edits" method for reasons completely unrelated to this rulemaking.

In response to WCom's question of whether the proposed method is the least costly and intrusive to implement, the commission notes that throughout the rulemaking process, the commission was open and flexible in how to reach the end goal of protecting Texas customers from unscrupulous collect calls via the least costly and intrusive route. Least costly and intrusive includes, but is not limited to least cost to the industry and/or, ultimately the customer, the solution that can be implemented most quickly, and most importantly, the solution that will identify, halt, and hold responsible the behavior of the actors perpetuating the problem. The commission further notes that WCom failed to recommend or suggest alternatives to the proposed amendments. Given WCom's lack of an alternative solution, the commission finds that inaction is not appropriate. Therefore,

in considering these factors, the commission maintains that the proposed amendments are "the least intrusive and most cost effective approach within the commission's jurisdiction to implement."

SWBT claimed the rule change initially proposed by commission staff in this project would have mandated significant changes to the provision of operator and billing services. Moreover, SWBT elaborated by saying that the original proposal would have prevented DCTUs from billing any call of a given duration if the call's price exceeded the specified amount.

OAG expressed concern that this subsection appears to be too easily circumvented by the targeted class of unscrupulous operators. OAG opined that these operators could simply charge less than the cap proposed or offer an additional minute or two of time thus effectively avoiding application of the rule.

AT&T commented that this subsection would have the effect of prohibiting the billing of any collect call of less than five minutes in duration. AT&T suggested that the text of the proposed rule, if adopted, be more narrowly tailored. AT&T urged the commission to reject the original proposal to include a blanket ban on the billing of all international collect calls with a duration of less than five minutes that result in a charge of more than $35.

AT&T also stated that the latest proposal would eliminate a broad section of the current collect call market and potentially subject any interexchange carrier to state-sanctioned abusive treatment by DCTUs regardless of fault. TelOne asserted that, despite the commission's intent, this proceeding appears to have been expanded to address the ability of a DCTU to terminate billing and collection services for all types of calls, not just collect calls as in subsection (c)(2). TelOne opposed implementation of this provision. In addition AT&T opined that the rule would also effectively impose rate regulation on international calling that is beyond the commission's jurisdiction.

AT&T and TelOne both misunderstand the purpose and effect of the proposed rule changes. The amendments do not attempt to regulate the rate that a carrier may charge for a domestic or international collect telephone call. To the contrary, a carrier is free to charge whatever rate for domestic or international collect telephone calls that the marketplace will support. However, the commission has the authority to determine whether or not those charges may be included on and collected through the regulated bill of a regulated entity. There is no right to collect unregulated charges through the regulated billing process. The concern expressed by SWBT is not valid because subsection (c)(1) addresses time and total charge, not just time as suggested by SWBT. The OAG's concern about carriers circumventing the provision of subsection (c)(1) by merely offering a few additional minutes or charging slightly less for the call ignores the method staff used to establish the initial call profile. Specifically, the call profile was established after convening a meeting of industry. In that meeting, there was a general consensus that the motivation of these unscrupulous carriers is severely undermined if

they are not allowed to bill and collect through the regulated billing process for calls meeting the time and charge profile established in subsection (c)(1).

AT&T explained that there is a number of foreign countries where a collect call placed by a person located in that foreign country to a person located in Texas and carried by AT&T can result in a charge greater than $35 even if the call is only four minutes. The effect of the proposed rule, AT&T asserts, would presume that only longer calls from these locations and many other locations are legitimate and prohibit a DCTU from billing what may be a legitimate and valuable short collect call from any of these countries. Consequently, AT&T suggested that subsection (c)(1) be rejected.

AT&T presented no evidence that the established call profile would prohibit or ban certain international collect calls. While expressing its generalized concerns, assuming that AT&T is correct, AT&T failed to present the commission with sufficient, or for that matter any, information with which to engage in a cost benefit analysis.

USLD submits that the complaint and call information include only calls terminating in Texas. The threshold instead should be calculated by comparing complaints received from Texas consumers against the number of calls terminating in Texas that are billed on behalf of the interexchange carrier (IXC).

The commission notes that it is without jurisdiction to review and adjudicate complaints related to calls terminating outside of Texas. Therefore, only calls terminating in Texas should be included in the calls used to trigger the threshold.

