

P.U.C. DOCKET NO. 25781

**APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
BELL TELEPHONE COMPANY FOR §
WAIVER OF REQUIREMENTS IN §
P.U.C. SUBST. R. 26.315 § OF TEXAS**

ORDER ON CERTIFIED ISSUE

I. Background

On April 19, 2002, Southwestern Bell Telephone Company (SWBT) filed a Request for Good Cause Waiver of P.U.C. SUBST R. 26.315 claiming that it could not meet the requirements under P.U.C. SUBST. R. 26.315(c)(1) and (c)(2). Specifically, SWBT argued that it needed additional time to meet the requirements under P.U.C. SUBST. R. 26.315(c)(1)¹ due to the amount of system programming changes that would be required to achieve compliance. Secondly, SWBT contended that it did not have the technical capabilities to conduct audits in the manner prescribed under P.U.C. SUBST. R. 26.315(c)(2). As a result, SWBT maintained that it did not have the means to determine if the number of complaints for each billing month exceeded the 0.5% threshold² as specified under P.U.C. SUBST. R. 26.315(c)(2).³

On May 17, 2002, SWBT filed a Statement of Understanding and Conditional Withdrawal of Request for Good Cause Waiver. SWBT stated that the withdrawal of its Request for Good Cause Waiver was based upon the interpretations of the requirements under P.U.C. SUBST. R. 26.315(c)(2) that were provided by Commission Staff at a meeting held on April 30, 2002.⁴ At this meeting, Commission Staff stated that the terms “third party” and “any third

¹ P.U.C. SUBST. R. 26.315(c)(1)(“To insure that only validated collect calls are billed, the DCTU shall: 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...”)

² P.U.C. SUBST. R. 26.315(c)(2)(“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.”)

³ Southwestern Bell Telephone Company’s Request for Good Cause Waiver at 3-4 (Apr. 19, 2002).

⁴ SWBT’s Statement of Understanding and Conditional Withdrawal of Request for Good Cause Waiver at 3 (May 17, 2002) (SWBT’s Statement of Understanding).

party” in P.U.C. SUBST. R. 26.315(c)(2) refer only to billing aggregators and to entities that have direct billing arrangements with a Dominant Certificated Telecommunications Utilities (DCTU). Commission Staff further clarified that those terms do not apply to those entities that have billing arrangements with a DCTU through billing aggregators. Commission Staff pointed out that the contracts of billing aggregators that contract directly with DCTUs are subject to Commission jurisdiction. Commission Staff stated that, because sub-Carrier Identification Codes (CICs)⁵ are not parties to these contracts, the audits required under P.U.C. SUBST. R. 26.315 do not need to include a sub-CIC’s billing data.⁶

SWBT stated that its Request for Good Cause Waiver was predicated on the assumption that it would follow the option set forth in P.U.C. SUBST. R. 26.315(c)(1). However, in light of the interpretations provided by Commission Staff, SWBT stated that it could conduct the audits in compliance with P.U.C. SUBST. R. 26.315(c)(2). SWBT asserted that Commission Staff’s interpretation of the terms “third party” and “any third party” should also be applicable to the term “audited carrier” under P.U.C. SUBST. R. 26.315(c)(2). As a result, SWBT concluded that “audit carrier” does not refer to sub-CICs as well.⁷

On May 20, 2002, the Commission’s ALJ issued Order No. 2 requesting Commission Staff’s response to SWBT’s Statement of Understanding. On June 4, 2002, Commission Staff filed a response stating that the Commission’s jurisdiction over billing and collection contracts was limited to the DCTU and billing agent as defined by PURA § 17.002(1).⁸ Therefore, Commission Staff concluded that the amendments of P.U.C. SUBST. R. 26.315 are limited to the billing and collection agreements between the DCTU and the billing agent. Consequently, Commission Staff contended that the references in P.U.C. SUBST. R. 26.315 to “third party” refer to the billing agent.⁹

⁵ Sub-CICs are carriers that lack their own Carrier Identification Codes (CIC) and which use the CIC of another carrier for billing purposes. Large carriers with their own CICs often have direct billing arrangements with SWBT.

⁶ SWBT’s Statement of Understanding at 3-4.

⁷ *Id.* at 4.

⁸ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 17.002(1)(“Billing agent means any entity that submits charges to the billing utility on behalf of itself or any provider of a product or service.”)

⁹ Commission Staff’s Response to Order No. 2 at 1 (Jun. 4, 2002).

On June 14, 2002, the Commission's ALJ issued Order No. 3 requesting SWBT to file a response to Commission Staff's response to Order No. 2. SWBT filed a response stating that it agreed with the statements included in Commission Staff's response to Order No. 2. SWBT requested that the Commission issue an order confirming the interpretations provided by Commission Staff.¹⁰ On July 11, 2002, the Commission's ALJ issued Order No. 5 requesting that parties submit the issue or issues that should be certified to the Commission.

On July 16, 2002, SWBT filed a proposed certified issue for the Commission's consideration. Commission Staff did not file a certified issue for the Commission's consideration. On July 26, 2002, the Commission's ALJ issued Order No. 6 ruling that the following certified issued was appropriate for certifications pursuant to P.U.C. PROC. R. 22.127(b)(1):

“Do the terms “third party entity”, “any third party entity”, and “audited carrier” in P.U.C. SUBST. R. 26.315(c)(2) apply only to billing aggregators and entities having direct billing arrangements with a DCTU?”¹¹

II. Commission Determination

The Commission finds that the definition of the terms “third party”, “any third party”, and “audit carrier” as stated in P.U.C. SUBST. R. 26.315(c)(2) mean an interexchange carrier

¹⁰ SWBT's Response to Order No. 3 at 2 (Jun. 20, 2002).

¹¹ Order No. 6 at 2 (Jul. 26, 2002).

(IXC) or third-party billing and collection agent operating on behalf of the IXC in accordance with P.U.C. SUBST. R. 26.315(c).¹² The applicability of these terms in P.U.C. SUBST. R. 26.315(c)(2) delineate a DCTU's responsibilities and procedural requirements. However, the Commission finds that P.U.C. SUBST. R. 26.315(c) does not in any manner limit its jurisdiction pursuant to PURA § 17.156(e)¹³ to order a billing utility to terminate billing and collection services with a service provider or billing agent for repeated violations regarding unauthorized charges on a customer's bill under PURA § 17.156(e).

Pursuant to P.U.C. PROC. R. 22.5(b), the Commission finds that good cause exists to waive the provision requiring it to issue a written decision on the certified issue within 30 days of its submission under P.U.C. PROC. R. 22.127(d). The ALJ submitted the certified issue on July 26, 2002. The Commission considered this matter at the August 23, 2002 open meeting. The good cause waiver is needed to ensure sufficient time to effectuate the ruling of the Commission on the Certified Issue.

SIGNED AT AUSTIN, TEXAS the _____ day of August 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

Q:\PD\ORDERS\Misc. Orders\25781_Cert.Issue.DOC

¹² P.U.C. SUBST. R. 26.315(c) ("If validation information is available for calls that the interexchange carrier (or 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.")

¹³ PURA § 17.156(e) ("If 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.")