

PROJECT NO. 32162

RULEMAKING TO IMPLEMENT	§	PUBLIC UTILITY COMMISSION
CHANGES IN LIFELINE SERVICE	§	
PURSUANT TO S.B. 5 (PURA §55.015)	§	OF TEXAS
AND 47 C.F.R. PART 54 SUBPART E	§	

**PROPOSAL FOR PUBLICATION OF THE REPEAL OF §26.412,
NEW §26.412, NEW §26.413, AND NEW §26.419
AS APPROVED AT THE SEPTEMBER 21, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes to repeal the current §26.412, relating to Lifeline Service and Link Up Service Programs and replace it with a new §26.412, relating to Lifeline Service Program. In addition, the commission proposes new §26.413, relating to the Link Up Service Program and new §26.419, relating to Telecommunication Resale Providers' Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

The repeal of the current §26.412 is made to conform the commission's rules to SB 5, 79th Legislature, Second Called Session, which amended PURA §55.015(c)-(d-1) that requires "certificated providers of local exchange telephone service" to provide Lifeline Service. The current §26.412 reflects the previous statute, which required only eligible telecommunication providers (ETPs) or eligible telecommunication carriers (ETCs) (collectively referred to as participating telecommunication carriers) to provide Lifeline Service. New PURA §55.015(d-1) now requires resale providers of local exchange telecommunication to provide Lifeline Service. Since resellers of local exchange service cannot qualify as ETCs under federal law, Commission staff developed new §26.412, relating to Lifeline Service Program and §26.413, relating to Link Up Service Program to clarify the responsibilities of Lifeline providers. Proposed new §26.419

will allow the commission to designate certificated providers of local exchange telephone service that provide this service solely through the resale of an incumbent local exchange carrier's (ILEC) services as ETPs solely in order to receive support from the Texas Universal Service Fund (TUSF) for providing Lifeline Service under new §26.412. These new rules also reflect changes pursuant to 47 C.F.R. Part 54 Subpart E. Project Number 32162 is assigned to this proceeding.

Liz Kayser, Policy Analyst, Communications Industry Oversight Division, and James Tourtelott, Staff Attorney, Telecommunications Legal Section, have determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Kayser and Mr. Tourtelott have determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be the ability of the commission to ensure that certificated providers of local exchange service are complying with the requirements of PURA §55.015. There will be no adverse economic effect to small businesses or micro-businesses as a result of enforcing these sections. There is some anticipated economic cost to persons who are required to comply with the sections as proposed, but the public benefit of ensuring that certificated providers of local exchange service are complying with PURA §55.015 should outweigh those costs.

Ms. Kayser and Mr. Tourtelott have also determined that for each year of the first five years the proposed sections are 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.

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 on Tuesday, December 12, 2006, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal and new sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed new sections are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 32162.

The repeal and new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in

the exercise of its powers and jurisdiction, and §55.015, which specifically requires certificated providers of local exchange telephone service to provide Lifeline Service.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

§26.412. Lifeline Service and Link Up Service Programs. (REPEALED)**§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 criterion of paragraph (1), (2), or (3) of this subsection. 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;
- (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 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 customers Lifeline Service and the customers 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 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.

- (2) **Lifeline support amounts.** The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1)(A) 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 – An ETP shall receive the following state and federal Lifeline 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 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 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 in federal support.
 - (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).
 - (v) An ETP shall receive a state reduction of up to a maximum of \$3.50.
- (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); and
 - (v) A Resale ETP shall receive a state-mandated reduction of up to a maximum of \$3.50.
- (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 (e) of this section may provide the LIDA with self-enrollment for Lifeline benefits.
- (B) Customers receiving benefits under the programs listed in subsection (e) 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 (e) 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 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 or initiates new service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.
 - (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.
- (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 ETPs 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; and
 - (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.
 - (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 HHSC prior to receiving the LIDAs

eligibility database. The agreement will specify that client information is released by HHSC 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.

§26.413. Link Up Service Program.

- (a) **Scope and purpose.** Through this section, the commission seeks to extend Link Up Service to all qualifying customers and define the responsibilities of participating telecommunications carriers and qualified customers.
- (b) **Applicability.** This section applies to designated eligible telecommunications carriers (ETCs) as defined by §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds) and designated eligible telecommunications providers (ETPs) as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)), collectively referred to in this section as participating telecommunications carriers.
- (c) **Definitions.**
- (1) Qualifying low-income customer – as defined in §26.412(c)(1) of this title (relating to Lifeline Service Program).
 - (2) Income – as defined in §26.412(c)(6) of this title.
- (d) **Link Up Service Program.** This is a program certified by the Federal Communications Commission (FCC), pursuant to 47 C.F.R. §54.411, that provides a qualifying low-income customer with the following assistance:

- (1) **Services.**
 - (A) A qualifying low-income customer may receive a reduction in the participating telecommunications carrier's customary charge for commencing telecommunications service for a primary single line connection at the customer's principal place of residence. The reduction shall be half of the customary charge or \$30, whichever is less.
 - (B) A qualifying low-income customer may receive a deferred schedule for payment of the charges assessed for commencing service, for which the customer does not pay interest. Interest shall be waived for connection charges of up to \$200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements. Deferred payment of these charges will not be subject to late fees or additional service fees.
- (2) **Qualifying low-income customer choice.** A qualifying low-income customer is eligible for both of the services set forth in paragraph (1)(A) and (B) of this subsection.
- (3) **Limitation on receipt.** A participating telecommunications carrier's Link Up Service shall allow a qualifying low-income customer to receive the benefit of Link Up Service on subsequent occasions only for a principal place of residence with an address different from the residence address at which the Link Up Service was provided previously.