USLD questioned whether the commission has jurisdiction to implement the changes proposed in §26.315(c)(1) in connection with services that are not intrastate in nature. USLD stated that the proposal would place broad and undefined powers in the hands of the DCTUs to monitor and disrupt, if not terminate, the business of their competitors, the IXCs. Parallel with USLD's jurisdiction assertion, WCom contended that if the rule addresses concerns regarding international collect calls, it should be narrowed to address the issue prompting the rulemaking.

The commission declines the invitation to change the $35/five minute phone call provision. The parties were free to propose alternatives to the $35/five minute call profile. However, no party offered alternative call profiles to this commission. With regard to whether or not this commission has jurisdiction to implement the changes proposed in subsection (c)(1), the commission, as discussed above, is not attempting to regulate rates. The commission is merely regulating the content of what may be placed on and collected through the regulated billing process. Carriers are free to implement alternative billing arrangements to collect charges that may be prohibited by these amendments. As such, the commission is not regulating rates.

III. Section 26.315 (c)(2) Terminating B&C Agreements for IXCs generating complaints exceeding 0.5% of all records per billing month and the establishment of random audits.

SWBT, Verizon and OAG commented that requiring the issuance of a commission order would unduly delay relief to consumers who are being affected by the unscrupulous activity, and would grant these companies the opportunity to engage in more deception prior to being effectively thwarted. SWBT further contended that carriers that wish to challenge terminations already have ample recourse via the commission complaint process. Thereafter, SWBT explained that in too many instances the offending carriers have completed their schemes and "left town" before their actions have been noticed in the form of complaints. SWBT's position is that a pre-approval requirement from the commission plays into the hand of unscrupulous providers. Specifically, SWBT proposes that §26.315 not contain a requirement that the commission approve terminations, because SWBT maintained this would surely decrease the effectiveness of the rule with no corresponding benefit.

OAG stated that additional regulatory efforts are still necessary to fully and adequately address this problem. OAG offered proposed language for §26.313(b)(3) of this title (relating to General Requirements Relating to Operator Services) which called for the operator call services to automatically quote rate information to the billed party for all international collect calls. OAG explained that its proposed language requires the

operator, prior to completion of all international collect calls, to quote information on the rates that will be charged to the person accepting the call.

In contrast, WCom supported the commission requiring the billing utility to seek a commission order to terminate B&C Agreements when the proposed 0.5% complaint threshold is reached. Moreover, WCom emphasized the commission should impose the due process procedures available in any other enforcement or commission proceeding, including the good cause waiver for application of the proposed rule.

Similarly to WCom, TelOne believed it is incumbent upon the commission to ensure that a DCTU is precluded from acting in a discriminatory or anti-competitive manner. However, TelOne believes the proposed amendment to §26.315 grants a DCTU unfettered discretion to unilaterally and without notice terminate B&C Agreements that are essential to a competitor's survival. In light of this explanation, TelOne emphasized their support for the commission's prohibition of DCTUs from blocking or terminating B&C Agreements without a commission order. TelOne proposed that the commission revise the rule to require DCTUs to obtain a commission order prior to terminating billing services for an IXC or, alternatively, to permit IXCs to contest DCTU terminations before the commission. In addition, TelOne suggested that, if DCTUs are permitted to terminate billing, the billing aggregator should be given at least 45 days in which to establish alternative billing arrangements or, as may be the case for smaller competitors, notify its customers that it can no longer serve them.

While the commission acknowledges the concerns expressed by SWBT, the OAG, and Verizon regarding potential delays in terminating the B&C Agreements for violating the complaint threshold established by these amendments, those concerns must give way to due process considerations. In that respect, the preservation of due process and the expeditious termination of B&C Agreements are not mutually exclusive. In balancing these considerations, the commission notes that the DCTU and commission staff are free to seek expeditious resolution of these matters by, for example, requesting a compressed hearing schedule and other appropriate temporary relief. In fact, consistent with due process, the commission urges the parties to request such relief on a case-by-case basis.

SWBT also stated that requiring a DCTU to obtain commission approval of terminations is inconsistent with the requirement of the Public Utility Regulatory Act (PURA) §§17.151-17.156.

