

**PROJECT NO. 39938**

<b>RULEMAKING PROCEEDING</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TO AMEND SUBSTANTIVE RULES</b>	<b>§</b>	
<b>RELATING TO THE SMALL AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RURAL INCUMBENT LOCAL</b>	<b>§</b>	
<b>EXCHANGE COMPANY UNIVERSAL</b>	<b>§</b>	
<b>SERVICE PLAN</b>	<b>§</b>	

**ORDER ADOPTING REPEAL OF §26.404, NEW §26.404, AND AMENDMENT TO §26.412 AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; new §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP); and an amendment to §26.412, relating to Lifeline Service Program. The repeal of §26.404 is adopted without changes to the proposal as published in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5399) and will not be republished. New §26.404 and the amendment to §26.412 are adopted with changes to the proposed text and will be republished. The new rule provides for reduction in support for local exchange carriers from the SRILEC USP based on the difference between current rates for basic local exchange service and a reasonable rate to be determined by the commission. The purpose of the amendments to §26.412 is to reflect new §26.404. Project Number 39938 is assigned to this proceeding.

The commission received comments on the proposed rule changes from the Texas Telephone Association (TTA), Office of Public Utility Counsel (OPUC), Sprint Communications Company L.P., Texas Cable Association and tw telecom of Texas, llc (collectively, the “USF Reform

Coalition” or “URC”), GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), TEXALTEL, and Texas Statewide Telephone Cooperative, Inc. (TSTCI).

No party requested that a public hearing be held regarding the proposed changes to the commission’s rules.

**(1) Issues Relating to the Calculation of SRILEC USP Base Support Amount**

The Texas Telephone Association (TTA) argued that the base support amount should be based on the higher support amounts provided for by the legislature in HB 2603, rather than on the amounts originally established in Docket Number 18516. In particular, TTA argued that the base support amount should be based on the support amount resulting from the implementation of HB 2603 in Docket Number 39643, or where appropriate, use the support amounts as adjusted for inflation by the commission in Project Number 40447.

While TSTCI did not support a return to basing TUSF support on a per-line basis, it recommended that if such an approach is adopted, the base support amounts should be based not on the levels determined over a decade ago in Docket Number 18516 and deemed insufficient by the legislature. The commission should instead base support amounts on the current monthly HB 2603 support amount. According to TSTCI, this would bring the proposed rule more closely in alignment with the legislature’s recent actions.

In reply comments, URC responded to the arguments of TSTCI regarding the intent of the legislature in enacting HB 2603. According to URC, HB 2603 can in no way be viewed as a legislative determination either that existing support mechanisms are insufficient or that the

method of distributing such support is inappropriate. In support of this argument, URC notes that the provisions of HB 2603 were a temporary mechanism, and that the provisions of HB 2603 are expressly subject to determinations regarding the appropriate support levels made by the commission pursuant to SB 980. In URC's view the express language of HB 2603 provides that: 1) subsequent determinations by the commission of the amount of support needed by companies participating in the SRILEC USP supersede any support amounts calculated pursuant to HB 2603; and 2) the support amounts calculated under HB 2603 expire on September 1, 2013, and the amounts therefore cannot be viewed as a determination by the legislature that any particular support amount or methodology is appropriate.

#### *Commission Response*

The commission agrees with URC that the provisions of HB 2603 are not binding on the commission in this rulemaking or subsequent contested cases. Public Utility Regulatory Act (PURA) §56.032(g) states that nothing in Section 56.032 (the section implementing HB 2603) affects the commission's authority under Chapter 53 or Chapter 56. Under §56.031, effective September 1, 2013, the commission may revise the monthly per line support amounts to be made available from the SRILEC USP after notice and an opportunity for hearing. That this authority to revise monthly per-line support amounts under §56.031 becomes effective on the same date as the expiration of §56.032, as added by HB 2603, strongly supports a conclusion that the legislature did not intend that any adjustments in support authorized by HB 2603 should be binding on future commission determinations of the appropriate level of support to be provided to companies under the SRILEC USP. Accordingly, no change is made to the rule.

