

DOCKET NO. 23375

PETITION OF TEXAS STATEWIDE	§	PUBLIC UTILITY COMMISSION
TELEPHONE COOPERATIVE, INC. TO	§	
AMEND SUBSTANTIVE RULE § 26.130(F)	§	
REGARDING INCONSISTENCIES BETWEEN	§	OF TEXAS
FEDERAL AND STATE RULES	§	

ORDER

This Order addresses the Petition by the Texas Statewide Telephone Cooperative, Inc. (TSTCI) filed on December 1, 2000 to amend Substantive Rule § 26.130(f) to make state rules consistent with federal law. TSTCI stated that Substantive Rule § 26.130(f) differs from the federal rules in two respects: (1) under federal rules, the authorized carrier is required to make refunds to customers while under the Commission rule the unauthorized carrier has this responsibility; and (2) the federal and state rules calculate refunds differently. TSTCI stated that the current two tiered approach unnecessarily complicates the reimbursement process by requiring carriers to separate intrastate and interstate charges and calculate refunds using applicable federal or state procedures.

The Commission denies the Petition to amend Substantive Rule 26.130(f). The consistency provision in PURA § 55.308 does not require that the Commission rules duplicate those of the FCC. The FCC allows flexibility to the states with regard to remedies as indicated in CC Docket No. 94-129 FCC 00-135, footnote 105. Also, in Paragraph 87 of CC Docket No. 94-129 FCC 00-255, the FCC states that they will not interfere with the state's ability to adopt more stringent regulations, that they must work hand-in-hand with the states to combat slamming, and that states have valuable insight into slamming problems in their respective locals.

Substantive Rule § 26.130 requires the unauthorized carrier to make a direct refund to the customer based on all charges for the first 30 days after a slam and a re-rating of charges after the first 30 days. The unauthorized carrier is also required to pay the authorized carrier any amount paid to it by the customer that would have been paid to the authorized carrier if the slam had not occurred. The FCC rules require the unauthorized carrier to pay the authorized carrier 150% of the amount paid by the customer and the

authorized carrier to refund the customer 50% of the amount paid by the customer. While the Commission's approach does not duplicate the FCC's procedures, it is consistent with the FCC's objectives and purpose.

The FCC requires the unauthorized carrier to pay the authorized carrier and then the authorized carrier makes the refund to the customer. If, however, the authorized carrier does not receive payment from the unauthorized carrier, the authorized carrier must inform the customer of this and the customer's right to pursue a claim against the unauthorized carrier. This refunding process was based on the original FCC approach, which required the authorized carrier to resolve slamming complaints. Under the new approach where either the FCC or the states that opt-in will resolve the complaints, it is more efficient and effective to have the unauthorized carrier make a direct refund to the customer.

The Commission does not agree that the current reimbursement process is a two-tiered approach, one for intrastate charges and another for interstate charges. The reimbursement process in the current § 26.130 applies equally to intrastate and interstate charges, as well as local charges when there is a local service slam.

The Commission shall initiate a rulemaking this summer to amend § 26.130 to include electronic letters of agency (LOA) as a verification method for switching telecommunications service and to make any other appropriate changes to the current rule.

The Commission shall continue to apply the provisions of the current § 26.130 until an amendment is adopted and shall accept electronic LOAs that meet the FCC requirements as a valid verification method for switching telecommunications service.

SIGNED AT AUSTIN, TEXAS on the 8th day of February 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

BRETT A. PERLMAN, COMMISSIONER