The commission believes that SWBT's claim is misplaced. Specifically, PURA §17.156(e) provides that " [i]f the commission finds that a service provider or billing agent has repeatedly violated any provision of this subchapter, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent." This rule merely establishes conditions the commission would consider in exercising the authority granted by PURA §17.156(e). Thus, SWBT's assertion is inconsistent with PURA §17.156(e).

With respect to the ability to unilaterally terminate B&C Agreements, WCom maintained that PURA does not allow the commission to delegate enforcement authority to the very entities that the commission oversees.

Since the commission has incorporated certain due process safeguards into the proposed amendments, it is not necessary to address WCom's assertion related to the delegation of enforcement authority.

SWBT stated that requiring a commission order prior to terminating B&C Agreements is inconsistent with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and that such a requirement would impair a billing telecommunications utility (BTU)/DCTU's ability to terminate problem carriers.

SWBT's broad and generalized comment failed to direct the commission to a specific concern. Nevertheless, the commission notes that §26.32 closely tracts the provisions contained in PURA §§17.151-17.156. These provisions delineate the rights and responsibilities of BTUs and service providers. SWBT's concern assumed that all complaints will rise to the level necessary for termination of the B&C Agreement. That assumption is clearly incorrect. In the event complaints do not reach the termination threshold established in this rule, the provisions of §26.32 are applicable. Likewise, if the threshold is triggered, many of the make-hold provisions of §26.32 remain mandatory and in force. Moreover, as discussed above, the commission believes that the current

procedural rules provide scheduling flexibility to address SWBT's concern regarding the expeditious termination of B&C Agreements of bad actors.

SWBT expressed concern with the first sentence of proposed §26.315(c)(2) regarding the threshold for termination. Specifically, SWBT and Verizon suggested that specific thresholds are better left to private contract and internal policies. Verizon parallels SWBT in arguing the contract itself gives the billing utility termination power. In addition, SWBT urged the commission to leave thresholds for terminations to private contract and internal policy, so as to permit SWBT and other DCTUs to respond to a rapidly changing environment and to promptly reduce cramming and other fraudulent actions of unscrupulous carriers.

The commission notes that the 0.5% threshold was recommended by SWBT and no other commenter suggested an alternative level. Instead, the other commenters suggest elimination of the established threshold and concur with SWBT's request to allow individual carriers the right to establish thresholds on a case-by-case basis. The commission declines this invitation because it would lead to inconsistent protections to various customer groups. Moreover, this approach would place the commission in the untenable position of not knowing what customer protections are in place for any given period for any given customer group. In the absence of specific alternatives, the commission believes that the threshold recommended by SWBT is reasonable. In the event the industry finds this threshold problematic; parties are free to petition the commission to adjust the threshold.

SWBT believed that the threshold employed by §26.315(c)(2) must be flexible for other reasons. First, SWBT argued that flexibility will permit DCTUs to adapt to changes in a rapidly evolving landscape including new processes, new technology, and what SWBT stated as most important, the new and inventive ways for unscrupulous carriers to "beat the system." Next, SWBT explained that flexibility is needed because it is appropriate to demand thresholds that vary based on the size of the carrier. SWBT believed that an arbitrary standard will be ineffective because it will not allow DCTUs to address obvious differences among carriers.

The commission is steadfast to the threshold for several reasons. First, as discussed above, it is not reasonable to discriminate between levels of customer protection based on the customers' selection of a carrier. All customers should be provided a minimum level of protection. Moreover, in response to SWBT's argument that flexibility is needed because of size variation between carriers, the commission is steadfast to the threshold because it is a percentage rather than a set number of complaints. Therefore, the percentage threshold is nondiscriminatory per carrier. As such, the absolute numbers of complaints necessary to trigger the threshold will vary per carrier and therefore company size is appropriately factored into the rule.

SWBT argued that SWBT and other DCTUs must be trusted to address cramming complaints. Further, SWBT explained that they actually have a vested interest in doing so as to avoid the negative impacts on customer goodwill. SWBT maintained that

carriers that bill though SWBT's aggregators cannot argue that they are subject to whims of a DCTU.

