

PROJECT NO. 39939

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND CHAPTER 26, SUBCHAPTER	§	
P-RELATING TO ADMINISTRATION	§	OF TEXAS
OF THE TEXAS UNIVERSAL	§	
SERVICE FUND (TUSF)	§	

**ORDER ADOPTING NEW §26.402
AS APPROVED AT THE OCTOBER 12, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.402, relating to Transparency and Accountability in the Administration of the Texas Universal Service Fund with changes to the proposed text as published in the June 29, 2012 issue of the *Texas Register* (37 TexReg 4777). The purpose of the new rule is to further ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF) by means of reports by recipients of high cost support regarding planned network upgrades and publication of quarterly reports by the commission regarding TUSF cashflows, total deposits, and total disbursements. This new section is adopted under Project Number 39939.

The commission received written comments from the following parties: AMA TechTel Communications (AMA); CenturyLink (CenturyLink); GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, and Cellco Partnership and its commercial mobile radio service provider subsidiaries operating in the state of Texas d/b/a Verizon Wireless (Verizon); Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); Sprint Communications Company LP, Texas Cable Association and TW Telecomm of

Texas LLC (Coalition); TEXALTEL (TEXALTEL); Texas Statewide Telephone Cooperative, Inc. (TSTCI); and Texas Telephone Association (TTA).

All comments, including any not specifically referenced herein, were fully considered by the commission.

No party requested that a public hearing be held regarding the proposed new rule.

Comments

Section 26.402(a) Purpose.

CenturyLink commented that they believe that the “purpose” statement was appropriate and comports with PURA §56.023(d), and that it also reflects that the commission already has rules in place to ensure reasonable transparency and accountability in the administration of the TUSF. CenturyLink contended that the new language in §56.023(d) would serve as a safeguard against future changes to existing rules that might diminish transparency and accountability. But, CenturyLink stated, §56.023(d) does not require the commission to adopt new rules or reporting requirements, and PURA Chapter 56 confers upon the commission broad discretion in administration of the TUSF, including the discretion not to act at all if it believes that it has sufficient rules in place.

The Coalition replied that CenturyLink’s statement strains credibility, that the TUSF is so opaque that, until 2008, even the amount of the subsidy to Texas High Cost Universal Service Plan (THCUSP) recipients was not publicly available, and that even today there is no

requirement or proposal that small ILEC TUSF recipients publicly file the amount of their TUSF receipts as is required by recipients of monies from the THCUSP. The Coalition argued that under the *status quo* those who fund the TUSF (Texas telephone consumers) have no visibility into what TUSF subsidies are paid, to whom they are paid, and how the funds are used.

The Coalition also took issue with CenturyLink's assertion that PURA §56.023(d) does not mandate the commission's adoption of new transparency and accountability rules if the commission believes current rules are sufficient; the Coalition argued that the Legislature would not have told the commission that it "shall" adopt rules that "ensure" transparency and accountability if it were satisfied with the *status quo*. The Coalition stated that the Legislature not only authorized, but required the commission to adopt rules to ensure transparency and accountability in the TUSF, and the Coalition noted that PURA §56.023(d) is more recent than any statutory language upon which CenturyLink relied.

Commission Response

The commission adopts the proposed language without modification, given that no party suggested changes to this subsection, and adoption of new §26.402 reflects the commission's intent to better meet the legislative mandate set forth in PURA §56.023(d).

Section 26.402(b) Application.

No comments were received regarding this subsection. However, AMA, CenturyLink, Verizon, AT&T, the Coalition, TEXALTEL, TSTCI, and TTA each expressed concern, in comments

regarding other proposed subsections, with the public disclosure of confidential company information.

Commission Response

Noting that no party suggested changes to this subsection, the commission adopts the proposed language of this subsection, correcting the internal references to other subsections to reflect deletions of specific proposed subsections, as further discussed below. Additionally, in response to comments regarding the submission of confidential information to the commission, the commission adopts language to make clear that all filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed pursuant to the commission's procedural rules relating to pleadings and other documents. These procedural rules include processes addressing the filing and handling of materials designated by the filing party as confidential information. The commission notes that if a person submits a request for information filed pursuant to this rule and that the filing party designated as confidential, the request will be processed in compliance with the Public Information Act, Texas Government Code Chapter 552.

Section 26.402(c)(1) Reports required for a price cap carrier designated as an ETP that receives Texas USF high cost support.

The Coalition opined that the proposed rule should include the number of supported lines as well as the support received per line (for carriers other than those who have elected to eliminate their high cost support through the Total Support Reduction Plan), contending that this information is

required to be filed publicly by recipients of federal High Cost model support and is critical to understanding how much support is being provided to an ETP in each exchange and whether the support is warranted or should be examined in a separate need inquiry.

CenturyLink replied that they believed the Coalition was overstating the federal requirements. CenturyLink stated that it does not object to filing information regarding the amount of support per line in each exchange, but it does object to filing line counts by wire center, which it considers to be highly sensitive confidential information. CenturyLink stated that this requirement should be rejected.

AMA replied that the Coalition's proposals here exceed the scope of what the Legislature required and what should be approved by the commission. AMA took issue with the Coalition's allegation that the Legislature directed the commission to "take action to ensure transparency and accountability of the TUSF" while the statute language requires rules to "include procedures to ensure reasonable transparency and accountability in the administration of the universal service fund." AMA argued that the Coalition's positions go beyond the Legislature's concern for transparency and accountability in the *administration* (AMA's emphasis) of the TUSF. AMA opined that the Coalition's proposals would effectively give oversight of the TUSF to competitors of the fund's recipients.

AMA stated that the commission should not make a provider's costs available to third parties, once again arguing that the statute calls for transparency and accountability in the *administration* of the fund rather than the fund itself. AMA said that there is a great difference between

ensuring that the commission is administering the fund in a transparent and accountable manner and what AMA characterizes the Coalition's position as requiring that all monies received and spent by a carrier be accounted for publicly. AMA stated that the five-year plans required by subsections (c) and (d) include specific descriptions of proposed improvements or upgrades to the reporting carrier's network, and that these should not be made public, or be accessible under a standard protective order. AMA indicated that it is not aware of any provisions in Texas law similar to those proposed by the Coalition. The Coalition gave the example of the Comptroller office which does not allow members of the public to have access to sales tax or revenue reports. AMA said that there has been no suggestion that the Comptroller should provide more transparency of its operations by allowing the public to second-guess the process of revenue collections.

AMA indicated that they support continued transparency to the commission for administration of the fund, but found no need to change current rules to allow third parties to evaluate the fund. AMA observed that PURA charges the commission with responsibility to adopt and enforce rules relating to the TUSF, and that the commission has adopted rules for eligibility and collection and disbursement of TUSF revenues, and that there is no evidence that the commission has failed to meet its obligations in administration of the fund. AMA stated that SB 980 did not abridge these obligations, nor did it direct the commission to allow third party evaluation of the fund, and that the commission is capable of discharging its responsibilities without providing unfettered access to confidential company information to competitors of TUSF recipients or the public.

Verizon did not oppose inclusion of this subsection in the rule.

CenturyLink noted that it considers the booked value of expenses, categorized according to the proposed rule, to be confidential and trade secret information, and that the rule is unclear as to whether all the expense value inputs must be filed or whether only the output from the formula needed to be filed. CenturyLink stated that this should be clarified. CenturyLink contended that if the expense line items were to be filed, it should be done confidentially.

The Coalition expressed skepticism regarding the square mile allocation factor, stating that while some costs are related to density it is not clear that square miles are an appropriate indicator of density when compared to factors such as line/road miles. The Coalition expressed concern that Project No. 40342 had been undertaken to a needs-based reform system for provision of TUSF support and that the allocation method now being proposed might be characterized as conferring commission support for a methodology that has no evidentiary basis. The Coalition was unclear as to what the allocation would accomplish, how it would inform the commission and public of a carrier's need for support. It was the Coalition's position that the proposed allocation cost factor fails to prove a need for TUSF support in any area, nor does it prove that the support being provided is used to provide service in an area.

CenturyLink said that the Coalition's concerns were overstated, and that any issues the Coalition might have with the square mile allocation methodology for purposes of any "needs based" inquiry could be addressed in comments to Project No. 40342.

CenturyLink replied that use of a line/road mile allocation factor would require extensive annual geocoding which would be burdensome to most carriers and impossible for others. CenturyLink said that the square mile allocation methodology strikes a fair balance between the goals of allocating cost and the burdens of performing an allocation exercise.

CenturyLink said that, while it does not directly measure line density, the proposed rule appears to be a reasonable allocation of costs to supported exchanges, and that any allocation is susceptible to criticism compared to a direct measure of costs, but that allocations are almost always used when determining costs, and while square miles may not be a perfect allocation factor the legal standard for adoption is not perfection.

CenturyLink, in response to TEXALTEL's supplemental comment in which it proposed an alternative allocation factor based on telephone customer counts rather than square miles in subsection (d)(1), contended that if this alternative was made available to some carriers, it should be available to all, both in subsection (d)(1) and (c)(1).

Commission Response

The commission declines to adopt this paragraph, concluding that the issues surrounding implementation of this proposed reporting, coupled with considerable concerns about such a report's benefits, outweigh its value as a contributor to transparency and accountability in the administration of the TUSF.

Section 26.402(c)(2)(A) Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal universal service fund (FUSF) USF high cost support.

Verizon stated that this subsection should not be adopted at this time because it is intended to reflect FCC reporting requirements which have not been finalized, pending a petition filed at the FCC by the Wireless Association® (CTIA) and the United States Telecom Association (USTA).

CenturyLink asserted that the granular wire center results of the FCC regression model have never been put to use by that agency or any state. It was CenturyLink's contention that carriers to which subparagraph (A) would apply either lack the data points necessary to populate the model or would have to derive the data from internal and external sources which would vary in quality, thus the outputs from the model would not be considered valid for TUSF purposes. CenturyLink asserted that subparagraph (A) should be deleted from the rule.

Commission Response

The commission declines to adopt this subparagraph, having concluded that the issues surrounding the report required by this language outweigh its benefits.

Section 26.402(c)(2)(B)-(C), (d)(2)(A)-(B) Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal universal service fund (FUSF)USF high cost support.

CenturyLink interpreted subsection (c)(2)(B) as simply requiring an ETC to file its FCC-required plan with the commission. CenturyLink believed that only Windstream and CenturyLink fall into this category. It was CenturyLink's contention that if the proposed rule intended that

affected ILECs in Texas file a five-year improvement plan specific to TUSF this would be inconsistent with PURA and is not supported by any federal requirement. CenturyLink stated that an ILEC ETP has no obligation to proactively upgrade its network or improve service quality as conditions of TUSF support so long as the ILEC is satisfying its obligations with respect to basic local telephone service (BLTS) as required under TUSF. CenturyLink concluded that any requirement for a five-year improvement plan requirement under TUSF would overstep the statutory mandate of PURA §56.021(l) and the TUSF orders in P.U.C. Docket Nos. 18515 and 34723 that set conditions under which ILEC ETPs would receive TUSF support. CenturyLink maintained it was entirely possible that an ILEC would have no need to expand its network or make service improvements but that TUSF support would still be justified if that support was used only to offset the high cost of maintaining the network and providing customer service in rural areas.

TEXALTEL stated in reply comment that to the extent the proposed rule simply required that copies of reports to the FCC be filed with the commission, filing parties should be allowed to attach the same level of non-disclosure to the copies files with the commission as those filed with the FCC.

The Coalition replied that CenturyLink's comment that a carrier had no obligation to upgrade or improve the service quality of its network in order to receive TUSF support as long as it is satisfying its ILEC and BLTS obligations merely serves to underscore what the Coalition perceived as inadequacy in the current requirements for TUSF transparency and accountability. The Coalition claimed that CenturyLink must file detailed reports and plans with the FCC in

order to receive \$5.5 million per year in federal USF support, but that CenturyLink objects to providing comparable reports for the Texas fund from which it receives \$34 million per year. The Coalition contended that CenturyLink's real objection is with disclosure of the information.

The Coalition argued that the commission should reject CenturyLink's interpretation that the proposed rule merely requires that an ETC file its FCC-required plan with the commission, stating that since the federal rule already establishes that requirement, it is unreasonable to interpret the proposed rule as a simple restatement of the federal requirement. Rather, the Coalition concluded that the intent of the language in subsection (c)(2)(B) is for an ETC that is also a Texas ETP to file Texas-specific reports of the information gathered in the course of preparing its FCC report filed pursuant to 47 C.F.R. 54.313(i), as the Coalition recommended in its comment on the Strawman rule in this project. The Coalitions requests that, to the extent this is not clear, it should be clarified but not deleted.

The Coalition further argued that the proposed rule should be amended to clarify that ETCs who receive federal or state USF support must file their federal USF reports pursuant to 47 C.F.R. §54.313 (which the Coalition said makes no provision for confidential filings) with the commission and that these be available to the public in a standing project number. It was the Coalition's position that if some or all of these reports are confidential their review should be permitted pursuant to a standing protective order.

CenturyLink replied that, while 47 C.F.R. §54.313 does not explicitly address confidential filings, it does not prohibit them, and that CenturyLink had made confidential filings pursuant to

§54.313 with no parties objecting. CenturyLink stated that, to the best of its knowledge and belief, no party has ever challenged an ETC for filing their 5-year plans and progress reports with the FCC as confidential and those plans and reports are not subject to a standing protective order providing access by third parties. CenturyLink urged the commission to reject the Coalition's request for a protective order that would grant third parties access to confidential data filed pursuant to the proposed rule.

Commission Response

Consistent with CenturyLink's comments, the commission confirms that these subparagraphs are applicable only to those carriers which are required by the FCC to file identical information with the FCC and rejects the Coalition's recommendation that language be added to require a Texas ETP to also file a TUSF-specific five-year plan or update. The commission declines to burden carriers who would not otherwise be doing so with preparation of five-year plans and annual updates.

The filing of, and access to, information designated as confidential by a filing party is addressed above with respect to subsection (b).

Section 26.402(d)(1) Requirements for ETPs and ETCs that receive state or federal high cost support and are designated as rate of return carriers, competitive local exchange carriers, or wireless carriers by the FCC.

The Coalition and TEXALTEL expressed skepticism of the square mile allocation factor, stating that while some costs are related to density it is not clear that square miles are an appropriate

indicator of density when compared to factors such as line miles or road miles. The Coalition expressed concern that Project No. 40342 had been undertaken to develop a needs-based reform system for provision of TUSF support and that the allocation method now being proposed might be characterized as conferring commission support for a methodology that has no evidentiary basis. The Coalition was unclear as to what the allocation would accomplish, how it would inform the commission and public of a carrier's need for support. It was the Coalition's position that the proposed allocation cost factor fails to prove a need for TUSF support in any area, nor does it prove that the support being provided is used to provide service in an area.

In initial comments, TEXALTEL noted that the proposed subsection (d) would impose the same reporting requirements on CLEC recipients and rate of return ILECS. TEXALTEL stated that CLECs have not been required to keep the same charts of accounts that ILECS have historically kept. Regarding the proposed use of an allocation factor based on THCUSF subsidized square miles divided by total study area square miles, TEXALTEL said that CLECs do not have study areas, rather they operate in portions of study areas, and that many CLEC service areas have no correlation with ILEC exchange/wire center boundaries. TEXALTEL contended that since CLECS provide ubiquitous service in any wire center receiving THCUSF support, the service area square miles could not be calculated, and that CLECs lack the data necessary to make such a calculation. And for facilities based CLECs in areas which do not receive THCUSF, TEXALTEL contended that such providers do not have a service area per se, rather they serve customers within the range of their facilities, resulting in a "service area" that would look like Swiss cheese. In a supplemental comment, TEXALTEL offered an optional, additional allocation factor derived by dividing a carrier's total customers in supported areas by that carriers

total telephone customers in Texas. TEXALTEL conceded in reply comments that this method might be reasonably questioned as an allocation of costs between densely- and sparsely-populated areas, but maintained that a factor based on square miles would have an even smaller likelihood of accuracy. TEXALTEL offered an alternative, suggesting that all Rate of Return ILECs simply report under subsection (d)(1)(B) and not attempt to allocate between subsidized and non-subsidized exchanges, but rather list subsidized and non-subsidized line counts and let any reviewing party draft its own allocation factor for whatever purposes it is analyzing the data.

