

PROJECT NO. 41608

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES RELATING TO	§	
TELECOMMUNICATIONS TO	§	OF TEXAS
CONFORM TO PURA §56.023	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.403 AND §26.404 AND
NEW §26.405 AS APPROVED AT THE MAY 30, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP), and to §26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan, and new §26.405, relating to Financial Need for Continued Support. The amendments and new rule will conform the commission's Substantive Rules to Senate Bill 583 of the 83rd Legislature, Regular Session, enacted in 2013, which requires the commission to reduce the support from the Texas Universal Service Fund (TUSF) available to certain incumbent local exchange companies (ILECs) over a three-year period and establish a procedure for affected ILECs to petition the commission in order to show financial need for continued support from the TUSF. Project Number 41608 is assigned to this proceeding.

Liz Kayser, Section Director in the Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Ms. Kayser has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with

Senate Bill 583. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Kayser has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

The commission solicits specific comments regarding the following questions:

- (1) In determining the ILEC's financial need for continued support from the TUSF, to what extent should the Commission consider both the expenses incurred by the ILEC, as well as the revenues received by the ILEC?
- (2) To what extent does PURA allow the Commission to consider the revenue received by the ILEC in a contested case to determine the ILEC's financial need for continued support from the high cost programs of the TUSF?

Comments on the questions and proposed sections 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. Sixteen copies of comments to the proposed sections are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the questions and the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 41608.

The amendments and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2013) (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; and specifically, Senate Bill 583 which amended PURA §§56.023, 56.024, 56.026, 56.031, and 56.032.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, Senate Bill 583 which amended PURA §§56.023, 56.024, 56.026, 56.031, and 56.032.

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

(a)–(e) (No change.)

(f) **Support Reduction.** The commission shall adjust the support to be made available from the THCUSP according to the following criteria.

(1) For each ILEC that is not electing under subsection (e)(6) of this section and that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC is eligible to receive for each exchange on December 31, 2016 from the THCUSP is reduced:

(A) on January 1, 2017, to 75 percent of the level of support the ILEC is eligible to receive on December 31, 2016;

(B) on January 1, 2018, to 50 percent of the level of support the ILEC is eligible to receive on December 31, 2016; and

(C) on January 1, 2019, to 25 percent of the level of support the ILEC is eligible to receive on December 31, 2016.

(2) An ILEC subject to this subsection may file a petition to show financial need for continued support pursuant to §26.405(f)(1) of this title (relating to Financial Need for Continued Support) on or before January 1, 2019.

(g)(f) **Reporting requirements.** An ETP that receives support pursuant to this section shall report the following information:

- (1) **Monthly reporting requirement.** An ETP shall report the following to the TUSF administrator on a monthly basis:
 - (A) the total number of eligible lines for which the ETP seeks TUSF support;
and
 - (B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.
- (2) **Quarterly filing requirements.** An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.
 - (A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.
 - (B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.
 - (C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.
- (3) **Annual reporting requirements.** An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.
- (4) **Other reporting requirements.** An ETP shall report any other information that is required by the commission of the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

(a)–(f) (No change.)

(g) **Support Reduction.** The commission shall adjust the support to be made available from the SRILEC USP according to the following criteria.

(1) For each ILEC ETP that is electing under PURA, Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC ETP is eligible to receive for each exchange on December 31, 2017 from the SRILEC USP is reduced:

(A) on January 1, 2018, to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017;

(B) on January 1, 2019, to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017; and

(C) on January 1, 2020, to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017.

(2) An ILEC ETP subject to this subsection may file a petition to show financial need for continued support pursuant to §26.405(f)(1) of this title (relating to Financial Need for Continued Support) on or before January 1, 2020.

(h)(g) **Reporting requirements.** An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) **Monthly reporting requirements.** An ETP shall report on a monthly basis:

- (A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and
 - (B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.
- (2) **Quarterly reporting requirement.** An ETP shall file quarterly reports with the commission showing actual SRILEC USP receipts by study area.
- (A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 ~~P.M~~p.m. on the 30th calendar day after the end of the calendar quarter reporting period.
 - (B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.
 - (C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.
- (3) **Annual reporting requirements.** An ETP shall confirm annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.
- (4) **Other reporting requirements.** An ETP shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements to the TUSF.

§26.405. Financial Need for Continued Support..

- (a) **Purpose.** This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.
- (b) **Application.** This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.
- (2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own

facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

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

(d) **Determination of financial need.**

(1) **Criteria to determine financial need.** For each exchange that is served by an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section, the commission shall determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if and only if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) **Establishing the existence of an unsubsidized wireline voice provider competitor.** For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission shall determine whether an

exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) provides basic local service using wireline-based technology.

