

**PROJECT NO. 32136**

**PUC REVIEW OF CHAPTER 26                    §        PUBLIC UTILITY COMMISSION**  
**SUBSTANTIVE RULES TO                    §**  
**CONFORM TO SB5                            §    OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §26.417 AND §26.420  
AS APPROVED AT THE OCTOBER 26, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts, with no changes to the proposed text as published in the August 25, 2006 issue of the *Texas Register* (31 TexReg 6611), amended §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), and amended §26.420, relating to Administration of Texas Universal Service Fund (TUSF).

These amendments make minor non-policy affecting changes to Chapter 26 Substantive Rules to bring them into conformity with associated minor changes in the Public Utility Regulatory Act brought about by Senate Bill 5, 79<sup>th</sup> Legislature, Second Called Session. Project Number 32136 is assigned to this proceeding.

The commission received no comments on these proposed amendments.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§54.251, 56.021 and 56.026(e), which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 54.251, 56.021 and 56.026(e).

**§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 wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, 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 the Public Utility Regulatory Act (PURA) §51.002(10), 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 (b) 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

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), 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). This subparagraph expires August 31, 2007.

(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 Customer Protection Division 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 PURA §51.002(10);

(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 and Link Up services in compliance with §26.412 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, 26.53, and 26.54 of this title, 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.
- (i) **Requirements for annual affidavit of compliance to receive TUSF support.** An ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support.
- (1) **Annual Affidavit of Compliance.** On or before September 1 of each year, an ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.
  - (2) **Filing Affidavit.** The affidavit used shall be the annual compliance affidavit approved by the commission.

**§26.420. Administration of Texas Universal Service Fund (TUSF).**

- (a) **Purpose.** The provisions of this section establish the administration of the Texas Universal Service Fund (TUSF).
- (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 26.414 of this title (relating to Telecommunications Relay Service (TRS));
  - (8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

- (9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
  - (10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
  - (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
  - (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
  - (13) Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas);-
  - (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service); and
  - (15) Section 26.424 of this title (relating to Audio Newspaper Program).
- (c) **Responsibilities of the commission.** The commission is the official governing agency for the TUSF, but may delegate the ministerial functions of TUSF administration to another entity (the TUSF administrator) through contractual agreement.
- (1) **Monitoring, and supervising TUSF administration.** The commission reserves the exclusive power to revise rules related to the operation and administration of the TUSF and to monitor and supervise such operation and administration.

- (2) **Annual audit.** The commission annually shall provide for an audit of the TUSF by an independent auditor. The costs of the audit are costs of the commission that are incurred in administering the TUSF, and therefore shall be reimbursed from the TUSF.
  - (3) **Inquiry into administration of the TUSF.** The commission may, upon its own motion, upon the petition of the commission staff or the Office of Public Utility Counsel, initiate an inquiry into any aspect of the administration of the TUSF. Any other party may initiate a complaint proceeding pursuant to the commission's procedural rules.
  - (4) **Selection of the TUSF administrator.**
    - (A) The commission shall have the sole discretion in the selection of the TUSF administrator. The selection of the TUSF administrator shall be based on a competitive bidding process.
    - (B) The TUSF administrator must meet the technical qualifications as provided in subsection (d)(1) of this section as well as other requirements as determined by the commission.
  - (5) **Contract term of the TUSF administrator.** The commission shall determine the duration of the TUSF administrator's contract. Prior to expiration of the contract term, the commission may discharge the TUSF administrator of its duties upon 60-days written notice.
- (d) **TUSF administrator.** The TUSF administrator serves at the discretion of the commission.

- (1) **Technical requirements of the TUSF administrator.** The TUSF administrator shall:
  - (A) be neutral and impartial, not advocate specific positions to the commission in proceedings not related to the administration of the universal service support mechanisms, and not have a direct financial interest in the universal service support mechanisms established by the commission;
  - (B) possess demonstrated technical capabilities, competence, and resources to perform the duties of the TUSF administrator as described in this section; and
  - (C) be bonded or bondable.
- (2) **Duties of the TUSF administrator.** The TUSF administrator will administer the TUSF in accordance with the rules set forth in this section and in accordance with the guidelines established by the commission in its contract with the TUSF administrator. The TUSF administrator's general duties shall include, but not be limited to:
  - (A) managing the daily operations and affairs of the TUSF in an efficient, fair and competitively neutral manner;
  - (B) taking steps necessary to ensure that all eligible telecommunications providers (ETPs) are in compliance with the relevant sections of this title under which they are receiving universal service support;
  - (C) calculating and collecting the proper assessment amount from every telecommunications provider and verifying that all telecommunications

providers are in compliance with the Public Utility Regulatory Act §56.022;

