

PROJECT NO. 46053

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND 16 TEX. ADMIN. CODE	§	
§ 26.420(f), ASSESSMENTS TO THE	§	OF TEXAS
TUSF	§	

**ORDER ADOPTING AMENDMENT TO § 26.420(f)
APPROVED AT THE OCTOBER 11, 2017 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to § 26.420(f), relating to administration of the Texas Universal Service Fund (TUSF) without changes to the proposed text as published in the July 14, 2017 issue of the *Texas Register* (42 TexReg 3533). The amendment will improve the administration of the TUSF by clarifying which providers have to pay TUSF assessments. This amendment is adopted under Project Number 46053.

The commission did not receive a request for a public hearing, therefore none was held.

The commission did not receive any comments on the proposed amendment.

This amendment is adopted under section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (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, PURA §56.023 which requires the commission to adopt procedures to fund the TUSF.

Cross reference to statutes: PURA §§ 14.002 and 56.023.

§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 Program);
 - (7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
 - (8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

- (9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
 - (10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
 - (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
 - (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
 - (13) Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas);
 - (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service); and
 - (15) Section 26.424 of this title (relating to Audio Newspaper Assistance Program).
- (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.
- (6) **Audit STAP voucher payments and expenditures.** The commission shall audit voucher payments and other expenditures made under the STAP program.

(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 Program, §26.412 of this title;
- (vii) Telecommunications Relay Service, §26.414 of this title;
- (viii) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title; and
- (ix) Audio Newspaper Assistance Program, §26.424 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), 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. The following entities are exempt from paying TUSF assessments on the services that they sell to their guests or tenants but are not exempt from TUSF pass-through assessments from telecommunications providers:
 - (A) a hotel or motel;
 - (B) an owner or lessor of an office or residential building development that contracts and pays for telecommunications services for resale to guests or tenants; and
 - (C) a development that contracts and pays for telecommunications services for resale to guests or tenants.

(2) **Definitions.** For the purposes of this section the following definitions apply:

- (A) Actual intrastate telecommunications services receipts -
Telecommunications services receipts that are clearly identifiable as intrastate telecommunications services receipts, as defined in subparagraph (E) of this paragraph.
- (B) FCC - means the Federal Communications Commission.
- (C) Interstate communications - Has the meaning assigned by 47 U.S.C. §153(22).
- (D) International communications -- Has the meaning assigned by 47 U.S.C. §153(17) (foreign communications).
- (E) Intrastate telecommunications services receipts -- Taxable telecommunications services receipts as reported by the telecommunications provider under Chapter 151 of the Texas Tax Code, with the exception of:
 - (i) Pay telephone service revenues received by providers of pay telephone services, which are exempt from the TUSF assessment pursuant to PURA §56.022(c)(2);
 - (ii) Telecommunications services receipts from interstate communications and international communications included in telecommunications services receipts reported under Chapter 151 of the Texas Tax Code; and
 - (iii) TUSF surcharges collected from customers.
- (F) Receipts -- Has the meaning assigned by Texas Tax Code §151.007.

- (G) Safe-Harbor intrastate telecommunications services receipts -- Means intrastate telecommunications receipts calculated by applying a commission-ordered percentage to telecommunications services receipts that are not clearly identifiable as intrastate.
 - (H) Telecommunications provider -- Has the meaning assigned by PURA §51.002(10).
 - (I) Telecommunications services -- Has the meaning assigned by Texas Tax Code §151.0103.
- (3) **Basis for assessments.** Assessments will be based upon the following:
- (A) **Actuals.** Effective December 1, 2017, assessments shall be made to each telecommunications provider based upon its monthly taxable actual intrastate telecommunications services receipts reported by that telecommunications provider under Chapter 151 of the Texas Tax Code.
 - (B) **Commission-Ordered Safe Harbor.** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and does not meet the *de minimus* exemption in subsection (c) of this section, may request, and the commission may grant for good cause, the modification or waiver of the requirement set forth in subsection (a) of this section, to allow the telecommunications provider to calculate all or some of its intrastate taxable telecommunications receipts using the relevant commission-ordered safe-harbor percentage. Requests for waiver will be subject to administrative

review unless the presiding officer determines at any point during the review that the request should be docketed. The presiding officer will issue an order approving, denying or docketing the request for waiver within 180 calendar days of the filing date of the waiver request.