CenturyLink replied that no allocation method would be as perfect as an intensive determination of direct costs. In their supplemental reply, CenturyLink noted that there is nothing in the record to indicate that TEXALTEL's proposed allocation factor based on customer counts is superior to a square mile allocation factor. While they did not oppose its inclusion, CenturyLink pointed out that the square mile allocation method uses well established exchange boundaries which have been approved by the commission, while the method proposed by TEXALTEL would rely on customer counts which vary and are subject to a carrier's marketing practices, making such a methodology subject to concerns about reliability and accuracy. CenturyLink contended that if the commission allowed one set of carriers to use TEXALTEL's proposed methodology, then all carriers should be given that option, both in subsection (d)(1) and in subsection (c)(1), as well.

In its response to TEXALTEL's supplemental comment, the Coalition said it believed that neither the square mile nor the customer count methodology will produce a reasonable estimate of cost as claimed by the rule, and that absent considerable investigation, no one knows how best to determine an ETP's costs in supported exchanges because ETPs have not been required to

track their costs by exchange. The Coalition contended that imposition of an arbitrary allocation factor does nothing to produce an “estimate of costs for the total of all supported wire centers,” as the rule intends; rather such methodology only serves to create the illusion of having done so.

The Coalition opined that the proposed rule should include the number of supported lines as well as the support received per line (for carriers other than those who have elected to eliminate their high cost support through the Total Support Reduction Plan). The Coalition stated that this information is critical to understanding how much support is being provided to an ETP in each exchange and whether the support is warranted or should be examined in a separate need inquiry.

The Coalition stated that its greater concern is that P.U.C. Project No. 40342 was opened to investigate how best to establish needs-based reforms to the system, and that use of a cost allocation factor in the proposed rule might confer commission support to the use of such a methodology despite a lack of proof of its efficacy to provide a reasonable estimate of costs in a given area.

The Coalition went on to say that cost allocation factors neither prove need for support in a given area, nor do they prove that support monies were *actually used* (their emphasis) to provide service in a given area.

TEXALTEL also found the instructions for the allocation factor in subsection (d)(1)(A)(ii) to be confusing, saying that if the intent of the clause is to produce a calculation from the ILEC study area and wire center areas, this would be information to which CLECs likely do not have access.

Alternatively, if the intent is to calculate the portion of a CLEC's total expenses allocable to lines supported by TUSF based on square miles served, TEXALTEL has commented on its concerns for this methodology above.

AMA expressed concern for the absence of specific provisions for confidentiality regarding the five-year plan described in subsection (d)(2), saying that the rule should make clear that the reports will be treated confidentially.

TEXALTEL urged that this subsection be applicable only to rate of return ILECs, saying that requiring this information of CLECs would put an undue burden in expense and disruption while failing to generate data that is meaningful to the commission or others. TEXALTEL also requested that the reports described in subsection (d)(2) be required of CLECs only to the extent they are required by the FCC, and that they be accorded the same level of confidentiality as the FCC's reports.

Commission Response

The commission declines to adopt this subparagraph, having concluded that the issues surrounding the report proposed in this subsection outweigh its benefits.

Section 26.402(e)(1) Reports made public by the commission.

AMA said it was reasonable to make public a cash flow statement for the overall TUSF.

Commission Response

The commission adopts the proposed language without modification.

Section 26.402(e)(2) Reports made public by the commission.

TEXALTEL, AMA, TSTCI, CenturyLink, the Coalition, Verizon, AT&T, and TTA opposed publication of carrier contributions to TUSF on the basis that doing so would reveal confidential information to competitors, owing to the fact that contributions to the fund are based on a company's intrastate revenues, which could easily be deduced if the payment amount were known.

AMA noted that it was unaware of any other state requiring public disclosure of company contributions to the fund and joined TTA in urging the commission to use this data for internal analysis only. AT&T contended that it would be unlawful to adopt a rule requiring publication of information that is exempted from disclosure under Texas Government Code §552.001 of the Open Records Act.

TSTCI, TTA, AT&T, Verizon and CenturyLink recommended that only aggregated payment data be made public. CenturyLink suggested that the published data be aggregated by industry segment (*e.g.*, ILEC, CLEC, wireless, VoIP).

The Coalition argued that, while there is a compelling argument for publication of company receipts from TUSF given that these are disbursements of public funds, there is no correlating need to make publicly available each company's contributions to the fund. The Coalition stated

that the subsection should be deleted altogether, contending that it serves no legitimate purpose. The Coalition noted that many CLECs are privately held, and do not make their financial information public. As an alternative, the Coalition offered that only the identities of companies who contribute to the TUSF be made public.

