

PROJECT NO. 22472

RULEMAKING TO AMEND THE § PUBLIC UTILITY COMMISSION
TEXAS UNIVERSAL SERVICE §
FUND RULES § OF TEXAS

**ORDER ADOPTING AMENDMENTS TO §§26.403, 26.417 AND 26.420 AS
APPROVED AT THE SEPTEMBER 5, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.403, relating to Texas High Cost Universal Service Plan (THCUSP), and §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), with changes to the proposed text as published in the March 30, 2001, *Texas Register* (26 TexReg 2468). The commission adopts amendments to §26.420, relating to Administration of Texas Universal Service Fund (TUSF), with no changes as proposed on March 30, 2001 (26 TexReg 2468). The amendments are necessary to implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §56.021 and §56.023 (PURA), regarding the commission's authority in the establishment and administration of the universal service fund. The proposed amendments are composed of several minor changes and clarifications. The major substantive revision proposed for §26.403(e)(3)(C) has not been adopted in the current proceeding. The amendments are adopted under Project Number 22472.

The adopted rules include amendments to the existing rules resulting from the implementation of the TUSF and Senate Bill 560 (SB 560) enacted by the 76th Texas Legislature.

The commission received written comments on the proposed amendments from the following parties: AT&T Communications of Texas (AT&T); Southwestern Bell Telephone Company (SWBT); Verizon Southwest (Verizon); United Telephone Company of Texas, Central Telephone Company of Texas, and Sprint Communications Company (collectively, Sprint); the State of Texas (State); Verizon Wireless; and Cingular Wireless (Cingular). Reply comments were received from AT&T, SWBT, Verizon, and the State.

A public hearing on the amendments was held at the commission offices on May 23, 2001. Representatives from the following entities attended the hearing and provided comments on the amendments: AT&T, SWBT, Verizon, Sprint, and MCI WorldCom (MCI). A representative from John Staurulakis attended the hearing, but did not comment. To the extent the oral comments differ from the submitted written comments, such comments are summarized herein.

Minor changes to rule language

§26.403, relating to Texas High Cost Universal Service Plan (THCUSP)

Section 26.403 sets forth the requirements for financial assistance to eligible telecommunications providers (ETPs) serving high cost rural areas of the state other than the study areas of small and rural incumbent local exchange companies (ILECs). The commission adopts minor corrections and revisions related to the timing of the commission's subsequent determinations regarding the THCUSP. As discussed under the heading

"proposed major change to rule language," the commission declines to adopt proposed §26.403(b)(6), "Zone 2" definition, and §26.403(e)(3)(C), adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs).

Section 26.403(d)(1) sets forth the initial determination of the definition of basic local telecommunications service. Subsection 26.403(d)(1)(F) includes "dual party" relay service in the definition. The proposed amendment to §26.403(d)(1)(F) replaces "dual party" as the appropriate title for relay service with "telecommunications."

No parties commented on this subsection.

The commission adopts this amendment to §26.403(d)(1)(F) with no changes.

Section 26.403(d)(2)(A) provides for the timing of subsequent determination of the definitions of services to be supported by THCUSP. Section 26.403(e)(2)(A) sets forth requirements for the timing of the review of the THCUSP base support. In §26.403(d)(2)(A)(i) and §26.403(e)(2)(A)(i), the proposed amendments revise the beginning date for the three-year review from February 10, 1998 to March 1, 2000. These proposed amendments comply with Order Number 1, in Project Number 22472, in which the commission granted a good-cause waiver to change the beginning date for the three-year review to March 1, 2000, the date on which the TUSF was implemented.

AT&T commented that September 1, 1999 should be the beginning date for the three-year review because that is the date the TUSF became fully operational. AT&T contended that high-cost support became available to large incumbent local exchange companies (ILECs), and the TUSF surcharge increased to 3.579% on September 1, 1999. AT&T asserted that the benchmark revenue levels are currently predicated on significantly outdated information. AT&T maintained that intrastate toll and access rates have declined substantially and that the federal Coalition for Affordable Local and Long Distance Services (CALLS) report has modified interstate access charges, interstate toll rates, and subscriber line charges since the 1997 period on which the benchmarks are based. Subsequently, AT&T maintained that the rule should be modified to require that the review and any subsequent adjustments and rule modifications be implemented by March 1, 2003. AT&T stated that its proposed modification would provide for an updated benchmark with concomitant financial elements based on current cost data.

The commission agrees with AT&T that commencing a review of the definition of services, the forward-looking cost methodology, the benchmark levels, and/or the base support amounts three years from September 1, 1999 would be more appropriate and revises the language accordingly. The commission notes that this date changes the existing order on this issue. Moreover, the commission finds that technological and competitive changes within the basic local telecommunications service market may necessitate an earlier review. The commission declines, however, to adopt AT&T's suggestion that the rule be modified to require that the review and any subsequent adjustments and rule modifications be

implemented by March 1, 2003. The commission finds that a review three years from the beginning date (*i.e.* September 1, 1999) should commence on September 1, 2002.

