

PUC DOCKET NO. 24907
SOAH DOCKET NO. 473-02-0506

REQUEST OF NTS	§	PUBLIC UTILITY COMMISSION
COMMUNICATIONS, INC. FOR	§	
DISPUTE RESOLUTION UNDER	§	OF TEXAS
P.U.C. SUBSTANTIVE RULE 26.129		

ORDER ON CERTIFIED ISSUE

The Commission concludes that neither PURA §§54.259-54.261 nor P.U.C. SUBST. R. 26.129 requires a property owner to grant a requesting carrier access to existing wires and facilities on the owner’s property. Instead, the provisions require the owner to allow a carrier access to the property in order to install telecommunications service facilities to serve a requesting tenant. Pursuant to P.U.C. PROC. R. 22.5(b), the Commission grants a good cause exception to the procedural deadline for issuance of this Order on Certified Issue.¹

I. PROCEDURAL HISTORY

On October 25, 2001, NTS Communications, Inc. filed a request to resolve disputes under P.U.C. SUBST R. 26.129 related to NTS’ request for access to wiring and facilities on certain properties owned by McDougal Properties, L.C.² NTS indicated that it received numerous requests for telecommunications service from tenants residing in certain multiple dwelling units (MDUs) owned by McDougal.³ NTS further contends that it was denied access to wiring and facilities on those properties to serve the requesting tenants because of an alleged exclusive agreement between McDougal and

¹ P.U.C. PROC. R. § 22.5(b): Notwithstanding any other provision of this chapter, the presiding officer may grant exceptions to any requirement in this chapter or in a commission-prescribed form for good cause.

² Request of NTS Communications, Inc. for Dispute Resolution (NTS’ Request for Dispute Resolution) (Oct. 25, 2001).

³ NTS’ Request for Dispute Resolution at 1 (Oct. 25, 2001).

TechTelephone Company, L.P. d/b/a/ TechTel Communications.⁴ NTS specifically requested that the Commission: (1) issue an order on interim relief allowing NTS access to the necessary wiring and facilities to provide telecommunications services to requesting tenants; (2) set aside the agreement between McDougal and TechTel; and, (3) find that NTS has been discriminated against and order that NTS be allowed access to the wiring and facilities on the McDougal properties in question on the same terms and conditions as NTS is allowed access to other McDougal properties that are not subject to the agreement with TechTel.⁵

On October 30, 2001, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). Before the Commission finalized its Preliminary Order on December 17, 2001, both NTS and TechTel filed numerous pleadings addressing jurisdictional matters, threshold issues, certified questions, and interim relief. On January 18, 2002, the Administrative Law Judge (ALJ) issued Order No. 4, certifying issues to the Commission. Both NTS and TechTel submitted briefs on the certified issues on January 30, 2002. The certified issues were presented to the Commission for consideration at the February 21, 2002 open meeting.

II. DISCUSSION

The ALJ certified two issues to the Commission pursuant to P.U.C. PROC. R. 22.127.

A. Issue 1

Do a property owner's obligations under PURA §§ 54.259-54.261 and P.U.C. SUBST. R. 26.129 include the obligation to grant a requesting carrier access to the existing wires and facilities on the property owner's premises to serve a requesting tenant? If so, does an agreement by the property owner to grant exclusive use of existing wiring to a single carrier, which

⁴ NTS' Request for Dispute Resolution at 1 (Oct. 25, 2001).

⁵ NTS' Request for Dispute Resolution at 9 (Oct. 25, 2001).

predates the effective date of P.U.C. SUBST. R. 26.129, violate PURA §§ 54.259-54.261 or P.U.C. SUBST. R. 26.129?

Under PURA § 54.259, a property owner may not prevent a telecommunications utility⁶ from installing on the owner's property a telecommunications service facility, interfering with the installation of such facilities, or discriminating against the utility regarding installation, terms, or conditions of such a facility.⁷ The Commission disagrees with NTS that the issue present is simply one of determining what is reasonable access to an owner's property.⁸ Rather the issue present is what access is allowed to the owner's property. The Commission concurs with TechTel's reading of this section: a utility is allowed access only to install its own facilities to serve a requesting tenant.⁹ Accordingly, the Commission concludes that a utility is not allowed access to either the owner's existing wiring or facilities, or another entity's existing wiring or facilities, in or on the property.

The Commission finds that this interpretation of PURA § 54.259 is further supported by the provisions in PURA § 54.260 that focus upon the *installation, operation, and removal* of a utility's facilities and the lack of protection that would preclude degradation of operational characteristics. Further, nothing in P.U.C. SUBST. R. 26.129 expands the rights of a utility beyond those provided in PURA §§ 54.259-54.261.

Given this interpretation of PURA and Commission rules, the Commission declines to address the remainder of this issue related to exclusive contracts.

⁶ The provisions in PURA §§ 54.259-.261 apply only to a telecommunications utility that hold an appropriate grant of authority from the municipality and hold a certificate if required by PURA. (PURA §§ 54.259(a), 54.260(a)) For purposes of answering this issue certified, the Commission assumes but does not decide that NTS holds all authorizations required to come within the protections provided by these sections.

⁷ PURA § 54.259(a)(1), (2) and (3).

⁸ NTS' Brief on Certified Issues at 4 (Jan. 30, 2002).

⁹ TechTel's Brief on Certified Issues at 4 (Jan. 30, 2002).

B. Issue 2

Is the relief NTS seeks from TechTel within the scope of the Commission's jurisdiction under PURA §§ 54.259-54.261 or P.U.C. SUBST. R. 26.129?

As discussed above, neither PURA §§ 54.259-.261 nor P.U.C. SUBST. R. 26.129 allows a utility access to an owner's existing wiring or facilities.

SIGNED AT AUSTIN, TEXAS the 27th day of February 2002

PUBLIC UTILITY COMMISSION OF TEXAS

|s|

BRETT A. PERLMAN, COMMISSIONER

|s|

REBECCA KLEIN, COMMISSIONER