

The Public Utility Commission of Texas adopts amendments to §26.401, §26.403, §26.404, §26.413, §26.414, §26.415, §26.417, and §26.418 and new §26.410 relating to the Texas Universal Service Fund (TUSF). The amendments are adopted with changes to the proposed text as published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10462). The new rule and amended rules are necessary as a result of Senate Bill 560 (SB 560), Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210 (Vernon) (to be codified as amendments to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§56.021, 56.023, 56.024, 56.026, 56.028, 56.071, 56.072). The amendments and new rule are adopted under Project Number 21163. The commission will not adopt amendments to §26.420 as published in the *Texas Register*. The commission will republish §26.420 to make changes further clarifying the administration of the TUSF.

The commission received comments on the proposed new and amended rules from AT&T Communications of the Southwest, Inc. (AT&T), MCI WorldCom (MCIW), Southwestern Bell Telephone (SWBT), and Texas Statewide Telephone Cooperative, Inc. (TSTCI).

Commentors in favor of adoption of the rules are AT&T, MCIW, and TSTCI. SWBT is not in favor of the adoption of the rules.

TSTCI has no problems with the rules as published.

Section 26.403 established financial guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve high cost areas. Section 26.403(e) established the criteria for determining the amount of support an ETP will receive under the Texas High Cost Universal Service Plan (THCUSP). AT&T recommends that §26.403(e)(3)(D) be deleted and instead insert the word "partially" at the appropriate place in §26.403(e)(3)(C). AT&T contends that the statute mentions services "partially" and "solely" provisioned through the use of unbundled network elements (UNEs) in a single breath and refers to a single allocation method.

The commission agrees with AT&T's recommendation that the allocation methods be clarified. The commission modifies §26.403(e)(3)(C) appropriately.

Section 26.403(e)(3) sets forth the calculations for THCUSP payments. Subsection (e)(3)(C) sets forth the calculation adjustments made when service is provided solely or partially through the purchase of UNEs. Section 26.420(g)(3)(B) is related to §26.403(e)(3)(C) in that it discusses TUSF disbursement reductions applicable when service is provided solely or partially through the purchase of UNEs. AT&T states that §26.420(g)(3)(B) should refer to the commission decision in Docket Number 18515, instead of merely incorporating that decision by reference.

The commission agrees with AT&T's suggestion. However, the commission believes the change is more appropriately incorporated into §26.403. Therefore the commission incorporates into §26.403(e)(3)(C) the commission's decision in Docket Number 18515 regarding the allocation of support when service is provided either solely or partially through UNEs.

Section 26.410 implements the provisions of PURA §56.028. AT&T states that it is unaware of any other reasonable criteria, beyond PURA §56.028, that should be applied to further define the scope of the eligible High Cap services addressed in §26.410. AT&T states that the reimbursements for rate reductions supported under §26.410 should not duplicate discounts or other rate reductions supported through the educational percentage discount rate (e-rate) discounts in §26.216 relating to Educational Percentage Discount Rates (E-Rates). AT&T proposes that the extent that a discount to a tariffed rate is available under §26.216, TUSF support under §26.410 should be applied only to any remaining difference between the discounted rate and the lowest rate offered by a Chapter 58 incumbent local exchange carrier (ILEC), pursuant to PURA §56.028. Alternatively, AT&T suggests that the commission require a carrier to elect to receive support only under one of the two sections.

The commission agrees that to the extent a discount to a tariffed rate is available under §26.216 TUSF support under §26.410 should be applied only to any remaining difference between the discounted rate and the lowest rate offered by a Chapter 58 ILEC, pursuant to PURA §56.028. Therefore, §26.410(c), which addresses the terms of reimbursement, is modified appropriately.

AT&T also states that §26.410 may require a local exchange carrier (LEC) to establish rates below its costs, whereas, §26.141(e) and (f), relating to Distance learning, Information Sharing Programs, and Interactive Multimedia Communications, require service to be provided at cost based rates. To avoid problems with the conflicting language, AT&T suggests that carriers be required to state the basis on which they are establishing rates (statewide cost, customer specific cost, or by price comparison). At a minimum, AT&T urges the commission to establish some

comparability between customers before allowing a small LEC to receive reimbursement for reducing its rates to a Chapter 58 company's customer-specific contract rate.

The commission agrees with AT&T's concern and modifies §26.410(d), which establishes the reporting requirements for ILECs receiving reimbursement for providing intraLATA interexchange high capacity service at reduced rates for entities described in PURA §58.253(a). The commission adds §26.410(d)(2) to require a small LEC, upon commission request, to designate the basis on which it is establishing rates.

Section 26.414 establishes the statewide Telecommunications Relay Service (TRS). Section 26.414(e) addresses the composition and responsibilities of the Relay Texas Advisory Committee (RTAC). AT&T recommends that §26.414(e)(1)(A) be revised because it is awkward. AT&T believes the language would be more understandable if revised to read: "(A) two persons with disabilities other than disabilities of hearing and speech that impair the ability to effectively access the telephone network."