§26.417, Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)

Section 26.417 sets forth the requirements to designate telecommunications providers as ETPs to receive funds from the TUSF. The proposed amendments include internal references and reflect minor changes resulting from the Final Order in Docket Number 18515, *Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan*, issued on January 14, 2000, and the implementation of PURA §56.021 and §56.023, as amended by SB 560.

Section 26.417(b)(1) sets forth the requirements for establishing THCUSP service areas. The proposed amendment revises the THCUSP service area from "census block groups" (CBGs) to "wire centers" (WCs). In the Final Order in Docket Number 18515, the commission determined that the WC area was appropriate because ILECs maintain internal records at the wire center level. Additionally, the Hatfield Associates, Inc. (HAI) model calculates the UNE costs on a wire center basis, thus providing administrative ease for the TUSF administrator and the commission. Therefore, the proposed amendment revises the rule to conform to the Final Order.

Verizon and AT&T commented that they agreed that wire centers, instead of census block groups, should be the basis for developing the forward-looking cost on which TUSF support amounts are based.

The commission adopts the proposed amendment with no changes in order to conform to the requirements set forth in the Final Order issued on January 14, 2000, in Docket Number 18515.

Section 26.417(c) sets forth criteria for designation of ETPs. In §26.417(c)(1)(B), the proposed amendment corrects the reference to "subsection (c)" to "subsection (b)." In the proposed amendment to §26.417(c)(2), local exchange company ("LEC") is replaced with "telecommunications provider" to comply with the implementation of PURA §56.021 and §56.023, as amended by SB 560 in 1999. Proposed amendments to §26.417(c)(1), (c)(2), and (f)(1)(B)(i)(I) reference the definition of "telecommunications provider" in PURA §51.002(10) rather than §26.5 of the commission's substantive rules.

No parties commented on the proposed amendments to §26.417(c) and §26.417(f)(1)(B)(i)(I).

The commission adopts the amendments with no changes.

§26.420, Administration of Texas Universal Service Fund (TUSF)

Section 26.420 sets forth the requirements for the administration of the TUSF. Section 26.420(b) sets forth programs included in the TUSF. The proposed amendment adds §26.410, relating to Universal Service Fund Reimbursement for Certain IntraLATA Service, as §26.420(b)(5). This program is required by PURA §56.028, as amended by SB 560 in 1999.

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendments with no changes.

Section 26.420(e) relates to the transition from existing USF programs to the TUSF. Subsection (e), as proposed, is eliminated due to the commission's full transition from existing USF programs to the TUSF on March 1, 2000, and each subsequent subsection renumbered.

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendment to delete §26.420(e) with no changes and each subsequent subsection is renumbered.

Section 26.420(e), as renumbered, relates to the determination of the amount needed to fund the TUSF. The proposed amendment to subsection (e) adds the reimbursement for certain

intraLATA services, pursuant to §26.410 of this title, to §26.420(e)(1)(A)(v). This proposed amendment is required by PURA §56.028, as amended by SB 560 in 1999.

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendments with no changes.

Section 26.420(e)(1)(B), as re-numbered, addresses the amount of costs associated with the implementation and administration of the TUSF. The amendment to §26.420(e)(1)(B) deletes the Lifeline and Link Up programs as costs of administration and implementation of the TUSF. PURA §56.021(5) does not allow the Texas Department of Human Services (TDHS) to recover costs associated with the administration of Lifeline and Link Up programs. PURA §56.021(5) allows TDHS to be reimbursed for costs incurred in implementing Chapters 56 and 57. Because these programs are authorized by PURA §55.015, Lifeline and Link Up, as required by SB 560 in 1999, are not included in Chapter 56 and 57.

No parties commented on this subsection.

The commission, in compliance with SB 560, adopts the proposed amendments with no changes. However, the commission finds that this subsection will warrant further modification in a separate rulemaking to comply with House Bill 2156 (HB 2156), enacted by the 77th Texas Legislature.

Section 26.420(f)(3), as renumbered, addresses assessment for TUSF. In §26.420(f)(3)(B), the proposed amendment clarifies the reference to paragraph (g)(2). The proposed amendment in §26.420(f)(4) revises the reporting requirement from "every month" to "as required," because the commission and the TUSF administrator may require telecommunications providers to report receipts at varying intervals.

No parties commented on these subsections.

The commission, therefore, adopts the proposed amendments to §26.420(f) with no changes.

The amendment to §26.420(f)(5)(A)(i), as renumbered, relating to the recovery of assessment, replaces the use of item label "TX USF Charge X.XX%" as the surcharge listed on the retail customer's bill with "Texas Universal Service" to comply with the commission's ruling in Project Number 19655, *Implementation of P.U.C. SUBST. R. §23.150(f) and (g)*.

No parties commented on §26.420(f)(5)(A)(i).

However, AT&T suggested that §26.420(f)(5)(A)(ii) should clarify whether it is expressly permissible to recover the full assessment from its retail customers even if the assessment rate on end users must slightly exceed the adopted assessment percentage. AT&T stated that confusion exists because under one interpretation of this rule a carrier's surcharge rate must be equal to the assessment rate. AT&T claimed that a more reasonable interpretation of this

subsection would be to interpret "one month's worth of assessments" as referring to the total amount collected during a month and not a particular assessment rate in effect for that month.