**(2) Issues Relating to the Timing of Support Reductions**

URC recommended that the rule be modified to allow very small ILECs more flexibility in the time period for implementing rate rebalancing. The time period given for implementation of rate rebalancing should be determined in the contested case proceeding for ILECs with fewer than 10,000 lines; for all other ILECs, the transition period should be four years.

OPUC generally supported the published rule. However, OPUC is concerned that while a goal of the rule should be to produce a reasonable rate for rural customers that is comparable to the rate paid by urban customers, there may be a greater disparity between the rates currently charged by rural ILECs and the rates charged by the larger companies. Accordingly, it may be appropriate in the rule to provide flexibility in the amount of time over which the transition to a reasonable rate is phased in so that consumers are protected from rate shock.

In reply comments, TEXALTEL agreed that the time for implementation of rate rebalancing should be made flexible.

***Commission Response***

The commission agrees with URC and OPUC that the greater disparity between current rates and a reasonable rate may exist for some companies receiving support under the SRILEC USP. This disparity may warrant some additional time for implementation of support reductions under this rule in order to mitigate the impact of rate shock on telecommunications customers served by these companies. The specific amount of time needed for implementation of the support reductions depends in part on the amount of the rate disparity, which is a matter best determined

in the contested case proceeding that will be conducted to implement this rule. Accordingly, language similar to that proposed by URC is incorporated into the rule in order to preserve the commission's ability to consider these timing issues in the subsequent contested case.

**(3) Issues Relating to Rate Changes for Companies Whose Rates are Regulated under Chapter 53**

TSTCI stated that, while the approach adopted in Project Number 39937 may be appropriate for the large companies regulated under Chapters 58 and 59 of PURA, it is not appropriate for the small companies subject to the commission's Chapter 53 jurisdiction. In any proceeding to adjust the rates or support provided to Chapter 53 companies, the companies have the right to have the commission establish rates that result in a revenue level sufficient to allow for an appropriate rate of return.

TSTCI argued that once a reasonable rate is established for a Chapter 53 company, it should be allowed to raise its rate to that level immediately in order to reach the reasonably determined revenue level. Additionally, according to TSTCI, any cap on rate increases could affect the ability of a company to meet the minimum rate floors established by the FCC.

In line with its overall position regarding the ability of the commission to adjust rates and revenues for Chapter 53 companies, TSTCI also argued that a reduction in support from the SRILEC USP should be made only if the resulting overall revenue is sufficient to allow the company to earn a reasonable rate of return. TSTCI also stated that the commission should take into account the difference in economic and demographic conditions that exist between the areas

served by the large ILECs and the small and rural ILECs, noting that there are no provisions in the proposed rule to take these factors into account.

Responding to TSTCI's argument that the commission cannot set rates for Chapter 53 companies outside of a full rate case, URC observes that neither the rule nor the contested case that follows adoption of the rule actually sets a rate for BLTS. URC instead notes that the procedure proposed in the rule establishes a benchmark for purposes of calculating support from the SRILEC USP, similar to the rate floor established by the FCC (to which TSTCI has indicated it does not object). Additionally, according to URC, the amount of support provided to small and rural companies under the SRILEC USP is not a "rate" or a guaranteed revenue stream that must be considered in light of all other costs and revenues in determining a company's ability to earn a reasonable rate of return. Instead, under the language of PURA, SRILEC USP support is simply designed to "assist" telephone companies to provide BLTS at reasonable rates.

### *Commission Response*

The purpose and effect of the proposed rule is not to establish a rate for BLTS. Rather, it is to determine an appropriate amount of support for that service in areas served by small and rural ETPs. Nothing in the rule establishes a rate for BLTS or requires a company to charge a particular rate for BLTS. The rule merely provides an opportunity for companies to recover some or all of the reduction in support from the SRILEC USP through increases in local rates.