AMA observed that no segment of the regulated industry expressed support for this subsection, and no watchdog group had even filed comments.

Commission Response

The commission finds commenters' concerns regarding publication of data from which confidential information could be deduced to be reasonable and modifies the rule language to reflect that only aggregated contributions to the TUSF will be made publicly available.

Section 26.402 (e)(3) Reports made public by the commission.

AMA stated that identification of total disbursements from the TUSF to each recipient company or organization is consistent with current policy, saying that this information is already available on a quarterly basis and contributes to current transparency for the TUSF.

Commission Response

The commission adopts the proposed language without modification.

Section 26.402(f)

The Coalition proposed language for a new subsection to the effect that any information filed confidentially pursuant to the proposed rule should be made available to third parties, or at a minimum, their experts or counsel, who are willing to sign a protective order. The Coalition went on to argue that non-cost information, such as the five-year plan and subsequent progress reports should not be permitted to be filed confidentially. It was the Coalition's position that these plans and reports are the sole means by which the public can know whether subsidies paid from the TUSF are being applied appropriately, and that filing "accountability" reports on a confidential basis would run counter to the Legislature's intent to *increase* (Coalition's emphasis) transparency.

Commission Response

As discussed above with respect to subsection (b), the commission adopts language in subsection (b) to make clear that all filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed pursuant to the commission's procedural rules relating to pleadings and other documents. These procedural rules include processes addressing the filing and handling of materials designated by the filing party as confidential information. The commission notes that if a person submits a request for information filed pursuant to this rule and for which the filing party designated as confidential, such request shall be processed in compliance with the Public Information Act, Texas Government Code Chapter 552. For information filed with the commission and designated by the filing party as confidential, the Public Information Act does not allow the commission to provide access to the information to other entities, via

a protective order or otherwise. The commission rejects the Coalition's proposed language and adopts language in support of this finding.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other changes for the purpose of clarifying its intent.

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.023(d), which requires the commission to adopt rules that include procedures to ensure reasonable transparency and accountability in the administration of the TUSF.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.023(d).

§26.402. Transparency and Accountability in the Administration of the Texas Universal Service Fund.

- (a) **Purpose.** This section, in conjunction with the audit, eligibility, public reporting, and affidavits of compliance requirements set forth throughout this subchapter, establishes procedures to ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF).
- (b) **Application.**
- (1) This section applies to a telecommunications provider that has been designated as an eligible telecommunications provider (ETP) by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds). Subsections (c) and (d) of this section apply to a telecommunications provider that has been designated, or has applied after June 30, 2013 to be designated by the commission as an eligible telecommunications carrier (ETC) pursuant to §26.418 of this title (relating to Designation of Common Carrier as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).
- (2) All filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).
- (c) **Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal USF high cost support.** This subsection applies to an ETP that has

been designated as an ETC that receives federal high cost support and has been designated as a price cap carrier by the Federal Communications Commission (FCC).

- (1) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for a carrier receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.
- (2) By July 1st of each subsequent year after filing its five-year plan pursuant to paragraph (1) of this subsection, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

(d) **Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP and as an ETC that receives federal USF high cost support.** This subsection applies to an ETP that has been designated as an ETC that receives federal high cost support and that has been designated as a rate of return carrier, competitive local exchange carrier, or wireless carrier by the FCC.

(1) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for carriers receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

(2) By July 1st of each subsequent year after filing its five-year plan pursuant to paragraph (1) of this subsection, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an

explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

- (e) **Reports made public by the commission.** For each State fiscal quarter, no later than the 45th day after the end of the preceding quarter, the commission shall make the following information publicly available on the commission's website:
- (1) A cash flow statement for the overall TUSF indicating starting balance, total revenues, disbursements for each program described in §26.401(b) of this title (relating to Texas Universal Service Plan (TUSF)), and ending balance; and
 - (2) Total disbursements from the TUSF to each recipient company or organization for each program described in §26.401(b) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §26.402, relating to Transparency and Accountability in the Administration of the Texas Universal Service Fund, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the _____ day of _____ 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER