

PROJECT NO. 24520

RULEMAKING TO IMPLEMENT	§	
HB 1351, 77th LEG., RELATING TO	§	PUBLIC UTILITY COMMISSION
THE FUNDING AND OPERATION	§	
OF THE UNIVERSAL SERVICE	§	OF TEXAS
FUND AS IT APPLIES TO PAY	§	
TELEPHONE PROVIDERS	§	

**ORDER ADOPTING AMENDMENTS TO §26.420, ADMINISTRATION OF TEXAS
UNIVERSAL SERVICE FUND, AS APPROVED
AT THE MAY 2, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.420 relating to the Administration of Texas Universal Service Fund (TUSF) with changes to the proposed text as published in the January 25, 2002 *Texas Register* (27 TexReg 549). The amendments implement House Bill 1351, 77th Legislature (HB 1351), later codified as the Public Utility Regulatory Act, Texas Utilities Code Annotated §56.022 (Vernon 1998 & Supplement 2002) (PURA) relating to the exemption of pay telephone services from TUSF assessment. These amendments are adopted under Project Number 24520.

A hearing regarding HB 1351 was held before the Senate Committee on Business and Commerce on May 8, 2001. HB 1351 was proposed as a means to exempt pay telephone services from TUSF assessment. At the hearing, it was noted that the provision of pay telephone services is dependent upon the purchase of services from a telecommunications provider. In other words, a provider of pay telephone services, while providing pay telephone service, is also a customer of another

telecommunications provider. Also at the hearing, it was noted that upon enactment of HB 1351, telecommunications providers provisioning services to providers of pay telephone services would assess TUSF fees on these services as they would to any retail customer.

Consistent with the above, the commission initiated this rulemaking making substantive changes to §26.420(f) with a twofold purpose: (1) to exempt pay telephone service revenues from TUSF assessment; and (2) to clarify that telecommunications providers should contribute directly into the TUSF based upon the revenue received from provisioning telecommunications services to pay telephone providers, and the telecommunications providers may pass-through the TUSF assessment fees to the pay telephone providers.

The commission also proposed deleting references to §26.413, relating to Tel-Assistance Service, from §26.420(b), (e), (f) and (g). However, the commission declines to adopt the proposed changes relating to Tel-Assistance Service at this time and will open a subsequent proceeding to amend this section.

The commission received comments on the proposed amendments from Southwestern Bell Telephone Company (SWBT) and Verizon Southwest (Verizon).

Preamble question

In addition to general comments, the commission sought specific comment on the following:

Should the commission address the issue of the implementation timeframe for §26.420(f)(2)(C) and (f)(5)? If so, should the issue be addressed via a provision in §26.420 even though the issue only applies to specific amended portions of the rule, or should affected local exchange companies (LECs) be required to seek a good cause waiver from the rule, which would allow the timeline of the waivers to be individualized according to the specific needs of the carrier?

SWBT commented that it had resolved the implementation issues raised in the preamble question and as a result, the commission may not need to address the issue of good cause waivers in this project. SWBT indicated that it placed this project on an accelerated implementation timetable and immediately began making all required programming changes to its system. SWBT estimated that it would be able to fully implement the required billing system modifications by June 2002; a date which currently coincides with the estimated effective date of this section. Accordingly, SWBT anticipated that it would not need to seek a good cause waiver from the new requirements. SWBT cautioned that this presumption is based upon the commission adopting the amended rule as proposed and adhering to the current project schedule.

Verizon suggested that the commission address the implementation timeframe by allowing 60 days after the effective date of the rule for compliance. Verizon also proposed that if a company needs time beyond the 60 days, then that company should be required to seek a good cause waiver.

The commission declines to insert into the proposed rule a blanket time period for allowing telecommunications providers to come into compliance with the requirements of subsection (f), relating to assessments for the TUSF. HB 1351 became effective September 1, 2001. Any additional time allowed for implementing the requirements delineated in the amended rule means a loss of revenue for the TUSF. Although that loss is minimal, the commission declines to further delay contributions into the fund. At the January 10, 2002 open meeting approving the proposed amendment for publication, the commission advised telecommunications providers that they should not wait until §26.420 was approved for adoption to begin making the required programming changes to their billing systems. The commission warned that any waivers submitted regarding this issue would be evaluated utilizing high standards. Accordingly, as established in the Administrative Procedure Act, Texas Government Code Annotated §2001.036 relating to the Effective Date of Rules; Effect of Filing With Secretary of State, the proposed amendments to §26.420 will be effective 20 days after the date this rule is filed with the Secretary of State.

No other comments were received regarding the proposed amendment.

In adopting this section, the commission also makes a minor modification for purposes of clarification and consistency. The commission changes the word "telephone" to "telecommunications" in subsection (f)(2)(C).

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §56.021 which provides the commission with the authority to adopt and enforce rules requiring local exchange companies to establish a universal service fund; and §56.022 regarding the statewide uniform charge upon which the TUSF is based and requiring the commission to exempt pay telephone services from the assessment.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.051-17.053, 56.021 and 56.022.

§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 (TRS), §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 STAP and TRS 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 will be based upon the following:
 - (A) Assessments shall be made to each telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151 of the Tax Code.
 - (B) Pay telephone service revenues received by providers of pay telephone services are exempt from the TUSF assessment pursuant to the Public Utility Regulatory Act §56.022(c)(2).
 - (C) Revenue received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services is subject to TUSF assessment.
- (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 of the 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. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Tax Code. 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 rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.420 relating to Administration of Texas Universal Service Fund (TUSF) is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 9th DAY OF MAY 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Commissioner Brett A. Perlman

Commissioner Rebecca Klein