

PROJECT NO. 35629

RULEMAKING RELATING TO § PUBLIC UTILITY COMMISSION
INCREASE IN LIFELINE §
DISCOUNT AMOUNT § OF TEXAS

ORDER ADOPTING AMENDMENT TO §26.412
AS APPROVED AT THE NOVEMBER 5, 2008 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §26.412, relating to Lifeline Service Program, with changes to the proposed text as published in the August 29, 2008 issue of the *Texas Register* (33 TexReg 7122). The amendment increases the Lifeline Discount Amount (LDA) for eligible customers of Eligible Telecommunications Providers (ETPs) operating in the service areas of AT&T Texas, Verizon, Embarq, and Windstream, or their successors, by an amount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the four companies mentioned above as a result of the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Final Order filed on April 25, 2008 in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. SUBST. R. 26.403*. This amendment is adopted under Project Number 35629.

The commission received comments on the amendment from Embarq (a/k/a United Telephone Company of Texas, Inc. and Central Telephone Company of Texas, Inc.), the Office of Public Utility Counsel (OPC), and Verizon (GTE Southwest Incorporated d/b/a Verizon Southwest).

Comments

Embarq, OPC, and Verizon stated that the amendment properly reflects the settlement agreement in Docket Number 34723. Embarq stated that the amendment addresses the methodology for calculating the additional Lifeline support amounts and the state support amounts, and provides a timetable for filing compliance tariffs and appropriate effective dates. Embarq stated its support for the amendment and that the methodology proposed is simple to follow and implement. OPC stated that it was very supportive of the amendment and that it will significantly benefit low-income customers and maintain the affordability of telecommunications services for those customers. OPC also stated that the amendment eases administrative expenses while maximizing the benefit to eligible customers. Verizon stated that the amendment properly reflects the parties' settlement and suggested minor changes for the sake of clarity and uniformity.

Commission Response

The commission declines to move the placement of “Settled Discount” as Verizon proposed, because Verizon’s proposal would make the definition less clear by placing the defined term within the definition, before numbered clauses (i) and (ii), which form part of the definition. The commission also declines to replace “actual” with “approved,” because the rule is clear with the inclusion of “actual” and “actual” was used in the Unanimous Settlement Agreement approved by the commission in Docket Number 34723.

The commission has further determined that: (1) the defined terms used in the rule should be changed to more closely reflect the language used in Docket Number 34723 and (2)

subsection (f) should be amended to clarify and distinguish the additional state reduction with federal matching in (f)(1)(C) and (f)(2)(A)(iii) from the additional state support resulting from Docket Number 34723. The commission has determined that the following non-substantive modifications to the rule as originally proposed in the Proposal for Publication are necessary:

1. Some of the defined terms have been changed to more closely align with the language in Docket Number 34723 as follows: (a) “Settling Parties” is now referred to as “THCUSP ILECs,” (b) “Settled Discount” is now referred to as “THCUSP ILEC Area Discount,” and (c) “Settled Rate Increase” is now referred to as “Rate Increase.”
2. There is no change to subsection (f)(1)(C) resulting from this rulemaking as originally proposed.
3. New subsection (f)(1)(F) has been created containing all language relating to the additional discount resulting from Docket Number 34723. This change clarifies that the discount in subsection (f)(1)(C) is the additional state rate reduction to which federal matching applies, while the discount in new subsection (f)(1)(F) is not subject to federal matching.
4. Proposed clauses in subsection (f)(1)(C) have been renumbered and reordered as clauses under new subsection (f)(1)(F).
5. A new clause (v) has been added to new subsection (f)(1)(F) to clarify that competitive local exchange carriers operating in the service areas of THCUSP ILECs are required to implement any applicable THCUSP ILEC Area Discount and are required to file a tariff accordingly.

6. **Subsection (f)(2)(B) has been divided into three clauses (i, ii and iii) to distinguish (i) the support amounts for which federal matching is available from (ii) those for which federal matching is not available, and (iii) clarifying that an ETP that is also an ETC will continue to receive the support amounts in subparagraph A of subsection (f)(2).**
7. **Clause (v) of subsection (f)(2)(C) has been divided into two clauses (v and vi) to distinguish between (v) the support amounts for which federal matching is available and (vi) those for which federal matching is not available.**

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (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 §56.021, which provides the commission the authority to adopt and enforce rules relating to the reimbursement of telecommunications carriers for the provision of lifeline service.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.021.

§26.412. Lifeline Service Program.