- (i) A request for waiver must contain, at a minimum:
 - (I) an affidavit from a corporate officer of the telecommunications provider attesting to the fact that the telecommunications provider is unable to calculate all or some of its actual intrastate telecommunications services receipts and, if applicable, that the telecommunications provider is using a safe harbor authorized by the FCC;
 - (II) a date by which the telecommunications provider will be able to calculate actual intrastate telecommunications services receipts;
 - (III) an explanation detailing why the telecommunications provider is unable to calculate actual intrastate telecommunications services receipts and why a waiver is necessary;
 - (IV) a detailed description of the safe-harbor percentage that is requested and how it will be applied;
 - (V) if applicable, a compliance tariff filing pursuant to paragraph (6)(C) of this subsection; and

- (IV) any other information that the telecommunications provider believes will aid in rendering of a decision.
- (ii) If a telecommunications provider requests a permanent waiver from reporting its TUSF assessment based on actual intrastate telecommunications services receipts, then the telecommunications provider must file a waiver containing all elements in clause (i) of this subparagraph, as well as an explanation detailing why a permanent waiver is required, and why it is in the public interest.
- (iii) A telecommunications provider that has been granted a waiver shall apply, for the duration of that waiver, a safe-harbor percentage to its telecommunications services receipts using one of the methods described in subclauses (I) or (II) of this clause as follows:
- (I) If a telecommunications provider is reporting interstate communications and international communications revenues for assessment for the federal universal service fund based on an FCC safe-harbor percentage, then the telecommunications provider shall apply the inverse of that percentage to its telecommunications services receipts as reported under Chapter 151 of the Texas Tax Code. The resulting total will be the telecommunications provider's safe-harbor-calculated total intrastate telecommunications

services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

- (II) If a telecommunications provider is not using an FCC safe-harbor percentage, the telecommunications provider shall apply a commission-ordered safe harbor percentage to its telecommunications services receipts under Chapter 151 of the Texas Tax Code as described in its waiver request approved by the commission. The resulting total will be the telecommunications provider's safe-harbor-calculated intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.
- (iv) If a telecommunications provider that has been granted a waiver seeks to change its safe-harbor assessment methodology, or seeks an extension of its existing waiver, it must file another waiver request with the commission.
- (v) A telecommunications provider may, at any time during the duration of its waiver and upon notice to the commission and the TUSF administrator, change its methodology to assess actual intrastate telecommunications services receipts. This will terminate any existing waiver.
- (C) ***De minimus exemption.*** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January

1, 2007, and whose TUSF assessment is less than \$500 per month using the relevant commission-ordered safe-harbor percentage, is not required to file a waiver request pursuant to subparagraph (B) of this paragraph.

(D) Intrastate telecommunications services receipts received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services are subject to TUSF assessment.

- (4) **Assessment.** Each telecommunications provider shall pay its TUSF assessment each month by multiplying the commission-approved assessment rate by the basis for assessments as determined pursuant to paragraph (3) of this subsection.
- (5) **Reporting requirements.** Each telecommunications provider shall report its taxable intrastate telecommunications services receipts under Chapter 151 of the Tax Code to the commission or the TUSF administrator. When reporting its intrastate telecommunications services receipts, each telecommunications provider shall report its total taxable telecommunications services receipts under Chapter 151 of the Tax Code, and indicate which methodology or methodologies (*i.e.*, actual and/or commission-ordered safe-harbor percentage) it used to arrive at its total intrastate telecommunications services receipts.
- (6) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment based on its intrastate telecommunications services receipts from its retail customers who are subject to tax under Chapter 151 of the Texas Tax Code, except for Lifeline and/or Link Up services. For purposes of the recovery of the TUSF assessment, pay telephone providers are

considered retail customers subject to Chapter 151 of the Texas 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 intrastate telecommunications services receipts on every retail customers' bill, except Lifeline and/or Link Up 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 and/or price sheet changes. A certificated telecommunications utility choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes as necessary to its tariff and/or price sheet 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.
- (7) **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; and/or
- (iii) Lifeline Service and Link Up 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;
 - (ii) Specialized Telecommunications Assistance Program; and/or
 - (iii) Audio Newspaper Assistance Program.
- (D) Agencies. The commission, the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, 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) Prior to August 31, 2007, 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)).
- (C) The commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations.

- (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 certifies that the adoption 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 the Texas Universal Service Fund (TUSF) is hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the _____ day of October 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER