

**PROJECT NO. 24520**

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

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE  
JANUARY 10, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.420, relating to the Administration of the Texas Universal Service Fund (TUSF). The proposed amendments will implement the provisions of 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 the TUSF assessment. The proposed amendment also removes references to §26.413, relating to Tel-Assistance Service. House Bill 2156, 77th Legislative Session (HB 2156) eliminated the Tel-Assistance Program effective September 1, 2001 and required telecommunications carriers to convert all Tel-Assistance customers to Lifeline Service; therefore, the references to Tel-Assistance Service in §26.420 are no longer necessary and have been deleted. Project Number 24520 is assigned to this proceeding.

*Non-substantive changes to rule language*

Proposed §26.420 amends internal references and reflects minor non-substantive changes necessary to ensure consistency with the changes made by the 77th legislature in HB 2156. Proposed §26.420 also includes revisions to renumber subparts affected by amendments to the rule.

*Substantive changes to rule language*

Proposed §26.420(f)(2)(B) is added, consistent with PURA §56.022(c)(2), to exempt pay telephone service revenues from TUSF assessment.

Proposed §26.420(f)(2)(C) and (f)(5) are added and amended, respectively, in order to denote that the revenue generated by telecommunications providers from the provision of telephone service to pay telephone providers is subject to TUSF assessment, and allowing telecommunications providers, in turn, to pass-on the assessment to their retail customers, including pay telephone providers.

On May 8, 2001, a hearing regarding HB 1351 was held before the Senate Committee on Business and Commerce. HB 1351 was presented as a means to exempt pay telephone services from TUSF assessment; however, payphone providers would continue to make indirect contributions via the pass-through fees on their monthly service bills from local exchange companies (LECs). Scott Pospisil, Executive Director of the Texas Payphone Association (TPA), testified in support of HB 1351 (see video of hearing, Part I at

01:07:28, <http://www.senate.state.tx.us/75r/senate/commit/c510/c510.htm>). Mr. Pospisil indicated that the impact of HB 1351 upon the TUSF would be minimal, in that it would affect less than one-half of one percent of the budgeted fund. Mr. Pospisil reiterated his support of HB 1351 at the workshop held in this project on November 14, 2001 by emphasizing that members of TPA were prepared to continue making indirect payments into the TUSF via the surcharges on the monthly bills paid to LECs. (See transcript of workshop at 41-43, November 14, 2001.)

Accordingly, the commission initiates the present 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 classify payphone providers as retail customers, thus allowing telecommunications providers who contribute directly into the TUSF based upon the revenue they generate from the provision of telephone services to pay telephone providers, to pass-through TUSF assessment fees to the payphone providers.

Lori Hartman, Policy Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Hartman has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section as amended

will be a more equitable, revenue-neutral process of determining the basis for TUSF assessments. Although there may be some loss of revenue to the TUSF, that loss will be minimal in that it represents less than one-half of one percent of the fund's total revenue for 2001. Additionally, the fund currently maintains an operating surplus.

There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There may be some economic cost to the telecommunications providers who provide telephone service to pay telephone providers and who are required to comply with this section as proposed because some billing system modifications may be necessary in order to effectuate §26.420(f)(2)(C) and (f)(5). However, such costs are expected to be minimal and are outweighed by the benefits derived from a more equitable basis for TUSF assessment.

Ms. Hartman has also determined that for each year of the first five years the proposed section is in effect there should be no effect on local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to Government Code §2001.029, at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, in

Hearing Room Gee, on Tuesday, March 26, 2002 at 1:30 p.m. The request for public hearing must be received within 30 days after publication.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the amended section. All comments should refer to Project Number 24520.

In addition to general comments, the commission invites specific comments regarding the following question:

Should the commission address the issue of the implementation timeframe for §26.420(f)(2)(C) and (f)(5)? If so,

- (a) 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,
- (b) Should affected 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?

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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. The commission also proposes this rule pursuant to PURA §56.021 which provides the authority to adopt and enforce rules requiring local exchange companies to establish a universal service fund; PURA §56.022 regarding the statewide uniform charge upon which the TUSF is based and which requires the commission to exempt pay telephone services from the assessment; and HB 2156, 77th Legislature, Regular Session, Chapter 1451, §4, that discontinued the Tel-Assistance Program.

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) (No change.)

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

(1) – (6) (No change.)

~~(7) — Section 26.413 of this title (relating to Tel Assistance Service);~~

~~(7)(8)~~ Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));

~~(8)(9)~~ Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

~~(9)(10)~~ Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

~~(10)(11)~~ Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and

~~(11)(12)~~ Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF)).

(c) – (d) (No change.)

(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) — (vi) (No change.)

~~(vii) — Tel Assistance Service, §26.413 of this title;~~

~~(vii)(viii)~~ Telecommunications Relay Service (TRS), §26.414 of this title; and

~~(viii)(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 Lifeline Service and Link up Service programs~~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~~Specialized~~

~~Telecommunications Assistance Program (STAP)~~ and ~~TRS~~the  
~~Telecommunications Relay Service~~ programs.

(C) (No change.)

(2) (No change.)

(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 telephone services supplied to pay telephone providers for the provision of pay telephone services is subject to TUSF assessment.

(3) (No change.)

- (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 ~~and~~, 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) (No change.)
- (ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline ~~and~~, Link Up, ~~and Tel-Assistance~~ services.
- (B) - (D) (No change.)
- (6) (No change.)
- (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) (No change.)

(ii) Small and Rural ILEC Universal Service Plan; and/or

(iii) Lifeline Service and Link Up Service; ~~and/or~~

~~(iv) Tel Assistance Service.~~

(B) — (D) (No change.)

(2) — (3) (No change.)

(h) — (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 11th DAY OF JANUARY 2002 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**