While the commission appreciates SWBT's good faith efforts expressed in their comments, the commission must recognize that the inherent reason for this rulemaking is that not every carrier acts in good faith. In addition, the commission believes that all concerns related to the potential misconduct of the billing utility can be addressed in the mandated commission proceeding.

SWBT contended that DCTUs should not be required to assume responsibility for the fraud committed by unscrupulous carriers over which DCTUs have no control. Moreover, SWBT argued that the language in §26.315(c) is improper insofar as it infers that a DCTU is to be held responsible for insuring the validity of another carrier's charges. SWBT stated that they have addressed these concerns in previous comments.

The commission believes that SWBT misstates the effect of the amendments. The amendments do not hold SWBT or any other BTU responsible for the fraud committed by unscrupulous carriers.

SWBT supported the commission excluding language from the rule that would purport to make DCTUs liable for the actions of carriers over which those DCTUs have no control. WCom echoed SWBT by asserting that, rather than impose regulatory burdens on parties not at fault and, therein, burdening customers, an alternative solution should be exercised.

Coupled with the OAG's authority pursuant to the Deceptive Trade Practices Act, WCom suggested instead the commission exercise hefty administrative penalties and forfeiture of the ability to operate as tools to detour unscrupulous collect calls.

The commission acknowledges that the amendments are not intended to make DCTUs or any other utility responsible for the unscrupulous business practices of third parties. Rather the intent of these amendments is restricted in both scope and application to what may be placed on and collected through the regulated billing process. Moreover, the commission recognizes that it may not have jurisdiction over many of these unscrupulous third party entities that are engaged in unscrupulous business practices. Therefore, WCom's suggestion that the Commission impose hefty administrative penalties against these unscrupulous carriers and/or forfeit certificates of operating authority falls short. In addition, the mere referral of these unscrupulous carriers to the OAG is contrary to an expeditious resolution to the problem. Consumers deserve an immediate response from the commission.

WCom maintained that the expense of "random" audits is not addressed by the rule. WCom explained that they understand the complexity of this issue since the audited carrier's conduct is not directly at fault. In light of this, WCom asserted that the audited carrier should not have to pay for the audit. In addition, it is WCom's position that if the commission determines the proposed revisions to §26.315 are necessary, the B&C/audit provision requires additional changes to provide audited carriers with the due process protections permitted by commission rules and statutes. TelOne asserted that the

proposed amendment insufficiently takes into account the potential anti-competitive effects of handling implementation of customer protection policies over to the DCTUs. TelOne maintained that the rule allows DCTUs like SWBT to be the police, judge, and jury when their IXC competitors are on trial.

The commission notes that the proposed amendments do not address the issue of cost responsibility. The issue was not addressed because it was understood that implementation cost would be born by the party incurring those cost. At no point in the process did the DTCU's request reimbursement of auditing cost. Moreover, such cost should be ordinary cost of during business. Since the commission is adopting certain due process protections, WCom's and TelOne's request for due process protection has been mooted.

AT&T commented that the effect of subsection (c)(2) is to put an IXC's competitor in a position to refuse charges, demand periodic and unannounced audits, and make arbitrary demands without liability, without notice, and without cause. AT&T believed that larger IXCs would be subject to the unrestrained whim of their competitor since that carrier is statistically more likely to exceed any arbitrary threshold level of billing complaints. WCom and USLD concurred with AT&T's due process concerns. As an alternative, AT&T proposes that issues related to the termination of billing contracts for cause and without cause should be resolved by DCTUs and IXCs in their contract negotiations. Consequently, AT&T suggested that subsection (c)(2) be rejected.

While AT&T's comments are slightly more explicit than those of other commenters, the commission holds steadfast to its conclusion that the due process protections adopted in this rule adequately address and discourage a DTCU from arbitrarily invoking the termination provisions included in these amendments. However, should a carrier present evidence that a DTCU has in bad faith invoked the termination provision, the existing rules provide the commission with sufficient authority to correct such an event to the detriment of the offending party. The commission believes that resolution of these issues by DCTUs and IXCs in their contract negotiations would result is inconsistent consumer protections. These amendments provide a minimum level of consumer protection on a statewide basis. Nothing in these amendments prevents DCTUs and IXCs from contractually imposing standards more stringent than those contained herein.