The commission adopts the amendment to §26.420(f)(5)(A)(i) with no changes because the revision simply modifies the item label notation on the customer's bill. The commission did not propose any changes to §26.420(f)(5)(A)(ii). Therefore, the change proposed by AT&T is beyond the scope of the proceeding.

The proposed amendment to §26.420(g)(1)(D), as renumbered, relating to the agencies eligible for disbursement from the TUSF, limits agencies to the reimbursement of costs directly and reasonably associated with the implementation of provisions of PURA Chapters 56 and 57. The amendment revises the section to conform to PURA §56.021(5).

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendment with no changes.

Section 26.420(g)(3), as renumbered, addresses disbursements of TUSF funds. Section 26.420(g)(3)(A) revises the TUSF disbursement deadline from 30 to 45 days. AT&T commented that the proposed language in §26.420(g)(3) which delayed receipt of TUSF support by an additional 15 days for eligible carriers was problematic. AT&T contended that it is not entirely clear to AT&T whether the National Exchange Carrier Association

(NECA) modifies the funding to each carrier every month based on the number of eligible lines served. However, AT&T asserted that NECA should be granted the authority, if it does not already have it, to modify funding levels for each eligible carrier on a monthly basis based on the specific number of lines qualifying for high-cost support. AT&T commented that such authority would give NECA the ability to ensure that carriers who are owed TUSF support would receive such funding promptly to offset the high cost of providing service in rural areas.

The commission adopts the proposed amendment with no changes and notes that the additional 15 days is necessary for the administration of the TUSF by the NECA. The concerns raised by AT&T are not properly addressed in this proceeding. If AT&T has concerns regarding whether NECA is properly disbursing TUSF funds, AT&T should request that the commission investigate such allegations.

The proposed amendment adds §26.420(g)(3)(B) in accordance with the implementation of PURA §56.026(c), as required by SB 560.

No parties commented on this subsection.

The commission adopts the proposed amendment contained in this subsection with no changes.

Proposed major change to rule language

Section 26.403(b)(6) includes a definition of "Zone 2" to complement the commission's proposed modification of the UNE sharing mechanism contained in §26.403(e)(3)(C)(i) and (ii).

In written comments, AT&T argued that each carrier drawing TUSF support did not have a "Zone 2" designation. Verizon agreed with AT&T that the Zone 2 definition is a SWBT-specific designation and is not appropriate for a rule of general application. Additionally, Sprint maintained that it did not have a Zone 2 rate or a statewide average loop rate. Sprint stated that the commission has set its usage sensitive local loops (USLL) rates and, therefore, the amendments should replace the Zone 2 rate with the minimum monthly recurring charge for the ETP's USLL.

The commission declines to adopt the Zone 2 definition contained in §26.403(b)(6) because the proposed amendments related to the UNE sharing mechanism contained in §26.403(e)(3)(C)(i) and (ii) are not being adopted.

Section 26.403(e)(3)(C)(i) and (ii) set forth requirements for adjustment to the monthly THCUSP support amount for service provided solely or partially through UNEs (UNE sharing). The amendments as published sought to create a UNE sharing mechanism that would make the provisioning of services via UNEs more attractive in rural areas. After considering the parties' comments, the commission declines to adopt the proposed changes

and, in order to fully develop all the issues relating to UNE sharing, plans to review this issue in a subsequent rulemaking proceeding.

The commission received specific comment on the proposed amendments, comments on the cost-benefit analysis presented in the published preamble, and specific comments as requested in the published preamble on alternative methods for UNE sharing. Even though the commission declines to adopt the proposed amendments in §26.403(e)(3)(C)(i) and (ii), the commission discusses these specific comments below.

The parties provided the following comments on the proposed amendments.

AT&T stated that it is entirely appropriate to amend the TUSF rules to make the provisioning of local service by competitors via UNEs more attractive in rural areas. However, AT&T contended that the proposed language too narrowly focused on just UNE loops and did not address the broader issue of competitive local exchange carriers (CLECs) paying more for UNEs in low cost exchanges. As discussed below, AT&T submitted a proposal to address this issue. AT&T maintained that the modified rule should encompass funding for all relevant UNEs, or at least the same five UNEs utilized by the commission in its original funding computations, specifically, loop, port, end office usage, signaling and transport. Moreover, AT&T stated that differences in computation for UNE prices and TUSF funding create difficulties that should be addressed in the modified rule.

SWBT argued that the proposed language was unnecessary, inequitable, and not competitively neutral. SWBT claimed that the proposed language would violate PURA §56.026(c)(2), which establishes an equitable allocation formula for the TUSF disbursement. SWBT asserted that the proposed language would confer an economic advantage to CLECs to the detriment of ILECs. SWBT maintained that such a competitively non-neutral outcome would conflict with the purpose of the TUSF, as enunciated in §26.401(a), Texas Universal Service Fund (TUSF).