A Chapter 53 rate case is not the only means by which rates for BLTS may be changed outside of a proceeding to determine the relationship between costs and revenues so as to permit a

company whose rates are regulated under Chapter 53 to earn a reasonable rate of return on investment. PURA Subchapter G and §26.171 permit small ILECs to increase local rates up to fifty percent provided that such increases do not result in an increase of more than five percent of the ILEC's total regulated intrastate gross annual revenue. In addition, PURA §56.025(a) further provides that the commission may adopt a mechanism necessary to maintain reasonable rates for local exchange telephone service. Companies with rates regulated under Chapter 53 are free to petition the commission at any time for a review of their costs and rates, and for adjustments needed to ensure the opportunity to earn a reasonable rate of return. Accordingly, no change is made to the rule.

**(4) Issues Relating to BLTS Rate Increases and Federal Universal Service Fund Requirements**

TTA raised a concern that, depending upon the level of the reasonable rate determined by the commission in a subsequent contested case proceeding, some ILECs may not be able to raise rates rapidly enough under §26.171 to comply with the commission's order. TTA also noted that the Federal Communications Commission has adopted minimum rate floors for BLTS that also may require some ILECs to increase rates, and that this FCC requirement could conflict with the provisions of the proposed rule and could violate what TTA characterizes as a "cap" on local rate increases contained in subsection (e)(2) of the proposed rule. To address these concerns, TTA proposed that the commission provide in the rule for an administrative compliance filing that would permit approval of rate increases in the event that the reasonable rate established by the commission would suggest a rate increase in excess of the increases permitted under §26.171, and that any "cap" imposed by subsection (e)(2) be eliminated.

*Commission Response*

The commission anticipates that the requirements of the FCC with regard to minimum rates for BLTS will be an issue in the contested case proceeding that will implement the provisions of this rule. In section (2) above, the commission noted that the time period for implementation of any support reductions will be considered in the contested case proceeding. The commission expects that each affected ILEC will present evidence in that proceeding regarding the effect of FCC requirements on the ability of each ILEC to increase rates for BLTS and the rate at which such rates may be increased.

The commission also is aware that the provisions of §26.171 may affect the rate at which rate increases may be implemented. The nature of the interaction between federal regulations and the provisions of this rule, as well as the provisions of PURA and other commission rules as they relate to each company receiving support from the SRILEC USP is a factual matter best addressed in the contested case proceeding to implement this rule. As such, no change is made to the rule.

**(5) Issues Relating to Charges Included in the Reasonable Rate**

TSTCI and TTA proposed a change to subsection (e)(3) of the published rule, to specify that the “reasonable rate” includes any mandatory EAS or ELCS charges and charges for touch tone service, as well as any other mandatory charges and fees.

*Commission Response*

The commission agrees that additional clarity in specifying the charges that are included in the reasonable rate would be helpful. The rule has been modified to incorporate the change proposed by TTA.

**(6) Issues Relating to Lifeline Support**

In its initial comments, OPUC stated that because the new §26.404 will accomplish reductions in SRILEC USP support similar to the THCUSP support reductions to be accomplished in §26.403 and the THCUSP support approved by the Commission in Docket No. 34723, it believes that it is appropriate to extend increases in the SRILEC USP Area Discount to rate increases occurring as a result of the new §26.404. OPUC believes that amendments to §26.412 are important to ensure that Lifeline discount for customers does not decrease in value as current rates increase to the reasonable rate.

In reply comments, TEXALTEL pointed to an apparent discrepancy between the adjustments to Lifeline discounts prescribed by the proposed rule and the discount adjustments adopted in Docket Number 40521. According to TEXALTEL, the proposed rule applies a reduction to Lifeline service rates, while the Docket Number 40521 settlement applies the adjustment, in the form of an increase, to the Lifeline service discount.

*Commission Response*

The commission's intent is that adjustments to the Lifeline service rate should be applied consistently to companies receiving support under the SRILEC USP and the Texas High Cost

Universal Service Plan (THCUSP). To prevent confusion in this matter, the proposed rule has been changed to more closely conform to the language adopted in the settlement agreement in Docket Number 40521.

The intent of the rule is to link increases in Lifeline discounts in all SRILEC USP areas to BLTS rate increases occurring as a result of the new §26.404. This applies to all small and rural ILECs in SRILEC USP service areas. To clarify this intent, as well as to address concerns raised by OPUC as to the importance of providing protection for Lifeline customers, Staff has modified the language in §26.412 to delete the reference to PURA Chapter 53. For purposes of clarification, PURA Chapter 52 addresses the Commission's regulation of public utilities, PURA Chapter 53 addresses the regulation of rates for public utilities and PURA Chapter 59 addresses an Infrastructure Plan which allows for certain pricing flexibility. Most of the small or rural telecommunications providers come under PURA Chapter 53 rate regulation; however there are a few small or rural ILECs that have elected to make an infrastructure commitment under PURA Chapter 59 and receive certain rate flexibility. Regardless of whether a small or rural ILEC comes under Chapter 53 rate regulation or elects to participate in the Chapter 59 Infrastructure Plan, the 25% increase of any actual increase is to be provided by all Lifeline providers operating in those SRILEC USP ILEC's regulated exchanges.

**(7) Issues Relating to Reporting Requirements**

URC argued that the rule should apply the same reporting requirements to all ILECs whether they are in the large company fund or the small company fund. Specifically, the ILECs receiving support from the small company fund should be required to file a calculation of the

base support amount and the number of eligible lines monthly, as well as quarterly reports showing actual SRILEC USP receipts by study area. This would, according to URC, bring the revised §26.404 into parity with §26.403, relating to the THCUSP.

*Commission Response*

The commission agrees with URC that the same or similar reporting requirements should apply both to the THCUSP and the SRILEC USP. The proposed rule has been changed to more closely conform to the requirements of §26.403.

**(8) Issues Relating to the Treatment of Larger ILEC ETPs in the SRILEC USP**

URC requested that the rule be modified so that the affiliates of CenturyLink, Windstream, and Consolidated (Fort Bend) would be subject to the same requirements that apply to LECs in the THCUSP. URC points to the large size of each of these companies compared to other companies in the SRILEC USP. In particular, URC notes that Consolidated's Fort Bend service territory serves an area (the Houston suburb of Katy) that is no longer rural in character. URC raises the question of whether such an area should receive any support at all from the TUSF. URC proposes specific revisions to the rule as published that would provide that the rate established under §26.403 would be presumed to be reasonable to carriers with more than 10,000 access lines.

In reply comments, TEXALTEL agreed with URC's position on this issue.

*Commission Response*

The commission determines that it would not be appropriate to treat exchanges receiving support from the SRILEC USP that are served by the larger ILEC ETPs differently from other exchanges supported by the SRILEC USP, and to instead support those exchanges as if they were supported by the THCUSP. The two high cost support funds have very different histories. The support amounts for each exchange in the SRILEC USP initially were designed to replace revenue lost by the small and rural ILECs as certain switched access charges were reduced. Those switched access charges were in turn designed to replace revenue lost by the small and rural ILECs as the Texas Toll Pool was terminated following the divestiture by AT&T of its local exchange operations. The support amounts for each exchange in the THCUSP, on the other hand, were based on a comparison of the cost of providing basic local telecommunications service, as determined by a forward-looking economic cost model, with a benchmark rate for that service. Because these two approaches to determining support amounts are fundamentally different, and because a forward-looking economic cost has never been determined for exchanges served by ILEC ETPs receiving support from the SRILEC USP, it would be inappropriate to begin treating an exchange currently supported by the SRILEC USP as if it were supported instead by the THCUSP.

The commission is fully cognizant of the fact that there are some exchanges currently receiving support from the SRILEC USP that have, over time, become more urban than rural in character. In those exchanges, the cost of providing basic local telecommunications service may also have changed such that support from the SRILEC USP is no longer needed to assist the companies in providing this service. Such a determination, however, is not the subject of this rulemaking nor

of the contested case proceeding that will implement this rule. The commission is focused at this time on determining an appropriate amount of support for BLTS in areas served by small and rural ETPs, as well as providing an opportunity for such companies to recover some or all of the reduction in support from the SRILCE USP through increases in BLTS rates. In a subsequent proceeding, the more fundamental issue of the relationship between costs and rates will be addressed.

**(9) Other Issues Addressed in Comments**

TTA suggested that the commission adopt a provision similar to that adopted in §26.403, relating to the THCUSP, that would permit acceleration of rate increases by no more than 10% in any year to produce rounded rates.

TTA also commented that the rule as proposed may result in decreases in SRILEC USP support in excess of the amount that would result from a simple comparison of the revenue produced by current rates and the revenue that would be produced by a reasonable rate, if ILEC ETPs continue to lose line subscriptions. To ameliorate this effect, TTA proposes that the reductions in support be calculated by reducing the total support amount by 25% of the total support reduction amount in each year of the transition period (assuming a four-year transition period), rather than apply the reduction to per-line support amounts.

Verizon supported the rule as published, and did not propose any changes to the rule. Verizon suggested, however, that the commission follow an approach for the SRILEC USP similar to the

approach proposed for the THCUSP in which ILECs receiving support under the THCUSP phase down support in areas with an unaffiliated unsubsidized competitor.

*Commission Response*

The commission agrees with the suggestion by TTA that the rule be changed such that support reductions may be accelerated. If the ILEC ETP chooses to raise local rates, the amount of such increment may be a rounded amount. The proposed rule has been changed accordingly.

The commission does not, however, agree with the methodology proposed by TTA for the calculation of support reductions. The current operation of the SRILEC USP does not insulate ILEC ETPs from the effects of line loss, and the commission does not intend to change this feature of the SRILEC USP in this rule.

While the commission agrees with Verizon that an approach similar to that proposed for the THCUSP whereby support would be reduced or eliminated in an area with an unaffiliated unsubsidized competitor has merit, this issue will be reserved for a future rulemaking.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the new and amended sections, the commission makes changes to clarify its intent.

The amendments, repeal and new section are adopted under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the

authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §56.021, which requires the commission to adopt rules concerning the Texas universal service fund.

Cross Reference to Statutes: PURA §14.002 and §56.021.

**§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan - REPEALED**

**§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.**

- (a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so that basic local telecommunications service or its equivalent may be provided at reasonable rates in a competitively neutral manner.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.
  - (2) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
  - (3) **Small incumbent local exchange company** -- An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(c) **Application.**

(1) Small or rural ILECs. This section applies to small ILECs, as defined in subsection (b) of this section, and to rural ILECs, as defined in §26.5 of this title (relating to Definitions), that have been designated ETPs.

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs.

(d) **Service to be supported by the Small and Rural ILEC Universal Service Plan.** The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(e) **Criteria for determining amount of support under Small and Rural ILEC Universal Service Plan.** The commission shall determine the amount of per-line support to be made available to ETPs in each eligible study area. The amount of support available to each ETP shall be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) **Determining base support amount available to ETPs.** The initial per-line monthly base support amount for a small or rural ILEC ETP shall be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP

access line count as of January 1, 2012. The initial per-line monthly base support amount shall be reduced as described in paragraph (3) of this subsection.

(2) **Determination of the reasonable rate.**

(A) The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. An increase to an existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding.

(B) The length of the transition period applicable to the reduction in support calculated under paragraph (3) of this subsection shall be determined in the contested case proceeding.