Verizon stated that it objects to the proposed mandatory threshold of 0.5% and does not intend to implement the billing system changes because Verizon believes they are unnecessary and exceed the estimated cost of the contract/audit option in subsection (c)(2). Verizon estimated that the cost for each IXC audit conducted under proposed subsection (c)(2) is $1,000 and estimated that the cost to implement a public education campaign using the customer rights' section of the white pages is $13,000.

Without addressing the propriety of Verizon's decision to implement the audit option under the proposed amendments, the commission does acknowledge that the decision of which of the two alternatives to implement should be resolved using the cost/benefit analysis approach. Since cost variances exist between carriers, the analysis should be

performed using costs that are company specific. Through innovative means, other carriers may very well determine that it is more cost effective not to bill for calls meeting the profile identified in subsection (c)(1). In any regard, those decisions are left to the individual carriers. The commission has previously addressed Verizon's request to leave the complaint thresholds to the individual carriers.

IV. Response to Commission's Specific Questions

Because the issue of the ability to terminate billing is now before the commission via this rulemaking, SWBT emphasized that a fresh examination of §26.32 is not only warranted, but would aid in clarifying the rule now being addressed in this project. In what first appears to be agreement with SWBT, TelOne supported the expanded scope of this proceeding and urged the commission to clearly define the circumstances under which a DCTU may terminate billing and collection service for an IXC. TelOne explained that without specific rules and the commission's oversight, the egregious conduct that led TelOne to file a complaint against SWBT will continue to occur, affecting not only TelOne but all other IXCs that bill their customers through SWBT. TelOne states that they would have been driven out of business based entirely on SWBT's unilateral decision to terminate billing services.

The commission agrees with SWBT that the issue of the ability to terminate billing is properly before the commission via this rulemaking. However, the commission does not agree with SWBT that it is necessary to examine §26.32 (the Cramming Rule). The

complaint threshold established by these amendments is not limited to cramming. Specifically, subsection (c)(2) is applicable to "all records billed for a billing month." Nothing in subsection (c)(2) limits its application to cramming complaints. The commission agrees with TelOne's request to identify the circumstances under with DTCU's may terminate billing contracts. Accordingly, the commission has established the complaint threshold that must be triggered to invoke a commission review of carrier specific conduct.

USLD also submitted that the DCTU should only be entitled to stop billing and collecting for the IXC with respect to collect calls. USLD requested that the commission clarify what a complaint is, as that term is used in the proposed rule amendment. TelOne concurred with USLD by stating that the proposed amendment does not include the definitions necessary for an accurate determination of the "complaint" threshold. Moreover, TelOne argued that without such clarification, a DCTU would be free to consider any type of customer inquiry about an IXC a compliant, no matter how innocuous or without legitimate foundation.

In addition, TelOne believed it imperative the commission specifically define not only the term "complaint", but also the term, "generating." TelOne posed the question as to whether "generating" means a complaint directed to the DCTU? The commission? Or the IXC? Moreover, TelOne stated that, if the commission determines an order to terminate services not in the public interest, at minimum the rule should: 1) include a detailed definition of "complaint"; 2) establish a reasonable "complaint threshold"; and 3)

provide that if the threshold is reached, the DCTU should be required to provide the IXC and/or the billing aggregator and commission notice that it will terminate billing and collection services within 45 days unless the IXC obtains affirmative relief from the commission. Presumably, these definitions and procedural issues could be established in the workshop requested by SWBT.

The commission appreciates the concerns expressed by the parties related to definitions and other procedural matters. However, the commission recognizes the near impossible task of defining certain terms in the absence of specific facts surrounding the issues. The commission believes that the terms "complaint" and "generating" falls within that category. In that respect, the commission believes that the review process established herein would work to determine whether a DTCU has properly characterized and categorized a customer contact related to charges contained on billing statements. Therefore, the commission declines SWBT's request for an additional workshop.

USLD suggested that the commission implement the following procedural safeguards. Once a DCTU determines that the threshold has been triggered, the DCTU could initiate a show cause proceeding with the commission under which the IXC would be required to demonstrate to the commission that the IXC is not in violation of the rule. If the IXC could not carry its burden, the commission could determine an appropriate sanction. The commission's decision about which complaints are valid and the appropriate remedy would then be reviewable in accordance with applicable rules.

While not adopting the specific process suggested by USLD, the commission has imposed procedural safeguards that provide for the review of the validity of specific complaints and whether or not those complaints properly triggered the established threshold. Without addressing the extent of the commission's jurisdiction over IXCs and other third parties seeking to bill through the regulated billing process, the commission notes that this rulemaking is rooted in PURA §17.156(e) which authorizes the commission to order the termination of billing and collection services. The commission's authority under PURA §17.156(e) is limited to the issue of contract termination. As such, the commission declines to extend the review process to alternative remedies as suggested by USLD.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes certain revisions to the rule consistent with the filed comments.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §17.001 which confers on the commission the authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices; §17.004 which provides that all buyers of telecommunications services are entitled to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices,

and which provides that the commission may adopt and enforce rules as necessary or appropriate to carry out the provisions of §17.004; and §52.002(a) that provides the commission with exclusive original jurisdiction over the business and property of telecommunications utilities in Texas, subject to the limitations imposed by PURA, to regulate rates, operations, and services so that the rates are just, fair, and reasonable and the services are adequate and efficient.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001, 17.004, 52.002, 52.057(a)(2) and (b), and 56.104(d).

§26.315. Requirements for Dominant Certificated Telecommunications Utilities (DCTUs).

(a) **Validation information.** Each DCTU shall make validation information (e.g., DCTU calling card numbers, whether an access line is equipped with billed number screening, or whether an access line is a pay telephone) available to any interexchange carrier requesting it on the same prices, terms, and conditions that the DCTU provides the service to any other interexchange carrier. The DCTU may comply with the requirements of this paragraph by providing its own database, making arrangements with another DCTU to provide the information, or making arrangements with a third-party vendor.

(b) **Billing and collection services.** Each DCTU shall offer billing and collection services, pursuant to subsection (c) of this section, to any interexchange carrier requesting it on the same prices, terms, and conditions that the DCTU provides the services to any other interexchange carrier.

(c) **Validation requirements.** If validation information is available for calls that the interexchange carrier (or a third-party billing and collection agent operating on behalf of the interexchange carrier) will bill through the DCTU, the interexchange carrier is required to validate the call and is allowed to submit the call for billing only if the call was validated. To insure that only validated collect calls are billed, the DCTU shall:

(1) Establish edits in the DCTU's current billing system to insure that calls less than five minutes in duration, and total charges for that call exceed $35, are not billed; or

(2) For charges that appear on the retail consumer's monthly billing statement, establish internal processes to track retail consumer complaints for each billing month for each third party entity. For any third party entity with complaints that exceed a threshold of 0.5% of all records billed for the billing month in which the report is generated, the DCTU shall initiate a proceeding with the commission to determine whether the billing and collection agreement should be terminated by commission order. In conjunction with the internal tracking procedures, the DCTU will establish a random, periodic, unannounced audit process whereby the DCTU will audit messages. The audited carrier will be required to provide the DCTU the necessary audit data in a form consistent with DCTU capabilities. The fact an audit has or has not been conducted and/or the DCTU has not previously questioned the charges at issue does not constitute approval or endorsement of charges by the DCTU; and

(3) The DCTU shall implement a public education campaign to advise customers of the responsibilities and obligations associated with accepting collect telephone calls. The public education campaign must also inform customers of the DCTU's policies and procedures for contesting unauthorized collect call charges. A DCTU fulfills this requirement if it

publishes such information in the customer rights section of the white page directory.

(d) **Request to access another carrier.** If a DCTU receives a request from a caller to access another carrier, the DCTU shall, using the same prices, terms, and conditions for all carriers, either:

(1) transfer the caller to the caller's carrier of choice if facilities that allow such transfer are available and if such transfer is otherwise allowed by law; or

(2) instruct the caller how to access the caller's carrier of choice if that carrier has provided the DCTU with the information referred to in §26.319(2) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)).

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.315 relating to Dominant Certificated Telecommunications Utilities (DCTUs) is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF FEBRUARY 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

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Commissioner Brett A. Perlman

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Commissioner Rebecca Klein