Verizon argued that the proposed language was both in violation of the statute and contrary to prior USF rulemakings and that it would not ensure or create efficient incentives for network facilities investment. Verizon contended that the support should be allocated between the UNE purchaser and the underlying provider to reconcile inconsistencies in cost estimates and ensure proper compensation for network facilities investment. Verizon noted that USF support is at a wire center level while UNE rates are averaged in only three zones across all wire centers. Verizon stated that the proposed language would mistakenly calculate the portion of support based on a statewide average loop rate that an ETP does not incur. Verizon claimed that the statewide average loop rate bears no relationship to the cost of universal service. Moreover, Verizon maintained that the ETP would absorb all the available support while ignoring the reduction in revenue incurred by the underlying provider in converting to a wholesale provider. Additionally, Verizon contended that the proposed language would generally provide a CLEC with an incentive to become an ETP only in a very limited number of its highest cost Zone 2 and Zone 3 wire centers.

Sprint argued in its written comments that the proposed language was ambiguous in its reference to "UNEs" because it did not address switching, transport or UNE Platform (UNE-P) rates. Sprint contended that the unaddressed UNEs could be treated in the same manner as the UNE loop rates in determining a statewide average, and the resulting division of the TUSF support would be based on whether the average is greater than or less than the price of the exchange-specific UNE.

The State agreed that the proposed language would provide greater support to providers of UNEs in rural areas.

As noted above, the commission declines to adopt the proposed amendment regarding UNE sharing.

SWBT argued that the cost-benefit analysis in the preamble was incorrect and misleading and, therefore, failed to substantially comply with Texas Government Code §2001.024(a)(5)(B). SWBT disagreed with the preamble statement of no anticipated economic cost to persons required to comply with the sections, as proposed. SWBT stated that, if the proposed amendments regarding the UNE sharing mechanism contained in §26.403(e)(3)(C) were adopted, it would incur a significant monetary loss of approximately \$5.4 million annually in TUSF disbursements.

In response, AT&T stated that SWBT's interpretation of the cost-benefit analysis requirement was unreasonable. AT&T argued that the law does not require an agency to

assign a monetary amount in every case to satisfy the requirements of §2001.024(a)(5)(B) of the Government Code. Likewise, in oral comments, MCI argued that the legal requirement is for a cost-benefit analysis and not a revenue-benefit analysis. Both AT&T and MCI asserted that even if SWBT's revenues are affected by the rule amendments, it does not then follow that the commission's cost-benefit statement was faulty.

The commission finds that the cost-benefit statement in the preamble complies with Texas Government Code §2001.024(a)(5)(B). The commission believes that SWBT's argument is erroneously based on the assumption that the commission's cost-benefit analysis should consider loss of revenue. The commission notes that SWBT's argument was triggered by proposed amendments to §26.403(e)(3)(C) regarding the UNE sharing mechanism and that those proposed amendments are not being adopted.

The commission also sought specific comments on alternative methods for the implementation of the UNE sharing mechanism in §26.403(e)(3)(C)(i) and (ii). Comments were to include actual examples of how the alternative method would affect wire centers in the state.

Based on its analysis of SWBT's public HAI-based data, AT&T commented that rural areas are drawing substantially more TUSF support than less rural areas. In its initial proposal, AT&T asserted that a CLEC providing residential service solely through the use of UNEs anywhere in SWBT's Zone 1 should be entitled to TUSF support in the amount of the average support per line per month received by the ILEC in that zone. AT&T contended

that the ILEC receives 100% of the average cost of all UNEs from the CLEC and, when a CLEC serves a customer in a TUSF eligible exchange, the ILEC should receive no TUSF. AT&T asserted that the ILEC would be kept whole by virtue of the fact that the CLEC is paying more for UNEs than it should in other exchanges within the Zone because UNE rates are set to recover the average cost across the whole Zone. AT&T further observed that a CLEC may serve its customers partially through the use of UNEs. In cases where a CLEC serves its customers partially through the use of UNEs, AT&T argued that the CLEC should draw a percentage of the average TUSF support by Zone or rate group based on the UNEs purchased.

SWBT commented that AT&T's initial proposal would be more inequitable than the commission's proposed language. SWBT asserted that AT&T's initial proposal had no cost basis, was not competitively neutral, and would provide a financial windfall to CLECs. SWBT noted that the ILEC would not receive TUSF support in eligible wire centers even when UNE payments do not offset its costs of providing the underlying facilities. SWBT maintained that the proposal would give a CLEC \$9.13 per line in TUSF support even when the CLEC would recover its costs without any support. SWBT estimated that the proposal would eliminate about \$26 million of its TUSF support and provide at least \$14 million extra to CLECs. Additionally, SWBT argued that it is *not* inequitable that UNE-purchasing CLECs are eligible for TUSF support in only 16 of its 246 TUSF-eligible wire centers because in the remaining 230 wire centers CLECs receive sufficient revenue from their end-user customers to more than recover their actual costs of providing service. SWBT asserted that it is not receiving enough money from UNE rates to be "kept whole" in high-cost wire

centers and claimed to be losing an average of \$13 for each TUSF-eligible residential line a CLEC serves via UNEs in Zone 1.