- (a) **Scope and purpose.** Through this section, the commission seeks to identify and make available Lifeline Service to all qualifying customers and households, establish a procedure for Lifeline Automatic Enrollment and Lifeline Self-Enrollment, and define the responsibilities of all providers of local exchange telephone service that provide Lifeline Service, qualified customers, the Texas Health and Human Services Commission (HHSC), and the Low-Income Discount Administrator (LIDA) Program.
- (b) **Applicability.** This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:
- (1) ETC -- A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).
 - (2) ETP -- A provider designated as an ETP as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
 - (3) Resale ETP -- A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as an ETP as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible

Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

- (4) Non-ETP/ETC Certificated Provider -- Any certificated provider of local exchange telephone service that chooses not to become an ETP or an ETC as defined by §§26.417, 26.418, or 26.419 of this title.

(c) **Definitions.**

- (1) Qualifying low-income customer -- A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section.
- (2) Toll blocking -- A service provided by Lifeline providers that let customers elect not to allow the completion of outgoing toll calls from their telephone.
- (3) Toll control -- A service provided by Lifeline providers that allow customers to specify a certain amount of toll usage that may be incurred on their telephone account per month or per billing cycle.
- (4) Toll limitation -- Denotes either toll blocking or toll control for Lifeline providers that are incapable of providing both services. For Lifeline providers that are capable of providing both services, "toll limitation" denotes both toll blocking as defined in paragraph (2) of this subsection and toll control as defined in paragraph (3) of this subsection.
- (5) Eligible resident of Tribal lands -- A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on or near a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a

“reservation” is defined as any federally recognized Indian tribe’s reservation, pueblo, or colony.

- (6) Income -- As defined in 47 C.F.R. §54.400(f) includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran’s benefits, inheritances, alimony, child support payments, worker’s compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.
- (d) **Customer Eligibility Requirements.** A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the LIDA. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.
- (1) The customer’s household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually;
- (2) A customer who receives benefits from or has a child that resides in the customer’s household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy

Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code; or

- (3) A customer is an eligible resident of tribal lands as defined in subsection (c)(5) of this section.
- (e) **Lifeline Service Program.** Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:
- (1) **Designated Lifeline services.** Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101(a)(1)-(9) (relating to Supported Services for Rural, Insular and High Cost Areas).
 - (2) **Toll limitation.** Lifeline providers shall offer toll limitation to all qualifying low-income customers at the time the customer subscribes to Lifeline Service. If the customer elects to receive toll limitation that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by otherwise applicable toll limitation charges.
 - (3) **Disconnection of service.**
 - (A) **Disconnection prohibition.** Lifeline providers may not disconnect Lifeline Service for non-payment of toll charges.
 - (B) **Discontinuance of Lifeline Discounts for customers automatically enrolled.** The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days for

renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self enroll with LIDA upon the expiration of their automatic enrollment.

- (C) Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with LIDA for an additional seven months.
- (4) **Number Portability.** Consistent with 47 C.F.R. §52.33(a)(1)(C), Lifeline providers may not charge Lifeline customers a monthly number-portability charge.
- (5) **Service deposit prohibition.** If the qualifying low-income customer voluntarily elects toll limitation from the Lifeline provider, the Lifeline provider may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits) in order to initiate Lifeline Service.
- (6) **Ancillary services.** A Lifeline provider shall provide customers who apply for or receive Lifeline Service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network services.
- (7) **Bundled packages.** A Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other

consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.

(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) Waiver of the monthly subscriber line charge (SLC) -- Lifeline providers shall grant a waiver of the monthly SLC at the rate tariffed by the incumbent local exchange carrier serving the area of the qualifying low-income customer. If the ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the ILEC serving the area of the qualifying low-income customer.
- (B) Federally approved \$1.75 reduction -- A Lifeline provider shall give a qualifying low-income customer a federally approved reduction of \$1.75 in the monthly amount of intrastate charges paid pursuant to 47 C.F.R. §54.403 (relating to Lifeline Support Amount).
- (C) Additional state reduction with federal matching -- A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of \$3.50 in the monthly amount of intrastate charges.
- (D) Federal match of state reduction -- A Lifeline provider shall provide a further federally approved reduction equal to one-half the amount of the

state-mandated reduction in subparagraph (C) of this paragraph up to a maximum of \$1.75.

- (E) Additional federal Lifeline support of up to \$25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).
- (F) Additional Texas High Cost Universal Service Plan (THCUSP) Incumbent Local Exchange Carrier (ILEC) Area Discount –
 - (i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide, a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan*,

Pursuant to PURA §56.031 and P.U.C. SUBST. R. §26.403 (Rate Increase).

- (ii) A THCUSP ILEC Area Discount shall be calculated by a THCUSP ILEC on the basis of the weighted average of the Rate Increase(s). The calculation of the weighted average of the Rate Increase(s) shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Rate Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Rate Increase times the corresponding Rate Increase. The weighted average of the Rate Increase(s) calculation shall be included in the tariff filing made to implement the THCUSP ILEC AREA Discount.
- (iii) A THCUSP ILEC Area Discount shall be provided to all qualifying Lifeline customers who are located in the service area of the THCUSP ILEC that has implemented the corresponding Rate Increase.
- (iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a Rate Increase.
- (v) A competitive local exchange carrier (CLEC) Lifeline provider operating in the service area of a THCUSP ILEC shall file with the

commission tariffs or price lists implementing the appropriate THCUSP ILEC Area Discount.