(3) **Annual reductions to the Small and Rural ILEC Universal Service Plan per-**

**line support.** As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission shall calculate the amount of additional revenue, using the basic telecommunications service rate (the tariffed local service rate plus any additional charges for tone dialing services, mandatory expanded local calling service and mandatory extended area service) and the access line count as of September 1, 2013, would result if the small and rural ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January

1, 2014. The small or rural ILEC ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period, unless specified otherwise pursuant to paragraph (2)(B) of this subsection. This reduction shall be accomplished by reducing support for each study area proportionally. An ILEC ETP may, in its sole discretion, accelerate its SRILEC USP reduction in any year by as much as 10% and offset such reductions with a corresponding local rate increase in order to produce rounded rates.

- (f) **Small and Rural ILEC Universal Service Plan support payments to ETPs.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.
- (1) **Payments to small or rural ILEC ETPs.** The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.
- (2) **Payments to ETPs other than small or rural ILECs.** The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

- (g) **Reporting requirements.** An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.
- (1) **Monthly reporting requirements.** An ETP shall report on a monthly basis:
- (A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and
  - (B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.
- (2) **Quarterly reporting requirement.** An ETP shall file quarterly reports with the commission showing actual SRILEC USP receipts by study area.
- (A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 P.M. on the 30th calendar day after the end of the calendar quarter reporting period.
  - (B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.
  - (C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.
- (3) **Annual reporting requirements.** An ETP shall confirm annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.
- (4) **Other reporting requirements.** An ETP shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements to the TUSF.

**§26.412. Lifeline Service Program.**

- (a) **Scope and purpose.** Through this section, the commission seeks to identify and make available Lifeline Service to all qualifying customers and households, establish a procedure for Lifeline Automatic Enrollment and Lifeline Self-Enrollment, and define the responsibilities of all providers of local exchange telephone service that provide Lifeline Service, qualified customers, the Texas Health and Human Services Commission (HHSC), and the Low-Income Discount Administrator (LIDA) Program.
- (b) **Applicability.** This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:
- (1) ETC -- A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).
  - (2) ETP -- A provider designated as an ETP as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
  - (3) Resale ETP -- A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as an ETP as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

- (4) Non-ETP/ETC Certificated Provider -- Any certificated provider of local exchange telephone service that chooses not to become an ETP or an ETC as defined by §§26.417, 26.418, or 26.419 of this title.

(c) **Definitions.**

- (1) Qualifying low-income customer -- A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section.
- (2) Toll blocking -- A service provided by Lifeline providers that let customers elect not to allow the completion of outgoing toll calls from their telephone.
- (3) Toll control -- A service provided by Lifeline providers that allow customers to specify a certain amount of toll usage that may be incurred on their telephone account per month or per billing cycle.
- (4) Toll limitation -- Denotes either toll blocking or toll control for Lifeline providers that are incapable of providing both services. For Lifeline providers that are capable of providing both services, “toll limitation” denotes both toll blocking as defined in paragraph (2) of this subsection and toll control as defined in paragraph (3) of this subsection.
- (5) Eligible resident of Tribal lands -- A “qualifying low-income customer,” as defined in paragraph (1) of this subsection, living on or near a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a “reservation” is defined as any federally recognized Indian tribe’s reservation, pueblo, or colony.

- (6) Income -- As defined in 47 C.F.R. §54.400(f) includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.
- (d) **Customer Eligibility Requirements.** A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the LIDA. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.
- (1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually;
- (2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy Assistance Program (LIHEAP), or health benefits

coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code; or

- (3) A customer is an eligible resident of tribal lands as defined in subsection (c)(5) of this section.

(e) **Lifeline Service Program.** Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:

- (1) Designated Lifeline services. Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101(a)(1)-(9) (relating to Supported Services for Rural, Insular and High Cost Areas).
- (2) Toll limitation. Lifeline providers shall offer toll limitation to all qualifying low-income customers at the time the customer subscribes to Lifeline Service. If the customer elects to receive toll limitation that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by otherwise applicable toll limitation charges.
- (3) Disconnection of service.
  - (A) Disconnection prohibition. Lifeline providers may not disconnect Lifeline Service for non-payment of toll charges.
  - (B) Discontinuance of Lifeline Discounts for customers automatically enrolled. The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days

for renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self enroll with LIDA upon the expiration of their automatic enrollment.

- (C) Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with LIDA for an additional seven months.
- (4) Number Portability. Consistent with 47 C.F.R. §52.33(a)(1)(C), Lifeline providers may not charge Lifeline customers a monthly number-portability charge.
- (5) Service deposit prohibition. If the qualifying low-income customer voluntarily elects toll limitation from the Lifeline provider, the Lifeline provider may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits) in order to initiate Lifeline Service.
- (6) Ancillary services. A Lifeline provider shall provide customers who apply for or receive Lifeline Service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network services.
- (7) Bundled packages. A Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other

consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.

(f) **Lifeline support and recovery of support amounts.**

(1) **Lifeline discount amounts.** All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

- (A) Waiver of the monthly subscriber line charge (SLC) -- Lifeline providers shall grant a waiver of the monthly SLC at the rate tariffed by the incumbent local exchange carrier serving the area of the qualifying low-income customer. If the ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the Incumbent Local Exchange Carrier (ILEC) serving the area of the qualifying low-income customer.
- (B) Federally approved \$1.75 reduction -- A Lifeline provider shall give a qualifying low-income customer a federally approved reduction of \$1.75 in the monthly amount of intrastate charges paid pursuant to 47 C.F.R. §54.403 (relating to Lifeline Support Amount).
- (C) Additional state reduction with federal matching -- A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of \$3.50 in the monthly amount of intrastate charges.
- (D) Federal match of state reduction -- A Lifeline provider shall provide a further federally approved reduction equal to one-half the amount of the

state-mandated reduction in subparagraph (C) of this paragraph up to a maximum of \$1.75.

(E) Additional federal Lifeline support of up to \$25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(F) Additional Texas High Cost Universal Service Plan (THCUSP) ILEC Area Discount --

(i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. SUBST. R. §26.403* (Rate

Increase) and with new §26.403 of this title adopted by the commission in Project Number 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program.*

- (ii) A THCUSP ILEC Area Discount shall be calculated by a THCUSP ILEC on the basis of the weighted average of the Rate Increase(s). The calculation of the weighted average of the Rate Increase(s) shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Rate Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Rate Increase times the corresponding Rate Increase. The weighted average of the Rate Increase(s) calculation shall be included in the tariff filing made to implement the THCUSP ILEC AREA Discount.
- (iii) A THCUSP ILEC Area Discount shall be provided to all qualifying Lifeline customers who are located in the service area of the THCUSP ILEC that has implemented the corresponding Rate Increase.
- (iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a Rate Increase.

- (v) A competitive local exchange carrier (CLEC) Lifeline provider operating in the service area of a THCUSP ILEC shall file with the commission tariffs or price lists implementing the appropriate THCUSP ILEC Area Discount.
  - (vi) The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding Rate Increase.
- (G) Additional Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Area Discount -
- Beginning January 1, 2014, Lifeline providers operating in the service areas of those incumbent local exchange carriers that participate in the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP ILEC) shall provide an increase in the Lifeline service discount equal to 25% of any actual increase by a SRILEC USP ILEC to its residential basic network service rate that occurs in a SRILEC USP ILEC's regulated exchanges and is consistent with §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (2) **Lifeline support amounts.** The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection:
- (A) ETC -- Pursuant to 47 C.F.R. §54.403(a), the federal Lifeline support an ETC shall receive is:

- (i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service.
- (ii) Additional federal Lifeline support in the amount of \$1.75 per month.
- (iii) Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month.
- (iv) Additional federal Lifeline support of up to \$25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(B) ETP --

- (i) An ETP shall receive state support of up to a maximum of \$3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection.
- (ii) An ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.
- (iii) If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.

