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May 13, 2010

Karl Spark  
Sunset Advisory Commission Members  
*Sunset Advisory Commission*  
PO Box 13066  
Austin, TX 78711

***Re: Sunset Advisory Commission Staff Report: Public Utility Commission of Texas***

Mr. Spark:

TEXALTEL<sup>1</sup> provides the following comment to the Sunset Advisory Commission in response to the "Texas Sunset Advisory Commission Staff Report: Public Utility Commission of Texas" issued April 23, 2010.

**1.4 Authorize PUC to require, by rule, renewal of registrations, certifications, and permits as it deems appropriate.**

TEXALTEL agrees that the PUC should have a tool to confirm which companies, out of all of the registered carriers, are still in business and operating in Texas. Although the PUC has an annual report requirement that report has not been used as such a tool. Today, the information the PUC has is outdated, inaccurate and misleading. For example, the PUC website lists 446 active Competitive Local Exchange Carriers (CLECs) in Texas. However, what the list does not show is that while the telecom industry went through a great boom in the 1990's drawing many

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<sup>1</sup> TEXALTEL is a trade association representing competitive communications providers operating in Texas. TEXALTEL was formed in 1982 as an association of long distance providers, but today its members have a wide array of business plans and provide a wide array of telecommunications, internet and other services. TEXALTEL's designated representative is the undersigned.

competitors to Texas, it also went through a great bust in the 2000's. It is highly unlikely that all 446, or even a majority of that 446, are still in operation in the State. As a result it is very difficult to judge just how much effective competition is available to consumers.

While TEXALTEL believes that having a tool to better track the scope of competition is worthwhile and the renewal of certifications, registrations, and permits could be one way to achieve that result, the Legislature should create a balance between gaining that knowledge and burdening the industry with yet more regulatory filings. Since CLECs and other carriers are already required to file annual reports, TEXALTEL suggests that the Legislature could utilize the annual reporting process for this purpose, rather than requiring formal "renewals" which will require work and responsibilities for both the PUC and the industry. The Annual Reports should establish and identify those carriers that remain active in Texas. In the alternative, if the Legislature desired a renewal process, TEXALTEL suggests that any renewal process require a 5- or 10-year renewal rather than annual renewals. TEXALTEL does not believe either of these courses will negatively affect the outcome desired from this recommendation.

### **1.5 Give PUC the authority to set reasonable fees in rule for its licensing-related activities related to certifications, registrations, and permits.**

TEXALTEL objects to recommendation 1.5 which allows the PUC to set fees for licensing related activities. Telecommunications is already subject to a high amount of fees, taxes and surcharges. Texas collects a .001667% gross receipts fee on public utilities, and ultimately from telecommunications consumers, to fund the PUC. Adding additional fees for licensing-related activities would amount to double taxation. Also the recommendation does not set a limit to how much the PUC could charge for this fee but rather includes an ambiguous statement that the amount should not exceed the amount necessary for licensing activities. Given that the gross receipts fee is already billed, any new charge would exceed the amount necessary for licensing activities.

Moreover, adding additional fees to an already heavily taxed industry could be very dangerous. Right now, telecom-specific fees make up a large percentage of the customer bill; in some cases, up to 60% of the price of service. Some examples of these fees include municipal rights-of-way,

9-1-1 fees, Excise Tax, Universal Service Fees (federal and state), and the PUC/FCC regulatory fees. These telecom specific fees do not include the fees customers do not see which are built into the price of their service and are simply a cost of doing business in any industry. Attached are three sample bills from two carriers in Texas outlining the fees and taxes of three typical types of business and residential service. These attachments highlight the growing problem of fees and taxation on telecommunications carriers and customers. Sample 1 highlights that fees and taxes for a single business line are approximately 35% the price of the service. Sample 2 highlights that fees and taxes for a 23 channel PRI, typical to medium-sized businesses are approximately 60% of the price of the service. Sample 3 highlights that fees and taxes for a single plain residential line are approximately 70% the price of the service.

An additional fee, although not the intent of the Legislature or the PUC, could become a barrier to entry for legitimate small businesses entering the market, thereby limiting the choices available to Texas consumers. It would also require carriers either to add yet another line item to their bill or to increase consumer rates to offset the cost of the fee. Consumers and carriers are already understandably concerned by the number of fees associated with communications services; in fact, very few industries are taxed as heavily, adding another would be unfair and unwarranted.

## **2.1 Eliminate the statutory test for deregulating a telecommunications market with a population between 30,000 and 100,000, replacing it with a test developed by PUC in rule.**

One of TEXALTEL's concerns with the Sunset Staff Report is the recommendation to abolish the legislated requirement for a competition test when considering whether to deregulate intermediate sized markets (30,000 to 100,000 customers per exchange). We understand and appreciate the effort to let the PUC decide what level of competition is appropriate to protect consumer interests in these markets, and respect that agency's expertise on such subjects. Thus, our concern is in the details of how such a recommendation would be implemented.

First, we note that there is a reason that many of these markets do not meet the legislated test – they have only minimal competition for telecommunications services. Second, we do not believe that there is actual evidence or proof that intermodal competition, regardless of how that term is

define, exists or constitutes a true substitute for wireline services (one would have to review each market separately, *e.g.*, residential, small & medium sized business, enterprise). Many ILECs today still require that customers purchase telephone service as a precondition to obtaining broadband service – a clearly anticompetitive practice, and one that AT&T has been coerced, with at least minimal success, out of in the last few years. If many consumers do not even have broadband services available, their competitive choices may well be limited to a few wireless providers, and some customers may find that a completely unacceptable alternative.

Our first suggestion is to merely update the statutory language to modify the “reseller” requirement to allow substitution of VOIP. Our second suggestion is that the Commission be empowered to condition a grant of deregulation. While such conditions may be dependent on market or ILEC specific conditions, among them might be (1) require a rural ILEC waive its “rural exemption” in any deregulated market<sup>2</sup>, (2) require a non-AT&T ILEC agree to the same section 251(b) requirements that are imposed on AT&T<sup>3</sup>, (3) require that the intraLATA toll tandem be available to complete local calls throughout such market at TELRIC cost based prices, (4) require TELRIC priced transport be available to reach each exchange within such market from the nearest urban market (over 100,000 access lines), (5) require the deregulated ILEC to offer “naked DSL”<sup>4</sup> to all of the customers within the deregulated market at prices no higher than current DSL prices when bundled with telephone service, and (6) require the ILEC being deregulated to agree to extensions of existing competitive interconnection agreements for up to 5 years, or such other appropriate safeguards as the Commission may determine necessary to assure that customers will continue to have adequate choices of local telephone service providers. While we would agree that there may be circumstances where all of the above conditions are not necessary, we urge that the PUC be permitted to add any conditions it determines appropriate. With an appropriate legislative mandate to see that all consumers have adequate competitive options that they are not abused by the incumbent.

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<sup>2</sup> The “Rural Exemption” permits a rural ILEC to refuse to comply with portions of the interconnection requirements in federal law on the basis that such interconnection would impose undue risk or hardship on such ILEC unless the state commission has reviewed the circumstances and removed such rural exemption for that ILEC in that exchange.

<sup>3</sup> Primarily, the additional requirements may be to provide certain network elements at prices based on cost.

<sup>4</sup> “Naked DSL” is broadband service over ILEC telephone lines with no requirements to purchase telephone service from the ILEC.

Third, we suggest that the PUC be permitted to declare only a portion of a market competitive. The concern is that there are some consumers in a market who have no acceptable choices, while many have enough choices that ILEC abuse would result in loss of consumers. The PUC might, if permitted, for example, declare all consumers who have an adequate naked DSL offer available, or who have cable modem service available, to be deregulated, while consumers with no options are still able to receive services at regulated rates. Such freedom might allow the PUC to declare portions of a market that truly are competitive to be deregulated, rather than refusing a deregulation request because too many consumers still do not have competitive choices. In addition, the PUC should be allowed (and industry participants to provide evidence) regarding separate aspects of a given geographic market. As mentioned above, an analysis of each products market (*e.g.*, residential, small & medium-sized business, enterprise) should be performed as the geographic market is likely not representative of the needs of each submarket with respect to telecommunications services or whether competition truly exists for each of these types of customers.

TEXALTEL thanks the Sunset Advisory Commission for the ability to provide the above comments. We look forward to working with the Sunset Advisory Commission as the Texas Sunset Review of the Public Utility Commission of Texas continues.

Respectfully Submitted,

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## ATTACHMENTS