Verizon argued that AT&T's initial proposal was self-serving and contrary to the stated purpose of the TUSF. Verizon contended that AT&T failed to identify the 230 exchanges in which it is inequitably drawing support and the extent of ETP UNE activity in SWBT's territory. Verizon contended that AT&T's support analysis is based on a faulty assumption that CLECs purchasing UNEs in high cost and low cost areas of a zone are paying on average 100% of the cost of every UNE in the zone. Verizon asserted that the UNE price paid by CLECs does not offset its cost even in the least-cost wire center within Zone 3. Verizon argued that ETPs should be eligible for support only when their costs exceed the costs of the underlying carrier.

In its reply comments and at the hearing, AT&T argued for the adoption of a revised proposal that would recognize the excess payments made by CLECs in lower cost exchanges on an exchange-by-exchange basis. AT&T commented that CLECs are paying more than they should in many exchanges and are ineligible to draw TUSF support when they serve in high cost exchanges. Thus, AT&T argued it is SWBT, and possibly other ILECs, that are receiving a windfall under the current TUSF funding formula. AT&T contended that the identified excess payments should be used to determine the maximum amount of support the CLEC would be eligible to receive in TUSF-eligible exchanges. The actual support would be equal to the lesser of either those excess payments or what the ILEC would have received in TUSF support had it served the customer won by the UNE-purchasing CLEC. AT&T

claimed that the revised proposal would allow CLECs electing to serve statewide to draw support for lines served in TUSF-eligible areas, thus increasing competition. AT&T stated that its revised proposal could also be applied in instances where CLECs provide service to customers partially through UNEs.

SWBT commented that AT&T's revised proposal was a repackaging of MCI's proposal rejected by the commission in Docket Number 18515, the generic USF proceeding. SWBT claimed that the revised proposal would motivate CLECs to provide service primarily in low-cost rural areas and is inconsistent with the commission's stated goal of making it more attractive for CLECs to serve rural customers. SWBT criticized AT&T's claim that it is paying 100% of the entire HAI-calculated costs in Texas, presuming that it serves the same proportion of lines across the state as SWBT. SWBT contended that the critical presumption could not fairly be made because CLECs are free to pick and choose their service areas, unlike ILECs. Moreover, SWBT maintained that the statewide calculations presented by AT&T revealed an average monthly shortfall of \$.39 per residential line in UNE-P rates compared to the corresponding HAI-calculated costs SWBT incurred. Additionally, SWBT stated that its comparison of UNE rates and HAI-calculated costs for lines actually served by UNE-purchasing CLECs reveals a net CLEC underpayment of approximately \$31 million annually. SWBT stated that CLECs serving in rural areas only would not benefit from the revised proposal's excess credits. Furthermore, SWBT claimed that AT&T's proposal attempts to deaverage UNE rates in only TUSF-ineligible wire centers is inconsistent with the Final Order issued in Docket Number 18515.

Verizon argued that AT&T's revised proposal was not competitively neutral. Verizon maintained that the proposal would not benefit carriers operating in only rural areas because trade-off credits accrue in only non-supported, urban areas. Verizon contended that a company-specific revenue benchmark should be developed if the USF formula is changed.

As noted earlier, the commission plans to review these issues in a separate rulemaking. Therefore, the commission declines to adopt any modification to the UNE sharing mechanism in the current proceeding.

Preamble Question

In addition to general comments on the proposed amendments, the commission sought specific comments on whether a new rulemaking should be opened to expand the quality-of-service rules (§26.52, Emergency Operations, §26.53, Inspections and Tests, and §26.54, Service Objectives and Performance Benchmarks) to include wireless technologies.

In written comments, Cingular and Verizon Wireless argued that the commission should not open a new rulemaking to expand the quality-of-service rules to apply to wireless providers. Cingular contended that no provision of PURA or federal law could serve as the basis for applying quality-of-service rules to wireless providers. Verizon Wireless argued that there would be no legitimate policy grounds for expanding the rules to include all wireless carriers unless competitive evidence suggests that such rules are needed. Cingular and Verizon Wireless asserted that intense competition among wireless providers and the competitive

market structure would provide sufficient quality-of-service incentives for wireless providers.

The State claimed that a new rulemaking to create quality-of-service rules for wireless technologies should be established. The State contended that wireless providers that are eligible for USF support should meet service standards that are similar to those currently established for wireline carriers.

At the public hearing, a clarification was made to establish that a proposed new rulemaking would make the quality-of-service rules applicable to only those wireless providers achieving ETP status. The parties did not make oral comments or submit reply comments on this issue.

The commission finds that evolving technology may result in an increasing number of wireless carriers providing basic local service throughout Texas. Therefore, the applicability of appropriate quality-of-service rules to ETP-designated wireless carriers may warrant further analysis in a separate rulemaking proceeding.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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, including rules of practice and procedure. Additional statutory authority is derived from PURA §56.021, which requires the

commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund, and §56.023, which requires the commission to adopt rules for the administration of the universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021-56.028.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

- (a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service 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) **Benchmark** — The per-line amount above which THCUSP support will be provided.
 - (2) **Business line** — The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.
 - (3) **Eligible line** — A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.
 - (4) **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)).