- (C) Resale ETP -- A resale ETP shall receive Lifeline Service support equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The Texas Universal Service Fund (TUSF), regardless of whether the Lifeline Service Discount is state or federally mandated, will provide all Lifeline Service support.
- (i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. If the Resale ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the ILEC serving the area of the qualifying low-income customer;
  - (ii) Additional federally mandated Lifeline support in the amount of \$1.75 per month;
  - (iii) Additional federally mandated Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month;

- (iv) Additional federally mandated Lifeline support of up to \$25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e);
  - (v) A resale ETP shall receive state-mandated support of up to a maximum of \$3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection; and
  - (vi) A Resale ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.
- (D) Non-ETP/ETC -- A Non-ETP/ETC is not eligible to receive any state or federally mandated Lifeline support.

(g) **Obligations of the customer and the Lifeline provider.**

(1) **Obligations of the customer.**

- (A) Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (d) of this section may provide the LIDA with self-enrollment for Lifeline benefits.
- (B) Customers receiving benefits under the programs listed in subsection (d) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures as provided by the LIDA unless they provide the LIDA with a request to be excluded from Lifeline Service.

(C) Customers receiving benefits under the programs listed in subsection (d) of this section and who do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(D) Opportunity for contest.

(i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.

(ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.

(iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(2) **Obligations of Lifeline providers.**

(A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.

(i) A Lifeline provider shall identify, on the initial database provided by the LIDA, those customers to whom it is providing telephone

service and shall begin reduced billing for those qualifying low-income customers.

- (ii) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible customer changes the telephone service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective.
- (iii) Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.
- (iv) The LIDA shall provide a self-enrollment form by direct mail at the customer's request. The LIDA shall maintain customers' self-enrollment forms and provide a database of self-enrolling customers to all Lifeline providers.

(B) **Tariff Requirement.** Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) **Reporting requirements.** Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the

commission or the TUSF administrator, including but not limited to the following information:

- (i) Initial reporting requirements. Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline Service plan meets the requirements of this section.
- (ii) Monthly reporting requirements. Lifeline providers shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the Lifeline providers. Resale ETPs shall not report any customers whose Lifeline Services were purchased from an ILEC as a wholesale Lifeline Service offering. The ILEC from whom these lines were purchased will include those customers in its total number of qualified low-income customers reported to the TUSF administrator. Non-ETP Lifeline providers are excluded from this reporting requirement since they have elected not to receive any type of Lifeline support.
- (iii) Other reporting requirements. Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF. Non-ETP Lifeline providers may be required to report certain information to the commission but will not be required to submit information to

the TUSF administrator since they have elected not to receive any type of Lifeline support.

(iv) ETPs shall file the following information with the administrator of the Federal Lifeline Program. Non-ETP Lifeline providers are exempt from this requirement.

(I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);

(II) the number of qualifying low-income customers served by the ETP;

(III) the amount of state assistance; and

(IV) other information required by the administrator of the Federal Lifeline Program.

(D) **Notice Requirement.** A Lifeline provider shall provide the following notices of Lifeline Service:

(i) Notice of Lifeline Service in any directory it distributes to its customers advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

- (ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;
  - (iii) Inform all customers both orally and in writing of the existence of the Lifeline Service program when they request or initiate service or change service locations or providers. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format; and
  - (iv) Shall publicize the availability of Lifeline Service in a manner reasonably designed to reach those likely to qualify for the service.
- (E) **Confidentiality agreements.** Each Lifeline provider must execute a confidentiality agreement with the LIDA prior to receiving the LIDA's eligibility database. The agreement will specify that client information is released by the LIDA to the Lifeline provider for the sole purpose of providing Lifeline Service to eligible customers and that the information cannot be released by the Lifeline provider or be used by the Lifeline provider for any other purpose.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the repeal of §26.404 relating to the Texas High Cost Universal Service Plan is adopted with no changes to the text as proposed and new §26.404 relating Texas High Cost Universal Service Plan and §26.412 relating to Lifeline Service Program are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_\_ day of \_\_\_\_\_ 2012.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**ROLANDO PABLOS, COMMISSIONER**