- (vi) The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding Rate Increase.

(2) **Lifeline support amounts.** The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection:

(A) ETC – Pursuant to 47 C.F.R. §54.403(a), the federal Lifeline support an ETC shall receive is:

- (i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service.
- (ii) Additional federal Lifeline support in the amount of \$1.75 per month.
- (iii) Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month.
- (iv) Additional federal Lifeline support of up to \$25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(B) ETP –

- (i) An ETP shall receive state support of up to a maximum of \$3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection.
 - (ii) An ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.
 - (iii) If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.
- (C) Resale ETP – A resale ETP shall receive Lifeline Service support equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The Texas Universal Service Fund (TUSF), regardless of whether the Lifeline Service Discount is state or federally mandated, will provide all Lifeline Service support.
- (i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. If the Resale ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC

tariffed by the ILEC serving the area of the qualifying low-income customer;

- (ii) Additional federally mandated Lifeline support in the amount of \$1.75 per month;
- (iii) Additional federally mandated Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month;
- (iv) Additional federally mandated Lifeline support of up to \$25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e);
- (v) A resale ETP shall receive state-mandated support of up to a maximum of \$3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection; and
- (vi) A Resale ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(D) Non-ETP/ETC - A Non-ETP/ETC is not eligible to receive any state or federally mandated Lifeline support.

(g) Obligations of the customer and the Lifeline provider.

(1) **Obligations of the customer.**

- (A) Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (d) of this section may provide the LIDA with self-enrollment for Lifeline benefits.
- (B) Customers receiving benefits under the programs listed in subsection (d) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures as provided by the LIDA unless they provide the LIDA with a request to be excluded from Lifeline Service.
- (C) Customers receiving benefits under the programs listed in subsection (d) of this section and who do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.
- (D) Opportunity for contest.
 - (i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.
 - (ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.
 - (iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal

complaint pursuant to §22.242(e) of this title (relating to Complaints).

- (2) Obligations of Lifeline providers.
 - (A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.
 - (i) A Lifeline provider shall identify, on the initial database provided by the LIDA, those customers to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income customers.
 - (ii) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible customer changes the telephone service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective.
 - (iii) Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.
 - (iv) The LIDA shall provide a self-enrollment form by direct mail at the customer's request. The LIDA shall maintain customers' self-

enrollment forms and provide a database of self-enrolling customers to all Lifeline providers.

(B) **Tariff Requirement.** Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) **Reporting requirements.** Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information:

(i) **Initial reporting requirements.** Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline Service plan meets the requirements of this section.

(ii) **Monthly reporting requirements.** Lifeline providers shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the Lifeline providers. Resale ETPs shall not report any customers whose Lifeline Services were purchased from an ILEC as a wholesale Lifeline Service offering. The ILEC from whom these lines were purchased will include those customers in its total number of qualified low-income customers reported to the TUSF administrator. Non-ETP Lifeline providers are excluded

from this reporting requirement since they have elected not to receive any type of Lifeline support.

- (iii) **Other reporting requirements.** Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF. Non-ETP Lifeline providers may be required to report certain information to the commission but will not be required to submit information to the TUSF administrator since they have elected not to receive any type of Lifeline support.
- (iv) ETPs shall file the following information with the administrator of the Federal Lifeline Program. Non-ETP Lifeline providers are exempt from this requirement.
 - (I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);
 - (II) the number of qualifying low-income customers served by the ETP;
 - (III) the amount of state assistance; and
 - (IV) other information required by the administrator of the Federal Lifeline Program.

- (D) **Notice Requirement.** A Lifeline provider shall provide the following notices of Lifeline Service:
- (i) Notice of Lifeline Service in any directory it distributes to its customers advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;
 - (ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;
 - (iii) Inform all customers both orally and in writing of the existence of the Lifeline Service program when they request or initiate service or change service locations or providers. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format; and
 - (iv) Shall publicize the availability of Lifeline Service in a manner reasonably designed to reach those likely to qualify for the service.
- (E) **Confidentiality agreements.** Each Lifeline provider must execute a confidentiality agreement with the LIDA prior to receiving the LIDA's

eligibility database. The agreement will specify that client information is released by the LIDA to the Lifeline provider for the sole purpose of providing Lifeline Service to eligible customers and that the information cannot be released by the Lifeline provider or be used by the Lifeline provider for any other purpose.

This agency hereby 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 §26.412 relating to Lifeline Service Program is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF NOVEMBER 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON JR., COMMISSIONER