- (5) **Residential line** — The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

- (d) **Service to be supported by the THCUSP.** The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

- (1) **Initial determination of the definition of basic local telecommunications service.** Basic local telecommunications service shall consist of the following:

- (A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;
- (B) tone dialing service;
- (C) access to operator services;

- (D) access to directory assistance services;
 - (E) access to 911 service where provided by a local authority;
 - (F) telecommunications relay service;
 - (G) the ability to report service problems seven days a week;
 - (H) availability of an annual local directory;
 - (I) access to toll services; and
 - (J) lifeline and tel-assistance services.
- (2) **Subsequent determinations.**
- (A) Timing of subsequent determinations.
 - (i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.
 - (ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.
 - (B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:
 - (i) the service is essential for participation in society;
 - (ii) a substantial majority, 75% of residential customers, subscribe to the service;
 - (iii) the benefits of adding the service outweigh the costs; and

- (iv) the availability of the service, or subscription levels, would not increase without universal service support.

- (e) **Criteria for determining amount of support under THCUSP.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection and as adjusted by the requirements of paragraph (3) of this subsection.
 - (1) **Determining base support amount available to ETPs.** The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.
 - (A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.
 - (B) Determination of the benchmark. The commission shall establish two benchmarks for the state, one for residential service and one for single-line business service. The benchmarks for both residential and

single-line businesses will be calculated using the statewide average revenue per line as described in clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.

- (i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.
 - (ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single-line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single-line business lines served for the same period, divided by 12.
- (C) Support under the THCUSP is portable with the consumer. An ETP shall receive support for residential and the first five single-line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.
- (2) **Proceedings to determine THCUSP base support.**
- (A) Timing of determinations.

- (i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from September 1, 1999.
 - (ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.
 - (B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.
- (3) **Calculating amount of THCUSP support payments to individual ETPs.** After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.
- (A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.

- (B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.
- (C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.
- (i) Solely through UNEs.
- (I) $\text{USF cost} > (\text{UNE rate} + \text{retail cost additive (R)}) > \text{revenue benchmark (RB)}$. USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark.

Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities-based competition is encouraged only if it is economic, i.e., reflective of real cost advantages in serving the customer; or

(II) $USF\ cost > RB > (UNE\ rate + R)$. The ILEC would receive the difference between USF cost and RB. In this case, where $USF\ cost > RB > (UNE\ rate + R)$, giving $(USF\ cost - RB)$ to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover $(USF\ cost - RB)$ would minimize financial harm to the ILEC; or

(III) $(UNE\ rate + R) > USF\ cost > RB$. The ETP would receive the difference between USF cost and RB. Where $(UNE\ rate + R) > USF\ cost > RB$, giving $(USF\ cost - RB)$ to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover

(USF cost - RB) would minimize financial harm to the ETP.

- (ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the HAI model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.
- (f) **Reporting requirements.** An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.
- (1) **Monthly reporting requirements.** An ETP shall report the following to the TUSF administrator on a monthly basis:
 - (A) information regarding the access lines on the ETP's network including:
 - (i) the total number of access lines on the ETP's network,
 - (ii) the total number of access lines sold as UNEs,
 - (iii) the total number of access lines sold for total service resale,

- (iv) the total number of access lines serving end use customers,
and
 - (v) the total number of eligible lines for which the ETP seeks
TUSF support;
 - (B) the rate that the ETP is charging for residential and single-line
business customers for the services described in subsection (d) of this
section; and
 - (C) a calculation of the base support computed in accordance with the
requirements of subsection (e)(1) of this section showing the effects
of the adjustments required by subsection (e)(3) of this section.
 - (2) **Annual reporting requirements.** An ETP shall report annually to the TUSF
administrator that it is qualified to participate in the THCUSP.
 - (3) **Other reporting requirements.** An ETP shall report any other information
that is required by the commission or the TUSF administrator, including any
information necessary to assess contributions to and disbursements from the
TUSF.
- (g) **Review of THCUSP after implementation of federal universal service support.**
The commission shall initiate a project to review the THCUSP within 90 days of the
Federal Communications Commission's adoption of an order implementing new or
amended federal universal service support rules for rural, insular, and high cost
areas.

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) **Purpose.** This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.

(b) **Requirements for establishing ETP service areas.**

(1) **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 that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.

(2) **Small and Rural ILEC Universal Service Plan service area.** A Small and Rural ILEC Universal Service Plan 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.**

(1) Telecommunications providers. A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

- (A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;
- (B) the telecommunications provider defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;
- (C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased

- unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;
- (D) the telecommunications provider renders continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);
- (E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service and Link Up Service Programs) and §26.413 of this title (relating to Tel-Assistance Service); and
- (F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.
- (2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:
- (A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:

- (i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or
 - (ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.
 - (B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.
 - (C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1).
- (d) **Designation of more than one ETP.**
- (1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

- (2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) **Proceedings to designate telecommunications providers as ETPs.**

- (1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.
- (2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.
- (3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(f) **Requirements for application for ETP designation and commission processing of application.**

- (1) **Requirements for notice and contents of application for 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 Office of Customer Protection 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 telecommunications provider seeking to be designated as an ETP for a high cost service area in this state 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.

