

## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

### Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

#### §26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.

- (a) **Purpose.** This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under 16 TAC §26.403 to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.
- (b) **Application.** This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under 16 TAC §26.403.
- (c) **Commission review.**
  - (1) The commission must review the per-line TUSF support amount for each exchange identified by subparagraph (d)(1)(B) of this section to determine whether support should be eliminated. The first review of an exchange must be completed not later than the end of the year following the year in which the exchange was reported under subparagraph (d)(1)(B) of this section.
  - (2) The commission must base its decision on the following criteria:
    - (A) The total number of access lines in the exchange served by competitive ETPs receiving TUSF support;
    - (B) The number of competitors providing comparable service in the exchange; and
    - (C) Whether continuing the TUSF support is in the public interest.
- (d) **Identification of exchanges for review.**
  - (1) No later than April 30 of each year, commission staff must report:
    - (A) The exchanges in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016; and
    - (B) The number of access lines served by those competitive ETPs identified in subparagraph (A) of this paragraph on December 31 of the previous year.
  - (2) Commission staff must file its report in central records under a control number designated for that purpose.
- (e) **Initiation of proceeding.** For each exchange identified under subparagraph (d)(1)(B) of this section, commission staff will file an application to initiate a proceeding to review the per-line TUSF support amount for that exchange.
  - (1) The application must be supported by an affidavit and describe commission staff's determination that the number of access lines served by competitive ETPs in the exchange decreased by at least 50% compared to the number of access lines served by competitive ETPs in that exchange on December 31, 2016.
  - (2) Commission staff must serve a copy of the application, at the time of filing, to the competitive ETPs receiving TUSF support in the exchange by email, regular mail, and certified mail.
- (f) **Competitive ETP's response to commission staff's application.**
  - (1) A competitive ETP serving access lines in an exchange identified under subparagraph (d)(1)(B) may respond to commission staff's application no later than 30 days after the application is filed.
  - (2) A competitive ETP's response must address the criteria listed in subsection (c) of this section.
  - (3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71.
- (g) **Commission staff's recommendation.** In accordance with the schedule established by the presiding officer, but no earlier than 40 days after filing the application described in subsection (e), commission staff will file a recommendation, supported by affidavit, on whether the commission should eliminate TUSF support in the

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identified exchange. In its recommendation, commission staff must address the criteria listed in subsection (c).

- (h) **Competitive ETP's response to commission staff's recommendation.** No later than 20 days after commission staff files its recommendation, a competitive ETP may file a response to commission staff's recommendation. The response must state whether the competitive ETP agrees or disagrees with commission staff's recommendation and may include a request for a hearing.
- (i) **Commission determination.**
  - (1) If a competitive ETP does not request a hearing within the time prescribed by subsection (h), the commission will determine whether to eliminate TUSF support for the exchange based on the filings submitted by commission staff and the competitive ETPs.
  - (2) If a competitive ETP requests a hearing, the proceeding will be conducted as a contested case.
- (j) **Further review.** If the commission does not eliminate TUSF support for an exchange after a review conducted under subsections (c) – (i) of this section, the commission must repeat the review of the TUSF per-line support amount for that exchange at least every three years.