- (e) **Obligations of the customer.** Qualified low-income customers who want Link-up and do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.
- (f) **Obligations of the participating telecommunications carrier.** Participating telecommunications carriers shall provide Linkup Service to all qualifying low-income customers in accordance with this section.
- (1) **Tariff requirement.** Each participating telecommunications carrier shall file a tariff to implement Link Up Service, or revise its existing tariff for compliance with this section and with applicable law.
- (2) **Reporting requirements.** Participating telecommunications carriers shall file the following information with the administrator of the Federal Lifeline/Link-up Program.
- (A) the number of qualifying low-income customers served by the participating telecommunications carrier;
- (B) the annual certification for ETCs;
- (C) the amount of revenues the participating telecommunication carrier forgoes in reducing their customary charge for providing telecommunications service; and
- (D) the amount of revenue the participating telecommunications carrier forgoes for providing a deferred schedule for payment of the charges assessed for commencing service for which customer does not pay interest.

- (3) **Notice of Linkup Services.** A participating telecommunications carrier shall publicize the availability of Link-up service in a manner reasonably designed to reach those likely to qualify for the service.
- (4) **Confidentiality agreements.** The confidentiality agreement executed by participating telecommunications carriers with HHSC for Lifeline Service also extends to Linkup Service.

§26.419. Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

- (a) **Scope and Purpose.** This section provides the requirements for the commission to designate certificated providers of local exchange telephone service that provide this service solely through the resale of an incumbent local exchange carrier's (ILEC) services as an eligible telecommunications provider (ETP) for the specific purpose of receiving funds for Lifeline Service from the Texas Universal Service Fund (TUSF) under §26.412 of this title (relating to the Lifeline Service Program). Only Resale ETPs as defined by §26.412(b)(2) of this title shall qualify to receive universal service support under this program.
- (b) **Requirements for establishing ETP service areas.**
- (1) **Texas High Cost Universal Service Plan (THCUSP) service area.** THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs contained within its certificated service area. An ETP must serve an entire WC or other geographic area as determined appropriate by the commission.
 - (2) **Small and Rural ILEC Universal Service Plan (SRIUSP) service area.** SRIUSP service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

- (c) **Criteria for designation of ETPs.** A Resale ETP as defined by §26.412(b)(2) of this title shall be eligible to receive TUSF support pursuant to §26.412 of this title for Lifeline Service only in each service area of a large company (THCUSP) or the study area of a small company (SRIUSP) for which it seeks ETP designation if it meets the following requirements:
- (1) the Resale ETP defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer service to any customer in its ETP service area;
 - (2) offers Lifeline Services as provided by 47 C.F.R. Part 54, Subpart E; and
 - (3) advertises the availability of, and the charges for, supported services using media of general distribution.
- (d) **Requirements for application for Resale ETP designation and commission processing of application.**
- (1) **Requirements for notice and contents of application for Resale ETP designation.**
 - (A) **Notice of application.** Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: “Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days

before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477.

(B) **Contents of application.** A certificated provider of local exchange telephone service seeking to be designated as a Resale ETP shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) demonstrate that the applicant is a certificated provider of local exchange telephone service that resells basic local telecommunication services, as defined in §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP));
- (ii) demonstrate that the applicant assumes the obligation to offer Lifeline Services, as defined in §26.412 of this title, to any customer in its certificated service area;

- (iii) demonstrate that the applicant will advertise the availability of and the charges for designated services, as defined in §26.403 of this title, using media of general distribution;
- (iv) contain a statement detailing the content of the notice the applicant proposes for publication in the *Texas Register* regarding the application as well as a brief statement explaining why the proposed notice is reasonable and that it complies with applicable law;
- (v) provide a copy of the text of the notice;
- (vi) state the proposed effective date of the designation; and
- (vii) provide any other information the applicant wants considered in connection with the commission's review of its application.

(2) **Commission processing of application.**

(A) **Administrative review.** An application considered under this section may be reviewed administratively unless the certificated provider of local exchange telephone service requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

- (i) The effective date of the Resale ETP designation shall be no earlier than 30 days after notice is published in the *Texas Register*.
- (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application,

the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no earlier than 30 days after notice is published in the *Texas Register*.

- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.
- (iv) No later than 20 days after the completion of notice, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall, and the Office of Public Utility Counsel may, file with the presiding officer written comments or recommendations regarding the application.
- (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) **Approval of application.** The application will be approved by the presiding officer if it meets all the following requirements:

- (i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title and Lifeline Service as defined in §26.412 of this title.
 - (ii) Notice was provided as required by this section.
 - (iii) The applicant has met the requirements contained in this subsection.
 - (iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.
- (C) **Docketing.** If, based on the administrative review, the presiding officer determines that one or more of the requirements has not been met, the presiding officer shall docket the application. The requirements of this subsection may not be waived.
- (D) **Review of the application after docketing.** If the application is docketed, the effective date of the application shall be automatically suspended until an order is issued in the proceeding granting the application. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (e) **Relinquishment of ETP designation.** A certificated provider of local exchange telephone service may seek to relinquish its ETP designation. The relinquishment of an ETP designation does not relieve the certificated provider from its obligation to provide Lifeline Service.
- (f) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that a Resale ETP is not in compliance with the requirements of subsection (c) of this section. The commission shall revoke the ETP designation of any Resale ETP determined not to be in compliance with subsection (c) of this section.
- (g) **Requirements for annual affidavit of compliance to receive TUSF support.** A Resale ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support for Lifeline Services:
- (1) **Annual Affidavit of Compliance.** On or before September 1 of each year, a Resale ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.
 - (2) **Filing Affidavit.** The affidavit used shall be the annual compliance affidavit approved by the commission.

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 25th DAY OF SEPTEMBER 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**