- (D) disbursing the proper support amounts, ensuring that only eligible recipients receive funds, and verifying that all recipients are in compliance with the section or sections of this title under which they are eligible to receive support;
- (E) taking steps necessary, including audits, to ensure that all telecommunications providers that are subject to the TUSF assessment are accurately reporting required information;
- (F) taking steps necessary, including audits, to ensure that all recipients of TUSF funds are accurately reporting required information;
- (G) submitting periodic summary reports to the commission regarding the administration of the TUSF in accordance with specifications established by the commission;
- (H) notifying the commission of any telecommunications providers that are in violation of any of the requirements of this section, §26.417 of this title and any reporting requirements; and
- (I) performing other duties as determined by the commission.

(e) **Determination of the amount needed to fund the TUSF.**

- (1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.
  - (A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:

- (i) Texas High Cost Universal Service Plan, §26.403 of this title;
  - (ii) Small and Rural ILEC Universal Service Plan, §26.404 of this title;
  - (iii) Implementation of the Public Utility Regulatory Act §56.025, §26.406 of this title;
  - (iv) Additional Financial Assistance, §26.408 of this title;
  - (v) Reimbursement for Certain IntraLATA Service, §26.410 of this title;
  - (vi) Lifeline Service and Link Up Service, §26.412 of this title;
  - (vii) Telecommunications Relay Service, §26.414 of this title;
  - (viii) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title; and
  - (ix) Audio Newspaper Program, §26.424 of this title.
- (B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.

- (C) Reserve for contingencies. The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.
- (2) **Determination of amount needed.** After the initial determination, the TUSF administrator shall determine, on a periodic basis, the amount needed to fund the TUSF. The determined amount shall be approved by the commission.
- (f) **Assessments for the TUSF.**
- (1) **Providers subject to assessments.** The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.
- (2) **Definitions.** For the purposes of this section the following definitions apply:
- (A) Actual intrastate telecommunications services receipts – Telecommunications services receipts that are clearly identifiable as intrastate telecommunications services receipts, as defined in subparagraph (E) of this paragraph.
- (B) FCC – means the Federal Communications Commission.
- (C) Interstate communications – Has the meaning assigned by 47 U.S.C. §153(22).
- (D) International communications – Has the meaning assigned by 47 U.S.C. §153(17) (foreign communications).
- (E) Intrastate telecommunications services receipts – Taxable telecommunications services receipts as reported by the

telecommunications provider under Chapter 151 of the Texas Tax Code, with the exception of:

- (i) Pay telephone service revenues received by providers of pay telephone services, which are exempt from the TUSF assessment pursuant to PURA §56.022(c)(2);
  - (ii) Telecommunications services receipts from interstate communications and international communications included in telecommunications services receipts reported under Chapter 151 of the Texas Tax Code; and
  - (iii) TUSF surcharges collected from customers.
- (F) Receipts – Has the meaning assigned by Texas Tax Code §151.007.
- (G) Safe-Harbor intrastate telecommunications services receipts – Means intrastate telecommunications receipts calculated by applying a commission-ordered percentage to telecommunications services receipts that are not clearly identifiable as intrastate.
- (H) Telecommunications provider – Has the meaning assigned by PURA §51.002(10).
- (I) Telecommunications services – Has the meaning assigned by Texas Tax Code §151.0103.
- (3) **Basis for assessments.** Assessments will be based upon the following:
- (A) **Actuals.** Effective January 1, 2007, assessments shall be made to each telecommunications provider based upon its monthly taxable actual

intrastate telecommunications services receipts reported by that telecommunications provider under Chapter 151 of the Texas Tax Code.

- (B) **Commission-Ordered Safe Harbor.** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and does not meet the *de minimus* exemption in subsection (c) of this section, may request, and the commission may grant for good cause, the modification or waiver of the requirement set forth in subsection (a) of this section, to allow the telecommunications provider to calculate all or some of its intrastate taxable telecommunications receipts using the relevant commission-ordered safe-harbor percentage. Requests for waiver will be subject to administrative review unless the presiding officer determines at any point during the review that the request should be docketed. The presiding officer will issue an order approving, denying or docketing the request for waiver within 180 calendar days of the filing date of the waiver request.

