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VIA HAND DELIVERY

David Ferguson
Pipeline Safety Division
Texas Railroad Commission
William B. Travis Bldg., Room 1-111
1701 N. Congress Ave.
Austin, TX 78701

RE: Proposed Amendments to Chapter 18 Rules Underground Pipeline Damage Prevention

Dear Mr. Ferguson,

AT&T is aware that the Texas Railroad Commission (hereinafter "Commission") Staff has issued draft proposed amendments to rules in Chapter 18, Underground Pipeline Damage Prevention (hereinafter "the Rules").

Although AT&T believes that providers of telecommunications service and information service are not subject to the jurisdiction of the Commission, AT&T would nevertheless like to provide its written comments to the draft proposed amendments because of the importance of safety and efficiencies in the excavation process involving pipelines and the potential impact on AT&T's operations as well as the potential of similar rules being developed in other forums as to AT&T. AT&T's comments are as follows:

- Rule 18.1(a), page 1, line 7—as written, the current rule applies to "all persons engaged in or preparing to engage in the movement of the earth . . ." This language fails to recognize the fact that the Commission has no jurisdiction or right-of-way management authority over telecommunications and information service providers. AT&T recommends that this subsection of the Rules be revised to acknowledge this fact; otherwise, the Commission would be ignoring express, legislative intent. Alternatively, AT&T requests that the Commission exempt telecommunications and information service providers pursuant to Natural Resources Code § 117.012(o)(2)(B) and Utilities Code § 121.201(e)(2)(B) because these providers are already subject to the Underground Facility Damage and Prevention Act found in Chapter 251 of the Texas Utilities Code.

- Rule 18.1(a), page 1, line 8—the term “vicinity,” as used in this instance, through the remainder of the Rules and in the relevant codes, remains undefined thereby rendering it vague and ambiguous. From an excavator’s perspective, the excavator will not know with absolute certainty whether it must comply with the obligations set out in the Rules because, as currently written, the Rules do not provide a set distance from the underground pipeline for which the Rules apply. This leaves the language in the Rules subject to numerous interpretations and foreseeable disputes. AT&T recommends that the Rules be amended to define the term “vicinity.”
- Rule 18.1(h), page 2, line 24—the phrase “14 working days” should be changed to a less complicated “21 calendar days.” The term “working days” requires a few extra, unnecessary steps of having to revisit the definition of “legal holiday” and then determining what day each national and state holiday falls on and whether any of those holidays fall within the 14-day time period. Revising this phrase to “21 calendar days” promotes greater efficiency.
- Rule 18.1(l)(1)&(2), page 4-5—these subsections are vague and ambiguous and potentially unduly burdensome for the excavator. By way of example only, the extent of cooperation the Commission requires is unclear, and the type of records, reports, data or other documents and information the Commission requires is also unclear. This raises serious concerns, including but not limited to the excavator’s right to protect from disclosure information and/or documents that are confidential and proprietary and/or protected by the work product or attorney client privileges (especially if litigation is anticipated or has ensued).
- Rule 18.3(e), page 9, lines 14-5—the phrase “or when the markings are no longer visible” assumes that the excavator has prior knowledge and/or is aware of all markings made in an excavation area. This poses a duty on the excavator that may be inadvertently breached simply because the excavator was unaware that a marking is no longer visible. This sentence may also be interpreted as imposing no duty on the excavator to refresh a ticket in a situation where the ticket has expired but the markings are still visible. It is unclear whether that was the original intent behind this revision.
- Rule 18.3(h), page 9—this subsection places distance restrictions on locate tickets. As proposed, an excavator would have to submit one ticket request for every ½ mile of the excavation area, which significantly increases the costs associated with the project. For example, at present time, if an excavation project covers 10 miles, an excavator would only be required to submit one locate ticket and incur one fee. The proposed language would now require the excavator to submit twenty separate locate tickets--each at a cost. This not only increases the cost of construction but can also lead to inefficiency if the locate

tickets are marked at different times, on different days, and by different people—clearly an unintended consequence of the proposed revisions.

- Rule 18.4(e)(5), page 11, lines 29-30—this subsection raises the same concern addressed for Rule 18.3(e) herein regarding an excavator’s prior knowledge and/or awareness of markings.
- Rule 18.10(c), page 17—there is ambiguity as to the scope of the “excavation event.” It is unclear whether the excavation event includes only the distance covered in the locate ticket or the entire distance of the excavation project.

AT&T reserves the right to make additional comments at the public stakeholder meeting. AT&T’s comments herein are not intended to be a waiver of AT&T’s belief that it is not subject to the Commission’s jurisdiction. AT&T appreciates the opportunity to provide written and oral comments to the draft proposed amendments. If you have any questions about these comments, please feel free to contact the undersigned directly.

Thank you,

A handwritten signature in black ink, appearing to read 'C. Villarreal', with a large, stylized initial 'C'.

Christie M. Villarreal

cc: Chairman Barry T. Smitherman
Commissioner David Porter
Commissioner Christi Craddick