(B) Utilizing Version 7 of the National Broadband Map, the commission shall determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange shall be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission shall determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served

by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the National Broadband Map creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the National Broadband Map with regard to the presence of an unsubsidized wireline voice provider competitor within a particular census block.

(e) **Criteria for determining amount of continued support.** In a proceeding conducted pursuant to subsection (f) of this section, the commission shall set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts shall be effective beginning with the first disbursement following a commission order entered pursuant to subsection (f)(2) of this section, except that they shall not be effective earlier than January 1, 2017 for an exchange with service supported by the THCUSP or earlier than January 1, 2018 for an exchange with service supported by the SRILEC USP.

(1) **Exchanges in which the ILEC ETP does not have a financial need for continued support.** For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission shall reduce the monthly per-line support

amount to zero. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and which is not included in the petition, the commission shall reduce the monthly per-line support amount to zero.

(2) Exchanges in which the ILEC ETP has a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission shall set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange shall be equal to

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2016 for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2017 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request pursuant to subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated pursuant to subsection (g) of this section for an ILEC ETP that has filed a request pursuant to subsection (g) of this section.

- (B) Initial monthly per-line support amounts for each exchange shall be reduced by the same proportion as the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC ETP in the twelve months prior to the filing of a petition pursuant to subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed pursuant to subsection (f)(1)(C) of this section.
- (C) For each exchange with service supported by the THCUSP, monthly per-line support shall not exceed:
- (i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;
 - (ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;
 - (iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or
 - (iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.
- (D) For each exchange with service supported by the SRILEC USP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2018, and before January 1, 2019; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILECT USP at the time of filing of a petition pursuant to subsection (f)(1) of this section.

(F) **Portability of support.** The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(f) **Proceeding to Determine Financial Need and Amount of Support.**

(1) **Petition to determine financial need.** An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case

proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP may only file one petition pursuant to this subsection. A petition filed pursuant to this subsection shall include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition pursuant to this subsection shall provide notice as required by the presiding officer pursuant to §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice shall be published in the *Texas Register*.

(C) A petition filed pursuant to this subsection shall include a summary of the following expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve months prior to the filing of the petition:

- (i) Plant-specific operations expense;
- (ii) Plant non-specific operations expense;
- (iii) Customer operations expense;
- (iv) Corporate operations expense;
- (v) Depreciation and amortization expenses;
- (vi) Other operating expenses;
- (vii) Total telecom plant in service;
- (viii) Total property held for future use; and
- (ix) Total telecom plant under construction.

(D) A summary filed pursuant to this subsection shall be filed publicly. Workpapers filed pursuant to this subsection may be filed publicly or under seal. Upon receipt of a petition pursuant to this section, the commission shall initiate a contested case proceeding to determine the eligibility of the ILEC ETP to receive continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission shall set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) The commission shall issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP shall continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) An ILEC ETP shall not be subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) The ILEC ETP filing a petition pursuant to this subsection shall bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) **De-averaging of the support received by ILEC ETPs from the SRILEC USP.** On or before January 1, 2017, an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on

December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission shall utilize per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

<u>Residential Line Density</u>	<u>Proxy Per-Line</u>
<u>Per Square Mile</u>	<u>Support Amount</u>
<u>0 to 2.49</u>	<u>\$120.53</u>
<u>2.50 to 4.99</u>	<u>\$69.82</u>
<u>5 to 9.99</u>	<u>\$46.46</u>
<u>10 to 14.99</u>	<u>\$31.45</u>
<u>15 to 19.99</u>	<u>\$18.81</u>
<u>20 to 24.99</u>	<u>\$14.78</u>
<u>25 to 29.99</u>	<u>\$10.51</u>
<u>30 to 49.99</u>	<u>\$4.33</u>
<u>50 or greater</u>	<u>\$1.83</u>

(2) Utilizing the per-line proxy support amount levels set forth in this subsection, the commission shall create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual

supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange shall be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed pursuant to subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) **Reporting requirements.** An ILEC ETP that receives support pursuant to this section shall remain subject to the reporting requirements of §26.403(g) or §26.404(h) of this title.

(i) **Additional Financial Assistance.** Nothing in this section shall be interpreted to prohibit an ILEC or cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance pursuant to §26.408 of this title (relating to Additional Financial Assistance (AFA)).

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

**ISSUED IN AUSTIN, TEXAS ON THE 4TH DAY OF JUNE 2014 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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