The commission agrees and incorporates the modification.

Section 26.417 provides the requirements for the commission to designate telecommunications providers as ETPs to receive funds from the TUSF. Section 26.417(g) establishes the circumstances in which an ETP designation can be relinquished. SWBT argues that §26.417(g)(3)(A) and (B) inappropriately give the commission authority to eliminate or partially reduce an electing company's TUSF disbursements for reasons other than as specifically set forth

in PURA §56.026(c)(1) and (c)(2). SWBT asserts that these two sections do not comply with PURA and therefore recommends that they be deleted from the rules. SWBT adds that these two sections rely on the quality of service rules under development in Project 19666, which as currently drafted, only apply to dominant certificated telecommunications utilities (DCTU). To ensure equality, the proposed quality of service rules should be amended to make sure that they apply either to all telecommunications providers or, at a minimum, to any telecommunications provider that seeks to be designated as an ETP to receive TUSF support.

AT&T has no opposition to the amended §26.417(g)(3)(A) and new §26.417(g)(3)(B). AT&T states that SWBT's recommendation would allow SWBT to receive TUSF disbursements even if it were no longer qualified as an ETP and not offering local service to customers. AT&T believes the commission should support a more balanced and reasonable construction of PURA than that suggested by SWBT. AT&T opposes SWBT's suggestion that the quality of service rules be applied to all telecommunications providers. AT&T states that whatever justification may exist in the statute for treating all ETPs the same does not extend to all telecommunications providers generally.

The commission disagrees with SWBT's assertion that the only two criteria that allow the commission to eliminate or partially reduce an electing company's TUSF disbursements are those specifically set forth in PURA §56.026(c)(1) and (c)(2). The commission relies on PURA §56.023(a)(1) and (b) as its source of authority. PURA §56.023(a)(1) requires the commission to adopt eligibility criteria and review procedures. PURA §56.023(b) mandates that the eligibility

criteria require that a telecommunications provider be in compliance with the commission's quality of service requirements.

The commission also modifies §26.417(f)(1)(B)(V) to update references to §23.61(c), (d) and (e) that were repealed and replaced by §§26.52, 26.53 and 26.54. This change conforms the rule to the same change already made in §26.417(c)(1)(D).

As regards SWBT's suggestion that the quality of service rules be amended to apply to all telecommunications providers, the commission does not believe this is the appropriate forum to make that specific modification. However, the commission notes that these TUSF rules, as amended, apply the same service quality standards to all ETPs, as suggested by SWBT, in a manner consistent with AT&T's comments.

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

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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 PURA §56.021, which requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021, 56.023, 56.024, 56.026, 56.028, 56.071, 56.072, and 56.1085.

**§26.401. Texas Universal Service Fund (TUSF).**

(a) **Purpose.** The purpose of the Texas Universal Service Fund (TUSF) is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. Because targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow accessibility by consumers, the TUSF will assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas. In addition, the TUSF will reimburse qualifying entities for revenues lost as a result of providing Lifeline and Tel-assistance services to qualifying low-income consumers under the Public Utility Regulatory Act (PURA); reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications devices and services for the disabled; and reimburse the Texas Department of Human Services, the Texas Department of Housing and Community Affairs, the Texas Department for the Deaf and Hard of Hearing, the TUSF administrator, and the Public Utility Commission for costs incurred in implementing the provisions of PURA Chapter 56 (relating to Telecommunications Assistance and Universal Service Fund).

(b) **Programs included in the TUSF.**

(1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));

- (2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
- (3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
- (4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
- (5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
- (6) Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);
- (7) Section 26.413 of this title (relating to Tel-Assistance Service);
- (8) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
- (9) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
- (10) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
- (11) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and
- (12) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF)).

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

- (a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service 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) **Benchmark** — The per-line amount above which THCUSP support will be provided.
  - (2) **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.
  - (3) **Eligible line** — A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.
  - (4) **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)).

- (5) **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.
  
- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.
  
- (d) **Service to be supported by the THCUSP.** The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.
  - (1) **Initial determination of the definition of basic local telecommunications service.** Basic local telecommunications service shall consist of the following:
    - (A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;
    - (B) tone dialing service;
    - (C) access to operator services;
    - (D) access to directory assistance services;

- (E) access to 911 service where provided by a local authority;
- (F) dual party relay service;
- (G) the ability to report service problems seven days a week;
- (H) availability of an annual local directory;
- (I) access to toll services; and
- (J) lifeline and tel-assistance services.

(2) **Subsequent determinations.**

- (A) Timing of subsequent determinations.
  - (i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from February 10, 1998.
  - (ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.
- (B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:
  - (i) the service is essential for participation in society;
  - (ii) a substantial majority, 75% of residential customers, subscribe to the service;
  - (iii) the benefits of adding the service outweigh the costs; and
  - (iv) the availability of the service, or subscription levels, would not increase without universal service support.

- (e) **Criteria for determining amount of support under THCUSP.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3) of this subsection.
- (1) **Determining base support amount available to ETPs.** The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.
- (A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.
- (B) Determination of the benchmark. The commission shall establish two benchmarks for the state, one for residential service and one for single-line business service. The benchmarks for both residential and single-line businesses will be calculated using the statewide average revenue per line as described in clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.

- (i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.
    - (ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single-line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single-line business lines served for the same period, divided by 12.
  - (C) Support under the THCUSP is portable with the consumer. An ETP shall receive support for residential and the first five single-line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.
- (2) **Proceedings to determine THCUSP base support.**
  - (A) Timing of determinations.
    - (i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from February 10, 1998.
    - (ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.

- (B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.
- (3) **Calculating amount of THCUSP support payments to individual ETPs.** After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.
  - (A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.
  - (B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.
  - (C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.

- (i) Solely through UNEs.
  - (I)  $USF \text{ cost} > (UNE \text{ rate} + \text{retail cost additive } (R)) > \text{revenue benchmark } (RB)$ . USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark. Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities-based competition is encouraged only if it is economic, i.e., reflective of real cost advantages in serving the customer; or
  - (II)  $USF \text{ cost} > RB > (UNE \text{ rate} + R)$ . The ILEC would receive the difference between USF cost and RB. In this case, where  $USF \text{ cost} > RB > (UNE \text{ rate} + R)$ , giving (USF

cost - RB) to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover (USF cost-RB) would minimize financial harm to the ILEC; or

(III)  $(\text{UNE rate} + R) > \text{USF cost} > \text{RB}$ . The ETP would receive the difference between USF cost and RB. Where  $(\text{UNE rate} + R) > \text{USF cost} > \text{RB}$ , giving  $(\text{USF cost} - \text{RB})$  to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover  $(\text{USF cost} - \text{RB})$  would minimize financial harm to the ETP.

(ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the HAI model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.

(f) **Reporting requirements.** An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.

(1) **Monthly reporting requirements.** An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) information regarding the access lines on the ETP's network including:

- (i) the total number of access lines on the ETP's network,
- (ii) the total number of access lines sold as UNEs,
- (iii) the total number of access lines sold for total service resale,
- (iv) the total number of access lines serving end use customers, and
- (v) the total number of eligible lines for which the ETP seeks TUSF support;

(B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and

(C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(3) of this section.

(2) **Annual reporting requirements.** An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(3) **Other reporting requirements.** An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

- (g) **Review of THCUSP after implementation of federal universal service support.** The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.

**§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 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 and a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan 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 the Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

- (3) **Small incumbent local exchange company (ILEC)** — An ILEC that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).
- (4) **Test year** — The fiscal year ending in 1997.

(c) **Application.**

- (1) **Small or rural ILECs.** This section applies to small ILECs and rural ILECs, as defined in subsection (b) of this section and/or §26.5 of this title (relating to Definitions), that have been designated ETPs by the commission pursuant to §26.417 of this title.
- (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 by the commission pursuant to §26.417 of this title.

- (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 the Texas High Cost Universal Service Plan (THCUSP)).

- (e) **Small and Rural ILEC Universal Service Plan monthly per-line support.** A monthly per-line amount of support for each small or rural ILEC study area shall be determined in a one-time calculation using data from such small or rural ILEC's test year that has been audited by an independent auditor in conformance with generally accepted accounting principles (GAAP).
- (1) **Calculation of the monthly per-line amount of support for each small or rural ILEC.** The toll pool amounts and access/toll revenue reductions determined in accordance with subparagraphs (A) and (B) of this paragraph shall be added together. To calculate the per-line amount of support, the resulting sum will then be divided by the average number of eligible lines served by such small or rural ILEC during the test year. To calculate the monthly per-line amount of support, the result shall be divided by 12.
- (A) Toll pool amounts. The toll pool amount for a small or rural ILEC shall be determined by subtracting the actual toll billed by the small or rural ILEC during the test year from its toll pool revenue requirement for the for the test year, as certified by the TUSF administrator.
- (B) Access/toll revenue reduction. At the time this section is implemented, a small or rural ILEC may reduce carrier common line (CCL), residual interconnection charge (RIC), and/or intraLATA toll rates. Upon commission approval a small or rural ILEC may recover a reasonable amount of the difference between the previous rates and the new rates, computed on the basis of minutes of use in the test year. This amount is

calculated by multiplying the difference between the previous rates and the new rates by the test year minutes of use.

- (2) **Freeze on support levels.** The per-line amount of support calculated in paragraph (1) of this subsection shall remain constant as long as the small or rural ILEC is eligible to receive funds pursuant to this section.
  - (3) **Switched Access Service Rate Reductions.** To the extent that the disbursements from the universal service fund under PURA §56.021(1) for small and rural local exchange companies are used to decrease the implicit support in intraLATA toll and switched access rates, the decrease shall be made in a competitively neutral manner.
- (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 report 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.
- (h) **Review of Small and Rural ILEC Universal Service Plan after implementation of federal universal service support.** Within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas, the commission shall initiate a project to investigate a mechanism by which ETPs receiving support pursuant to this section would transition to receiving support pursuant to §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

**§26.410. Universal Service Fund Reimbursement for Certain IntraLATA Service.**

- (a) **Purpose.** The purpose of this section is to implement the provisions of the Public Utility Regulatory Act (PURA) §56.028.
- (b) **Applicability.** Under this section, an incumbent local exchange company (ILEC) that is not an electing company under PURA Chapters 58 and 59 may request reimbursement through the Texas Universal Service Fund (TUSF) when providing intraLATA interexchange high capacity (1.544 Mbps) service at reduced rates for entities described in PURA §58.253(a).
- (c) **Reimbursement.** Reimbursement shall be retroactive to the date on which a non-electing ILEC's tariff containing the reduced rate was approved by the commission, or September 1, 1999, whichever is later. The amount of reimbursement shall be the difference between the ILEC's tariffed rate for that service, less any applicable discounts, and the lowest rate for that service offered by any local exchange company electing incentive regulation under PURA Chapter 58, multiplied by the number of eligible lines. The non-electing ILEC's rate for purposes of reimbursement shall be the rate effective on January 1, 1998. A non-electing ILEC without a tariffed rate on January 1, 1998, shall use the rate most recently approved by the commission.
- (d) **Reporting requirements.**

- (1) An ILEC awarded support under this section shall provide the TUSF administrator:
  - (A) the number of lines eligible for support; and
  - (B) the ILEC's tariffed rate, as of January 1, 1998, for the service; and
  - (C) the lowest rate offered for the service by any local exchange company electing incentive regulation under PURA Chapter 58.
- (2) Upon request of the commission, the ILEC awarded support under this section shall designate the basis on which it is establishing rates.

**§26.413. Tel-Assistance Service.**

- (a) **Application.** This section applies to local exchange companies (LECs) as defined by §26.5 of this title (relating to Definitions). In addition, this section applies to telecommunications providers that receive TUSF support in accordance with the TUSF rules, and any reference to or requirement imposed on LECs in this section shall also apply to those telecommunications providers.
- (b) **Definition.** The term "eligible consumer", when used in this section, shall mean that in order to be eligible for Tel-Assistance Service, the consumer must be a head of household and disabled, as determined by the Texas Department of Human Services (TDHS), or be 65 years of age or older; and have a household income at or below the poverty level, as

reported annually by the United States Office of Management and Budget in the *Federal Register*.

- (c) **Provision of Tel-Assistance Service.** Each LEC shall provide Tel-Assistance Service as provided in this section. A consumer eligible for Tel-Assistance Service also qualifies for Lifeline Service and Link Up Service as provided in §26.412 of this title (relating to Lifeline Service and Link Up Service Programs). Nothing in this section shall prohibit a person otherwise eligible to receive Tel-Assistance Service from obtaining and using telecommunications equipment or services designed to aid such person in utilizing qualifying telecommunications services.
- (1) **Rate reductions under Tel-Assistance Service.**
- (A) Each LEC shall provide Tel-Assistance Service to all eligible consumers within its certificated area in the form of a 65% reduction in the applicable tariff rate for the qualifying services provided.
- (B) The reduction for local area calling usage shall be limited to an amount such that, together with the reduction for local exchange access service, the overall rate reduction does not exceed the comparable reduction applicable to flat rate service.
- (2) **Texas Universal Service Fund (TUSF) reimbursement.** LECs providing Tel-Assistance Service to eligible consumers under this section are eligible for reimbursement from the TUSF of the lost revenue associated with the application of a 65% reduction in the applicable tariff rate for those accounts.

(d) **Obligations of the consumer, TDHS, and the LEC.**

- (1) **Consumer.** Consumers may apply for Tel-Assistance Service by obtaining an application form from TDHS. Persons who are eligible for Tel-Assistance Service, but do not have telephone service at the time TDHS provides its eligibility list to LECs, are responsible for initiating a request for qualifying services from their serving LEC.
- (2) **TDHS.** TDHS shall review the consumer's application form and shall determine if the consumer meets the eligibility criteria. TDHS shall provide each LEC with an initial list of persons eligible for Tel-Assistance Service and shall provide an updated list to each LEC on a semi-annual basis.
- (3) **LEC.**
  - (A) The LEC shall provide Tel-Assistance Service to all eligible consumers identified by TDHS within its certificated area if the existing service of those consumers meets the qualifications set forth in subsection (b) of this section. The LEC shall identify those consumers on the TDHS list to whom it is providing telephone service and shall determine if the existing telephone service qualifies. Within 60 days after receipt of the list, the LEC shall begin reduced billing for those eligible consumers subscribing to qualifying services.
  - (B) If the existing telephone service does not qualify, the LEC shall advise the eligible consumer by direct mail of changes necessary to satisfy Tel-Assistance Service criteria. The LEC shall advise the eligible consumer by direct mail that persons choosing not to make necessary changes to

their telephone service arrangements will not receive Tel-Assistance Service and that the eligible consumer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Tel-Assistance Service, or for service order charges associated with transferring the account into Tel-Assistance Service. If the eligible consumer changes the existing telephone service to qualifying services or initiates new qualifying service, the LEC shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.

(C) The LEC shall notify TDHS on a semi-annual basis of changes in the status of its Tel-Assistance Service consumers.

(e) **Specific service exceptions for Tel-Assistance Service.** No other local voice service may be provided to the dwelling place of a Tel-Assistance Service consumer, nor may single or party line optional extended area service, optional extended area calling service, foreign zone service or foreign exchange service be provided to a Tel-Assistance Service consumer.

(f) **Retroactive prohibition for Tel-Assistance Service.** Tel-Assistance Service shall not be available on a retroactive basis except for such instances in which the LEC failed to initiate reduced billing within the time frame established in subsection (d)(3)(A) of this section.

- (g) **Termination of Tel-Assistance Service.** Consumer certification is provided by TDHS subject to annual renewal. Reduced billing will continue until such time as either the TDHS notifies the LEC that the consumer is no longer eligible or the consumer establishes telephone service arrangements that do not satisfy the qualifications for Tel-Assistance Service. After Tel-Assistance Service is established, if the recipient requests a change in telephone service arrangements such that the new arrangements do not meet the qualifications, before making such changes, the LEC shall advise the consumer by direct mail that the requested changes will result in removal of the Tel-Assistance Service discount. If the consumer then chooses to have such changes made, the LEC shall terminate the discount at the time the change of service becomes effective.
- (h) **Reporting requirements for the provision of Tel-Assistance Service.** LECs shall file monthly reports with the TUSF administrator detailing the lost revenues associated with the 65% discount applied to Tel-Assistance Service accounts. The LECs shall also file activity reports showing the total number of accounts transferred into and out of Tel-Assistance Service in the previous month and the total number of Tel-Assistance Service accounts at the end of the month.
- (i) **Tariff requirement.** Each LEC shall file a tariff to implement Tel-Assistance Service in compliance with this section and with applicable law within 30 days of beginning to provide service. No other revision, addition, or deletion unrelated to Tel-Assistance Service shall be contained in the tariff.

**§26.414. Telecommunications Relay Service (TRS).**

- (a) **Purpose.** The provisions of this section are intended to establish a statewide telecommunications relay service for individuals who are hearing-impaired or speech-impaired using specialized telecommunications devices and operator translations. Telecommunications relay service shall be provided on a statewide basis by one telecommunications carrier, except that the commission may contract with another vendor for a special feature in certain circumstances. Certain aspects of telecommunications relay service operations are applicable to local exchange companies and other telecommunications providers.
- (b) **Provision of TRS.** TRS shall provide individuals who are hearing-impaired or speech-impaired with access to the telecommunications network in Texas equal to that provided to other customers.
- (1) **Components of TRS.** TRS shall meet the mandatory minimum standards defined in §26.5 of this title (relating to Definitions) and further shall consist of the following:
- (A) switching and transmission of the call;
  - (B) oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices;

- (C) sufficient operators and facilities to meet the grade and quality of service standards established by the commission for TRS, including the operator answering performance standards listed in §26.54(c)(2)(A) and (D) of this title (relating to Service Objectives and Performance Benchmarks).
  - (D) appropriate procedures for handling emergency calls;
  - (E) confidentiality regarding existence and content of conversations;
  - (F) capability of providing sufficient information to allow calls to be accurately billed;
  - (G) capability of providing for technologies such as hearing carryover or voice carryover;
  - (H) operator training to relay the contents of the call as accurately as possible without intervening in the communications;
  - (I) operator training in American Sign Language and familiarity with the special communications needs of individuals who are hearing-impaired or speech-impaired;
  - (J) capability for callers to place calls through TRS from locations other than their primary location and to utilize alternate billing arrangements;
  - (K) capability of providing both inbound and outbound intrastate and interstate service;
  - (L) capability for carrier of choice; and
  - (M) other service enhancements approved by the commission.
- (2) **Conditions for interstate service.** The TRS carrier shall not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate

TRS. Interstate TRS shall be funded through the interstate jurisdiction as mandated by the Federal Communications Commission. Separate funds and records shall be maintained for intrastate TRS and interstate TRS.

- (3) **Rates and charges.** The following rates and charges shall apply to TRS:
- (A) Local calls. The calling and called parties shall bear no charges for calls originating and terminating within the same toll-free local calling scope.
  - (B) Intrastate long distance calls. The TRS carrier shall discount its tariffed intrastate rates by 50% for TRS users.
  - (C) Access charges. Telecommunications providers shall not impose access charges on calls that make use of this service and which originate and terminate within the same toll-free local calling scope.
  - (D) Billing and collection services. Upon request by the TRS carrier, telecommunications providers shall provide billing and collection services in support of this service at just and reasonable rates.

(c) **Contract for the TRS carrier.**

- (1) **Selection.** On or before April 1, 2000, the commission shall issue a request for proposal and select a carrier to provide statewide TRS based on the following criteria: price, the interests of individuals who are hearing-impaired and speech-impaired in having access to a high quality and technologically-advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to competing offerers. The

commission's determination shall include evaluations of charges for the service, service enhancements proposed by the offerers, and technological sophistication of the network proposed by the offerers. The commission shall make a written award of the contract to the offerer whose proposal is the most advantageous to the state.

- (2) **Location.** The operator centers used to provide statewide TRS shall be located in Texas.
- (3) **Contract administration.**
  - (A) Contract amendments. All recommendations for amendments to the contract shall be filed with the executive director of the commission on June 1 of each year. The executive director is authorized to approve or deny all amendments to the contract between the TRS carrier and the commission, provided, however, that the commission specifically shall approve any amendment that will increase the cost of TRS.
  - (B) Reports. The TRS carrier(s) and telecommunications providers shall submit reports of their activities relating to the provision of TRS upon request of the commission or the Relay Texas administrator.
  - (C) Compensation. The TRS carrier(s) shall be compensated by the TUSF for providing TRS at the rates, terms, and conditions established in its contract with the commission, subject to the following conditions:
    - (i) Reimbursement shall include the TRS costs that are not paid by the calling or the called party, except the TRS carrier shall not be

reimbursed for the 50% discount set forth in subsection (b)(3)(B) of this section.

- (ii) Reimbursement may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the commission.
- (iii) The TRS carrier shall submit a monthly report to the commission justifying its claims for reimbursement under the contract. Upon approval by the commission, the TUSF shall make a disbursement in the approved amount.

(d) **Special features for TRS.**

- (1) The commission may contract for a special feature for the state's telecommunications relay access service if the commission determines:
  - (A) the feature will benefit the communication of persons with an impairment of hearing or speech;
  - (B) installation of the feature will be of benefit to the state; and
  - (C) the feature will make the relay access service available to a greater number of users.
- (2) If the carrier selected to provide the telecommunications relay access service is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a carrier to provide the special feature

to the telecommunications carrier whose proposal is most advantageous to the state, considering;

- (A) factors stated in subsection (c)(1) of this section;
  - (B) the past performance demonstrated capability and experience of the carrier.
- (3) The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.
- (4) The commission's evaluation of a telecommunications carrier's proposal shall include the considerations listed in subsection (c)(1) of this section.
- (e) **Advisory Committee.** The commission shall appoint an Advisory Committee, to be known as the Relay Texas Advisory Committee (RTAC) to assist the commission in administering TRS and the specialized telecommunications assistance program, as specified by the Public Utility Regulatory Act (PURA) §56.111. The Relay Texas administrator shall serve as a liaison between the RTAC and the commission. The Relay Texas administrator shall ensure that the RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.
- (1) **Composition.** The commission shall appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows. The RTAC shall be composed of:
- (A) two persons with disabilities other than disabilities of hearing and speech that impair the ability to effectively access the telephone network;

- (B) one deaf person recommended by the Texas Deaf Caucus;
  - (C) one deaf person recommended by the Texas Association of the Deaf;
  - (D) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;
  - (E) one hearing-impaired person recommended by the American Association of Retired Persons;
  - (F) one deaf and blind person recommended by the Texas Deaf/Blind Association;
  - (G) one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;
  - (H) two representatives of telecommunications utilities, one representing a local exchange company and one representing a telecommunications carrier other than a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;
  - (I) two persons, at least one of whom is deaf, with experience in providing relay services, recommended by the Texas Commission for the Deaf; and
  - (J) two public members recommended by organizations representing consumers of telecommunications services.
- (2) **Conditions of membership.** The term of office of each RTAC member shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the

remainder of the term. RTAC members shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

- (3) **Responsibilities.** The RTAC shall undertake the following responsibilities:
- (A) monitor the establishment, administration, and promotion of the statewide TRS;
  - (B) advise the commission regarding the pursuit of services that meet the needs of individuals who are hearing-impaired or speech-impaired in communicating with other users of telecommunications services;
  - (C) advise the commission regarding issues related to the contract between the TRS carrier and the commission, including any proposed amendments to such contract;
  - (D) advise the commission and the Texas Commission for the Deaf and Hard of Hearing, at the request of either commission, regarding issues related to the specialized telecommunications assistance program, including devices or services suitable to meet the needs of persons with disabilities in communicating with other users of telecommunications services.
- (4) **Committee activities report.** After each RTAC meeting, the Relay Texas administrator shall prepare a report to the commission regarding the RTAC activities and recommendations.

- (A) The Relay Texas administrator shall file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:
  - (i) the minutes of the meeting;
  - (ii) a memo summarizing the meeting; and
  - (iii) a list of items, recommended by the RTAC, for the Relay Texas administrator to discuss with the TRS carrier, including issues related to the provisioning of the service that do not require amendments to the contract.
- (B) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed approved by the commission.
- (5) **Evaluation of RTAC costs and effectiveness.** The commission shall evaluate the advisory committee annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, RTAC members, and other commission employees who work directly or indirectly with the RTAC, TRS, or the equipment distribution program shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:
  - (A) the committee's work;
  - (B) the committee's usefulness; and

- (C) the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

**§26.415. Specialized Telecommunications Assistance Program (STAP).**

- (a) **Purpose.** The provisions of this section are intended to establish procedures for a specialized telecommunications assistance program and for reimbursement to vendors and service providers who submit vouchers issued under the program.
- (b) **Program responsibilities.**
  - (1) **Texas Commission for the Deaf and Hard of Hearing (TCDHH) responsibilities.** TCDHH is responsible for:
    - (A) Adopting rules and procedures regarding the issuance of STAP vouchers to eligible individuals;
    - (B) Establishing a database containing sufficient information to enable the commission to verify the issuance of a particular STAP voucher; and
    - (C) Depositing amounts paid by eligible individuals for STAP vouchers into the Texas Universal Service Fund (TUSF).
  - (2) **Commission responsibilities.** The commission is responsible for:
    - (A) Adopting rules and procedures regarding the reimbursement to vendors for properly redeemed STAP vouchers;

- (B) Administering the TUSF to ensure adequate funding of the specialized telecommunications assistance program ; and
- (C) Appointing and providing administrative support for the Relay Texas Advisory Committee (RTAC), in accordance with the Public Utility Regulatory Act (PURA), §56.110 and §56.112.

(c) **Program administration.**

- (1) **Vendor and service provider registration.** To facilitate the timely reimbursement of STAP vouchers, the TUSF administrator may specify that a vendor or service provider who accepts STAP vouchers shall register with the administrator by providing their name, contact person, address, telephone number, facsimile number (if available), and information sufficient to permit the administrator to reimburse the vendor or service provider by direct deposit rather than by check.
- (2) **Vendor or service provider reimbursement.** A vendor or service provider who exchanges an STAP voucher for the purchase of approved equipment or services in accordance with the terms of the specialized telecommunications assistance program specified by TCDHH shall be eligible for reimbursement of the lesser of the face value of the STAP voucher or the actual price of the equipment or service.
  - (A) TUSF disbursements shall be made only upon receipt from the vendor or service provider of a completed STAP voucher and a receipt showing the actual price of the equipment or service exchanged for the STAP voucher.

- (B) TUSF disbursements may also be subject to such other limitations or conditions as determined by the commission to be just and reasonable, including investigation of whether the presentation of an STAP voucher represents a valid transaction for equipment or service under the STAP.
- (C) The TUSF administrator shall ensure that reimbursement to vendors for STAP vouchers shall be issued within 45 days after the STAP voucher is received by the TUSF administrator.
- (D) The commission may delay payment of a voucher to a distributor of devices or a service provider if there is a dispute regarding the amount or propriety of the payment or whether the device or service is appropriate or adequate to meet the needs of the person to whom the Texas Commission for the Deaf and Hard of Hearing issued the voucher until the dispute is resolved.
- (E) The commission may provide that payment of the voucher is conditioned on the return of the payment if the device is returned to the distributor or if the service is not used by the person to whom the voucher was issued. The commission may provide an alternative dispute resolution process for resolving a dispute regarding the equipment or service provided.

**§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).**

(a) **Purpose.** This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.

(b) **Requirements for establishing ETP service areas.**

(1) **THCUSP service area.** THCUSP service area shall be based upon census block groups (CBGs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all CBGs that are wholly or partially contained within its certificated service area. An ETP must serve an entire CBG, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire CBG, or other geographic area as determined appropriate by the commission.

(2) **Small and Rural ILEC Universal Service Plan service area.** A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or

rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs.**

(1) **Telecommunications providers.** A telecommunications provider, as defined in §26.5 of this title (relating to Definitions), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

- (A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;
- (B) the telecommunications provider defines its ETP service area pursuant to subsection (c) of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;
- (C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

- (D) the telecommunications provider renders continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);
  - (E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service and Link Up Service Programs) and §26.413 of this title (relating to Tel-Assistance Service);  
and
  - (F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.
- (2) **ILECs.** If the LEC is an ILEC, as defined in §26.5 of this title, it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:
- (A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:
    - (i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or
    - (ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

- (B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.
- (C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1).

(d) **Designation of more than one ETP.**

- (1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.
- (2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) **Proceedings to designate telecommunications providers as ETPs.**

- (1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.

- (2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.
  - (3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.
- (f) **Requirements for application for ETP designation and commission processing of application.**
- (1) **Requirements for notice and contents of application for ETP designation.**
    - (A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility

Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

- (B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.
  - (i) Telecommunications providers. The application shall:
    - (I) show that the applicant is a telecommunications provider as defined in §26.5 of this title;
    - (II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;
    - (III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the

- applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;
- (IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;
- (V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;
- (VI) show that the applicant offers Lifeline, Link Up, and Tel-Assistance services in compliance with §26.412 and §26.413 of this title;
- (VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;
- (VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the

public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

(2) **Commission processing of application.**

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application,

the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.
- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

- (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.
- (i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.
  - (ii) Notice was provided as required by this section.
  - (iii) The applicant has met the requirements contained in subsection (c) of this section.
  - (iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected

persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(g) **Relinquishment of ETP designation.** A telecommunications provider may seek to relinquish its ETP designation.

(1) **Area served by more than one ETP.** The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

- (A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;
- (B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and
- (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) **Area where the relinquishing telecommunications provider is the sole ETP.**

In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

- (A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

- (B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.
- (3) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.
  - (A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.
  - (B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks) in that portion of its ETP service area.
- (h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.
  - (1) **Announcement of auction.** Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide

notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

- (2) **Bidding procedure.** Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.
- (A) Every bid must contain:
- (i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;
  - (ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and
  - (iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.
- (B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.
- (C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

**§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.**

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF). Only common carriers designated by the commission pursuant to 47 United States Code §214(e) (relating to Provision of Universal Service) as eligible for federal universal service support may qualify to receive universal service support under the FUSF.
- (b) **Service areas.** The commission may designate eligible telecommunications carrier service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an eligible telecommunications carrier.
  - (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(c) **Criteria for determination of eligible telecommunications carriers.** A common carrier shall be designated as eligible to receive federal universal service support if it:

- (1) offers the services that are supported by the federal universal service support mechanisms under 47 Code of Federal Regulations §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (2) advertises the availability of and charges for such services using media of general distribution.

(d) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

- (1) meet the requirements of subsection (c) of this section;
- (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and
- (3) offer toll limitation services in accordance with 47 Code of Federal Regulations §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(e) **Designation of more than one eligible telecommunications carrier.**

- (1) **Non-rural service areas.** In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application,

more than one eligible telecommunications carrier in a service area so long as each additional carrier meets the requirements of subsection (b)(1) of this section and subsection (c) of this section.

- (2) **Rural service areas.** In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an eligible telecommunications carrier a carrier that meets the requirements of subsection (b)(2) of this section and subsection (c) of this section if the commission finds that the designation is in the public interest.
- (f) **Proceedings to designate eligible telecommunications carriers.**
- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
  - (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring eligible telecommunications carrier shall file an application, within 30 days after the date of the purchase, to amend its eligible telecommunications carrier service area to include those geographic areas that are eligible for support.
  - (3) If an eligible telecommunications carrier receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its eligible telecommunications carrier designation to exclude from its designated service area those exchanges for which it was receiving support.

(g) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

- (A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."
- (B) Contents of application for each common carrier seeking eligible telecommunications carrier designation. A common carrier that seeks to be designated as an eligible telecommunications carrier shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory

Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an eligible telecommunications carrier;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c) to any consumer in the service area for which it seeks designation as an eligible telecommunications carrier;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an eligible telecommunications carrier;
- (v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;
- (vi) contain a copy of the text of the notice;

- (vii) contain the proposed effective date of the designation; and
    - (viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.
  - (C) Contents of application for each common carrier seeking eligible telecommunications carrier designation and receipt of federal universal service support. A common carrier that seeks to be designated as an eligible telecommunications carrier and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:
    - (i) comply with the requirements of subparagraph (B) of this paragraph;
    - (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E; and
    - (iii) show that the applicant offers toll limitation services in accordance with 47 Code of Federal Regulations §54.400 and §54.401.
- (2) **Commission processing of application.**
  - (A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause,

determines at any point during the review that the application should be docketed.

- (i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.
- (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
  - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application.
- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
    - (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c);
    - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
    - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
    - (IV) notice was provided as required by this section;

- (V) the applicant satisfies the requirements contained in subsection (b) of this section; and
  - (VI) if, in areas served by a rural telephone company, the eligible telecommunications carrier designation is consistent with the public interest.
- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;
  - (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E; and
  - (III) the applicant offers toll limitation services in accordance with 47 Code of Federal Regulations §54.400 and §54.401.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with

the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (E) Waiver. In the event that an otherwise eligible telecommunications carrier requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (h) **Designation of eligible telecommunications carrier for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 United States Code §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(i) **Relinquishment of eligible telecommunications carrier designation.** A common carrier may seek to relinquish its eligible telecommunications carrier designation.

(1) **Area served by more than one eligible telecommunications carrier.** The commission shall permit a common carrier to relinquish its designation as an eligible telecommunications carrier in any area served by more than one eligible telecommunications carrier upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an eligible telecommunications carrier;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) **Area where the common carrier is the sole eligible telecommunications carrier.** In areas where the common carrier is the only eligible telecommunications carrier, the commission may permit it to relinquish its eligible telecommunications carrier designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an eligible telecommunications carrier; and

- (B) commission designation of a new eligible telecommunications carrier for the service area or areas.

This agency hereby certifies that the rules, as adopted, have 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 rule §§26.401, 26.403, 26.404, 26.410, 26.413, 26.414, 26.415, 26.417, and 26.418 relating to the Texas Universal Service Fund are hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF MAY 2000.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**