- (i) Telecommunications providers. The application shall:
 - (I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10) ;
 - (II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;
 - (III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

- (IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;
- (V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;
- (VI) show that the applicant offers Lifeline, Link Up, and Tel-Assistance services in compliance with §26.412 and §26.413 of this title;
- (VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;
- (VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;
- (IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation;
and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

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

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider 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 ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(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 less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

- (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 filing date of the application or the completion of notice, whichever is later, 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 or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.
- (i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.
 - (ii) Notice was provided as required by this section.
 - (iii) The applicant has met the requirements contained in subsection (c) of this section.
 - (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 have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section 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 to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. 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.

(g) **Relinquishment of ETP designation.** A telecommunications provider may seek to relinquish its ETP designation.

(1) **Area served by more than one ETP.** The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) **Area where the relinquishing telecommunications provider is the sole ETP.** In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

- (B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.
- (3) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.
 - (A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.
 - (B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks) in that portion of its ETP service area.
- (h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

- (1) **Announcement of auction.** Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.
- (2) **Bidding procedure.** Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.
 - (A) Every bid must contain:
 - (i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;
 - (ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and
 - (iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.
 - (B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.
 - (C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

§26.420. Administration of Texas Universal Service Fund (TUSF).

(a) **Purpose.** The provisions of this section establish the administration of the Texas Universal Service Fund (TUSF).

(b) **Programs included in the TUSF.**

- (1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));
- (2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
- (3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
- (4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
- (5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
- (6) Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);
- (7) Section 26.413 of this title (relating to Tel-Assistance Service);
- (8) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
- (9) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

- (10) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
 - (11) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and
 - (12) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF)).
- (c) **Responsibilities of the commission.** The commission is the official governing agency for the TUSF, but may delegate the ministerial functions of TUSF administration to another entity (the TUSF administrator) through contractual agreement.
- (1) **Monitoring, and supervising TUSF administration.** The commission reserves the exclusive power to revise rules related to the operation and administration of the TUSF and to monitor and supervise such operation and administration.
 - (2) **Annual audit.** The commission annually shall provide for an audit of the TUSF by an independent auditor. The costs of the audit are costs of the commission that are incurred in administering the TUSF, and therefore shall be reimbursed from the TUSF.
 - (3) **Inquiry into administration of the TUSF.** The commission may, upon its own motion, upon the petition of the commission staff or the Office of Public

Utility Counsel, initiate an inquiry into any aspect of the administration of the TUSF. Any other party may initiate a complaint proceeding pursuant to the commission's procedural rules.

(4) **Selection of the TUSF administrator.**

(A) The commission shall have the sole discretion in the selection of the TUSF administrator. The selection of the TUSF administrator shall be based on a competitive bidding process.

(B) The TUSF administrator must meet the technical qualifications as provided in subsection (d)(1) of this section as well as other requirements as determined by the commission.

(5) **Contract term of the TUSF administrator.** The commission shall determine the duration of the TUSF administrator's contract. Prior to expiration of the contract term, the commission may discharge the TUSF administrator of its duties upon 60-days written notice.

(d) **TUSF administrator.** The TUSF administrator serves at the discretion of the commission.

(1) **Technical requirements of the TUSF administrator.** The TUSF administrator shall:

(A) be neutral and impartial, not advocate specific positions to the commission in proceedings not related to the administration of the universal service support mechanisms, and not have a direct financial

interest in the universal service support mechanisms established by the commission;

(B) possess demonstrated technical capabilities, competence, and resources to perform the duties of the TUSF administrator as described in this section; and

(C) be bonded or bondable.

(2) **Duties of the TUSF administrator.** The TUSF administrator will administer the TUSF in accordance with the rules set forth in this section and in accordance with the guidelines established by the commission in its contract with the TUSF administrator. The TUSF administrator's general duties shall include, but not be limited to:

(A) managing the daily operations and affairs of the TUSF in an efficient, fair and competitively neutral manner;

(B) taking steps necessary to ensure that all eligible telecommunications providers (ETPs) are in compliance with the relevant sections of this title under which they are receiving universal service support;

(C) calculating and collecting the proper assessment amount from every telecommunications provider and verifying that all telecommunications providers are in compliance with the Public Utility Regulatory Act §56.022;

(D) disbursing the proper support amounts, ensuring that only eligible recipients receive funds, and verifying that all recipients are in

compliance with the section or sections of this title under which they are eligible to receive support;

- (E) taking steps necessary, including audits, to ensure that all telecommunications providers that are subject to the TUSF assessment are accurately reporting required information;
- (F) taking steps necessary, including audits, to ensure that all recipients of TUSF funds are accurately reporting required information;
- (G) submitting periodic summary reports to the commission regarding the administration of the TUSF in accordance with specifications established by the commission;
- (H) notifying the commission of any telecommunications providers that are in violation of any of the requirements of this section, §26.417 of this title and any reporting requirements; and
- (I) performing other duties as determined by the commission.

