

PROJECT NO. 39938

RULEMAKING PROCEEDING	§	PUBLIC UTILITY COMMISSION
TO AMEND SUBSTANTIVE RULES	§	
RELATING TO THE SMALL AND	§	OF TEXAS
RURAL INCUMBENT LOCAL	§	
EXCHANGE COMPANY UNIVERSAL	§	
SERVICE PLAN	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.412,
REPEAL OF §26.404, AND NEW §26.404
AS APPROVED AT THE JUNE 13, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §26.412, relating to the Lifeline Service Program, the repeal of the current §26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan, and new §26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP). The amendment and new rule will conform §26.404 and the amended §26.412 to Senate Bill 980 of the 82nd Legislature, Regular Session, enacted in 2011. Additionally, the amendment and new rule are proposed in compliance with §26.404(h), which requires a review of the SRILEC USP within 90 days of the Federal Communications Commission's (FCC) adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas. The FCC released such an order on November 18, 2011 in WC Docket No. 05-337. Project Number 39938 is assigned to this proceeding.

The proposed new §26.404 provides for a reduction in SRILEC USP support over a four-year period that is equal to the amount of additional revenue that each telecommunications provider calculates will be generated if that telecommunications provider were to charge a reasonable rate,

as determined by the commission, for basic local telecommunications service to all residential customers.

Dr. Mark Bryant, Wholesale Market Economist, 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 sections.

Dr. Bryant has determined that for each year of the first five years that the proposed sections are in effect, the public benefit anticipated as a result of enforcing the amendment and new rule will be compliance with Senate Bill 980 and House Bill 2295. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Dr. Bryant has also determined that for each year of the first five years the proposed sections are in effect, there should be no effect on 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 public hearing must be received by Thursday, August 9, 2012. Notice of such public hearing, if requested, will be filed with the commission under Project Number 39938.

Comments on the 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, by Thursday, August 9, 2012. Reply comments may be submitted by Friday, August 24, 2012. When commenting on the proposed sections, the commission is particularly interested in receiving specific, quantified estimates of how the proposed amendment and new rule or any suggested amendment or alternatives to them will impact future disbursements from the Texas Universal Service Fund, and correspondingly, quantifications of the anticipated impact of the proposed amendment and new rule or any suggested amendment or alternatives to them on customer rates. Sixteen copies of comments and reply comments on the proposed sections are required to be filed pursuant to §22.71(c) of this title. Comments and reply comments should be organized in a manner consistent with the organization of the amendment and new rule. All comments should refer to Project Number 39938.

The amendment, repeal, and new rule are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (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 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

Cross Reference to Statutes: PURA §14.002, Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

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

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

- (a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so that basic local telecommunications service or its equivalent may be provided at reasonable rates in a competitively neutral manner.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Eligible line** — A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.
 - (2) **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)).
 - (3) **Small incumbent local exchange company** — An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(c) **Application.**

(1) **Small or rural ILECs.** This section applies to small ILECs, as defined in subsection (b) of this section, and to rural ILECs, as defined in §26.5 of this title (relating to Definitions), that have been designated ETPs.

(2) **Other ETPs providing service in small or rural ILEC study areas.** This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs.

(d) **Service to be supported by the Small and Rural ILEC Universal Service Plan.** The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(e) **Criteria for determining amount of support under Small and Rural ILEC Universal Service Plan.** The commission shall determine the amount of per-line support to be made available to ETPs in each eligible study area. The amount of support available to each ETP shall be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) **Determining base support amount available to ETPs.** The initial per-line monthly base support amount for a small or rural ILEC ETP shall be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP

access line count as of January 1, 2012. The initial per-line monthly base support amount shall be reduced as described in paragraph (3) of this subsection.

- (2) **Determination of the reasonable rate.** The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. An increase to an existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding.
- (3) **Annual reductions to the Small and Rural ILEC Universal Service Plan per-line support.** As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission shall calculate the amount of additional revenue that would result if the small and rural ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2014. The small or rural ILEC ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period. This reduction shall be accomplished by reducing support for each study area proportionally.

- (f) **Small and Rural ILEC Universal Service Plan support payments to ETPs.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.
- (1) **Payments to small or rural ILEC ETPs.** The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.
- (2) **Payments to ETPs other than small or rural ILECs.** The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.
- (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 the total number of eligible lines served by the ETP in its study area to the TUSF administrator on a monthly basis.
- (2) **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.

- (3) **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.

§26.412. Lifeline Service Program.

(a) – (e) (No change.)

(f) **Lifeline support and recovery of support amounts.**

(1) **Lifeline discount amounts.** All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

(A) – (F) (No change.)

(G) Additional Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Area Discount -- Beginning January 1, 2014, Lifeline providers operating in the service areas of those incumbent local exchange carriers that participate in the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP ILEC) shall provide a reduction to Lifeline service rates equal to 25% of any actual increase by a SRILEC USP ILEC to its residential basic network service rate that occurs in a SRILEC USP ILEC's Public Utility Regulatory Act (PURA) Chapter 53 regulated exchanges and is consistent with §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(2) (No change.)

(g) (No change.)

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 9th DAY OF JULY, 2012 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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