PROJECT NO. 39939

RULEMAKING PROCEEDING TO AMEND CHAPTER 26, SUBCHAPTER P-RELATING TO ADMINISTRATION OF THE TEXAS UNIVERSAL SERVICE FUND (TUSF)	§ § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

PROPOSAL FOR PUBLICATION OF NEW §26.402
AS APPROVED AT THE JUNE 13, 2012 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §26.402, relating to Transparency and Accountability in the Administration of the Texas Universal Service Fund, pursuant to Senate Bill 980 of the 82nd Texas Legislature, Regular Session in 2011 which in part amended Public Utility Regulatory Act (PURA) §56.023(d). The purpose of the new rule is to further ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF). Project Number 39939 is assigned to this proceeding

David Smithson, Retail Market Analyst, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Mr. Smithson has determined that for each year of the first five years the rule is in effect the primary public benefits anticipated as a result of enforcing the rule will be greater transparency and accountability in the administration of the TUSF. Mr. Smithson has determined that for each year of the first five years the rule is in effect the economic cost to persons required to comply with the rule will be limited to the production of annual reports to the commission regarding costs and revenues associated with services supported by the TUSF.

Mr. Smithson has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Mr. Smithson has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule. Therefore, no regulatory flexibility analysis is required.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days of publication in the *Texas Register*. If requested, notice of a hearing will be posted under this project.

Initial comments on the amendment should be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, July 30, 2012. Reply comments should be submitted by Wednesday, August 8, 2012. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the rule. All comments should refer to Project Number 39939.

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.023(d), which requires the commission to adopt rules that include procedures to ensure reasonable transparency and accountability in the administration of the TUSF.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.023(d).

§26.402. Transparency and Accountability in the Administration of the Texas Universal Service Fund.

(a) **Purpose.** This section, in conjunction with the audit, eligibility, public reporting, and affidavits of compliance requirements set forth throughout this subchapter, establishes procedures to ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF).

(b) **Application.** This section applies to a telecommunications provider that has been designated as an eligible telecommunications provider (ETP) by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)). Subsections (c)(3) and (d)(3) apply to a telecommunications provider that has been designated, or has applied after June 30, 2013 to be designated by the commission as an eligible telecommunications carrier (ETC) pursuant to §26.418 of this title (relating to Designation of Common Carrier as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(c) **Requirements for ETPs and ETCs that Receive State or Federal High Cost Support and are Designated as Price Cap Carriers by the Federal Communications Commission.** This subsection applies to an ETP or ETC that receives state or federal high cost support and has been designated by the Federal Communications Commission (FCC) as a price cap carrier.

(1) **Reports required for a price cap carrier designated as an ETP that receives Texas USF high cost support.** Beginning July 1, 2013, and upon that date in each successive year, each ETP receiving high cost disbursements from the TUSF pursuant to §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) or §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan) that is a price cap carrier by FCC designation shall file with the commission a cost estimate for wire centers receiving TUSF support using the following data and methodology.

(A) Operating expenses for the study area by category:

(i) Plant-specific operations expense;

(ii) Plant non-specific operations expense;

(iii) Customer operations expense;

(iv) Corporate operations expense;

(v) Operating taxes; and

(vii) Depreciation expense.

(B) Develop a factor by dividing the total square miles of all supported wire centers by the total square miles of the study area.

(C) Multiply the sum of the operating expenses from paragraph (2)(A) of this subsection by the factor calculated pursuant to paragraph (2)(B) of this subsection to produce an estimate of costs for the total of all supported wire centers.

(2) **Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal USF high cost support.** This subsection applies to an ETP that has been designated as an ETP and as an ETC that receives federal high cost support and a price cap carrier by the Federal Communications Commission (FCC).

(A) Beginning July 1, 2013, and upon that date in each successive year, each ETP receiving disbursements from the TUSF pursuant to §26.403 of this title or §26.404 of this title shall file confidentially with the commission a forward-looking cost estimate by wire center, using the formula shown below, in which the term "ln" means *natural logarithm*:

$$\begin{aligned}\ln(\text{total cost}) = {} & 7.08+0.02*\ln(\text{distance to nearest central office in feet } +1)\\ & -0.15*\ln(\text{number of households + businesses in wire center } +1)\\ & +0.22*\ln(\text{total road feet in wire center } +1)\\ & +0.06*(\ln(\text{number of households + businesses in wire center } +1))^2\\ & -0.01*(\ln(\text{number of businesses in wire center}+1))^2\\ & -0.07*\ln((\text{number of households + businesses})/\text{square miles } +1)\end{aligned}$$

(B) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for a carrier receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

(C) By July 1st of each subsequent year after filing its five-year plan pursuant to subparagraph (B) of this paragraph, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

(d) **Requirements for ETPs and ETCs that receive state or federal high cost support and are designated as rate of return carriers, competitive local exchange carriers, or wireless carriers by the FCC.** This subsection applies to an

ETP or ETC that receives high cost support and has been designated by the FCC as a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier.

(1) **Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP that receives Texas USF high cost support.**

(A) Beginning July 1, 2013, and upon that date in each successive year, each ETP receiving disbursements from the TUSF pursuant to §26.403 or §26.404 of this title that is a rate of return carrier by FCC designation and has one or more wire centers not receiving TUSF support shall file with the commission a cost estimate for wire centers receiving TUSF support using the following data and methodology:

(i) Operating expenses for the study area by category:

(I) Plant-specific operations expense;

(II) Plant non-specific operations expense;

(III) Customer operations expense;

(IV) Corporate operations expense;

(V) Operating taxes; and

(VI) Depreciation expense.

(ii) Develop a factor by dividing the total square miles of all supported wire centers by the total square miles of the study area.

(iii) Multiply the sum of the operating expenses from paragraph (2)(A) of this subsection by the factor calculated pursuant to paragraph (2)(B) of this subsection to produce an estimate of costs for the total of all supported wire centers.

(B) For carriers in this category that receive TUSF support for all wire centers, provide operating expenses for the study area by category:

(i) Plant-specific operations expense;

(ii) Plant non-specific operations expense;

(iii) Customer operations expense;

(iv) Corporate operations expense;

(v) Operating taxes; and

(vi) Depreciation expense.

(2) **Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP and as an ETC that receives federal USF high cost support.**

(A) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for carriers receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

(B) By July 1st of each subsequent year after filing its five-year plan pursuant to subparagraph (A) of this paragraph, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

(e) **Reports made public by the commission.** For each State fiscal quarter, no later than the 45th day after the end of the preceding quarter, the commission shall make the following information publicly available on the commission's website:

(1) A cash flow statement for the overall TUSF indicating starting balance, total revenues, disbursements for each program described in §26.401(b) of this title (relating to Texas Universal Service Plan (TUSF)), and ending balance;

(2) Total deposits to the TUSF by each company; and

(3) Total disbursements from the TUSF to each recipient company or organization for each program described in §26.401(b) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

ISSUED IN AUSTIN, TEXAS ON THE 13th DAY OF JUNE 2012 BY THE PUBLIC UTILITY COMMISSION OF TEXAS ADRIANA A. GONZALES

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