(e) **Determination of the amount needed to fund the TUSF.**

(1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.

- (A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:
 - (i) Texas High Cost Universal Service Plan, §26.403 of this title;
 - (ii) Small and Rural ILEC Universal Service Plan, §26.404 of this title;

- (iii) Implementation of the Public Utility Regulatory Act §56.025, §26.406 of this title;
 - (iv) Additional Financial Assistance, §26.408 of this title;
 - (v) Reimbursement for Certain IntraLATA Service, §26.410 of this title;
 - (vi) Lifeline Service and Link Up Service, §26.412 of this title;
 - (vii) Tel-Assistance Service, §26.413 of this title;
 - (viii) Telecommunications Relay Service, §26.414 of this title; and
 - (ix) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title.
- (B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), any costs incurred by the Texas Department of Human Services caused by its administration of the Tel-Assistance program, and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.

- (C) Reserve for contingencies. The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.
- (2) **Determination of amount needed.** After the initial determination, the TUSF administrator shall determine, on a periodic basis, the amount needed to fund the TUSF. The determined amount shall be approved by the commission.
- (f) **Assessments for the TUSF.**
- (1) **Providers subject to assessments.** The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.
- (2) **Basis for assessments.** Assessments shall be made to each telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151, Tax Code.
- (3) **Assessment.** Each telecommunications provider shall pay its TUSF assessment each month as calculated using the following procedures.
- (A) Calculation of assessment rate. The TUSF administrator shall determine an assessment rate to be applied to all telecommunications providers on a periodic basis approved by the commission.

- (B) Calculation of assessment amount. Payments to the TUSF shall be computed by multiplying the assessment rate determined pursuant to subparagraph (A) of this paragraph by the basis for assessments as determined pursuant to paragraph (2) of this subsection.
- (4) **Reporting requirements.** Each telecommunications provider shall be required to report taxable telecommunications receipts under Chapter 151, Tax Code as required by the commission or the TUSF administrator.
- (5) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment only from its retail customers who are subject to tax under Chapter 151 of the Tax Code, except for Lifeline, Link Up, and Tel-Assistance services. The commission may order modifications in a telecommunications provider's method of recovery.
- (A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills;
- (i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service"; and
 - (ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline, Link Up, and Tel-Assistance services.
- (B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail

customers' bills must file for commission approval of the surcharge mechanism.

(C) **Tariff changes.** A telecommunications provider choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes to its tariff and provide supporting documentation for the method of recovery.

(D) **Recovery period.** A single universal service fund surcharge shall not recover more than one month of assessments.

(6) **Disputing assessments.** Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.

(g) **Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.**

(1) **ETPs, ILECs, other entities, and agencies.**

(A) **ETPs.** The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

(i) Texas High Cost Universal Service Plan;

- (ii) Small and Rural ILEC Universal Service Plan;
 - (iii) Lifeline Service and Link Up Service; and/or
 - (iv) Tel-Assistance Service.
 - (B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:
 - (i) Implementation of the Public Utility Regulatory Act §56.025; and/or
 - (ii) Additional Financial Assistance program.
 - (C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:
 - (i) Telecommunications Relay Service; and/or
 - (ii) Specialized Telecommunications Assistance Program.
 - (D) Agencies. The commission, the Texas Department of Human Services, the Texas Commission for the Deaf and Hard of Hearing, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of PURA Chapters 56 and 57.
- (2) **Reporting requirements.**
- (A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

- (B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.
 - (C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.
- (3) **Disbursements.**
- (A) The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 45 days of the due date of their reports except as otherwise provided.
 - (B) If an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:
 - (i) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of unbundled network elements, the electing LEC's disbursement may be reduced by the amount attributable to that customer under PURA §56.021(1); or

- (ii) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing LEC, the electing LEC's disbursement attributable to that customer under PURA §56.021(1) may be reduced according to the commission established equitable allocation formula for the disbursement as described in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

- (h) **True-up.** The assessment amount determined pursuant to subsections (e) and (f) of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over-reporting.

- (i) **Sale or transfer of exchanges.**
 - (1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §26.404 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the sale or transfer.
 - (2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant to §26.403 of this title, shall receive the per-line

support amount for which those exchanges were eligible prior to the transfer of the exchanges.

- (j) **Proprietary information.** The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:
- (1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.
 - (2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information "PROPRIETARY PURSUANT TO PUC SUBST. R. §26.420 (j) ".
 - (3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to the commission and its designated representatives without notifying the telecommunications provider.
 - (4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications

provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

This agency hereby certifies that the rules, as adopted, have 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 §26.403, relating to Texas High Cost Universal Service Plan (THCUSP), and §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), are hereby adopted with changes to the text as proposed. It is also ordered that §26.420, relating to Administration of Texas Universal Service Fund (TUSF), is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 13th DAY OF SEPTEMBER 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Max Yzaguirre

Commissioner Brett A. Perlman

Commissioner Rebecca Klein