- (i) A request for waiver must contain, at a minimum:

- (I) an affidavit from a corporate officer of the telecommunications provider attesting to the fact that the telecommunications provider is unable to calculate all or some of its actual intrastate telecommunications services receipts and, if applicable, that the telecommunications provider is using a safe harbor authorized by the FCC;

- (II) a date by which the telecommunications provider will be able to calculate actual intrastate telecommunications services receipts;
  - (III) an explanation detailing why the telecommunications provider is unable to calculate actual intrastate telecommunications services receipts and why a waiver is necessary;
  - (IV) a detailed description of the safe-harbor percentage that is requested and how it will be applied;
  - (V) if applicable, a compliance tariff filing pursuant to paragraph (6)(C) of this subsection; and
  - (IV) any other information that the telecommunications provider believes will aid in rendering of a decision.
- (ii) If a telecommunications provider requests a permanent waiver from reporting its TUSF assessment based on actual intrastate telecommunications services receipts, then the telecommunications provider must file a waiver containing all elements in clause (i) of this subparagraph, as well as an explanation detailing why a permanent waiver is required, and why it is in the public interest.
  - (iii) A telecommunications provider that has been granted a waiver shall apply, for the duration of that waiver, a safe-harbor percentage to its telecommunications services receipts using one of

the methods described in subclauses (I) or (II) of this clause as follows:

- (I) If a telecommunications provider is reporting interstate communications and international communications revenues for assessment for the federal universal service fund based on an FCC safe-harbor percentage, then the telecommunications provider shall apply the inverse of that percentage to its telecommunications services receipts as reported under Chapter 151 of the Texas Tax Code. The resulting total will be the telecommunications provider's safe-harbor-calculated total intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.
- (II) If a telecommunications provider is not using an FCC safe-harbor percentage, the telecommunications provider shall apply a commission-ordered safe harbor percentage to its telecommunications services receipts under Chapter 151 of the Texas Tax Code as described in its waiver request approved by the commission. The resulting total will be the telecommunications provider's safe-harbor-calculated intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

- (iv) If a telecommunications provider that has been granted a waiver seeks to change its safe-harbor assessment methodology, or seeks an extension of its existing waiver, it must file another waiver request with the commission.
  - (v) A telecommunications provider may, at any time during the duration of its waiver and upon notice to the commission and the TUSF administrator, change its methodology to assess actual intrastate telecommunications services receipts. This will terminate any existing waiver.
- (C) ***De minimus exemption.*** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and whose TUSF assessment is less than \$500 per month using the relevant commission-ordered safe-harbor percentage, is not required to file a waiver request pursuant to subparagraph (B) of this paragraph.
- (D) Intrastate telecommunications services receipts received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services are subject to TUSF assessment.
- (4) **Assessment.** Each telecommunications provider shall pay its TUSF assessment each month by multiplying the commission-approved assessment rate by the basis for assessments as determined pursuant to paragraph (3) of this subsection.
- (5) **Reporting requirements.** Each telecommunications provider shall report its taxable intrastate telecommunications services receipts under Chapter 151 of the

Tax Code to the commission or the TUSF administrator. When reporting its intrastate telecommunications services receipts, each telecommunications provider shall report its total taxable telecommunications services receipts under Chapter 151 of the Tax Code, and indicate which methodology or methodologies (*i.e.*, actual and/or commission-ordered safe-harbor percentage) it used to arrive at its total intrastate telecommunications services receipts.

- (6) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment based on its intrastate telecommunications services receipts from its retail customers who are subject to tax under Chapter 151 of the Texas Tax Code, except for Lifeline and/or Link Up services. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Texas Tax Code. The commission may order modifications in a telecommunications provider's method of recovery.

(A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills:

- (i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service"; and
- (ii) the surcharge must be assessed as a percentage of intrastate telecommunications services receipts on every retail customers' bill, except Lifeline and/or Link Up services.

- (B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.
  - (C) Tariff and/or price sheet changes. A certificated telecommunications utility choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes as necessary to its tariff and/or price sheet and provide supporting documentation for the method of recovery.
  - (D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.
- (7) **Disputing assessments.** Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.
- (g) **Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.**
- (1) **ETPs, ILECs, other entities, and agencies.**
    - (A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

- (i) Texas High Cost Universal Service Plan;
    - (ii) Small and Rural ILEC Universal Service Plan; and/or
    - (iii) Lifeline Service and Link Up Service.
  - (B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:
    - (i) Implementation of the Public Utility Regulatory Act §56.025; and/or
    - (ii) Additional Financial Assistance program.
  - (C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:
    - (i) Telecommunications Relay Service;
    - (ii) Specialized Telecommunications Assistance Program; and/or
    - (iii) Audio Newspaper Program.
  - (D) Agencies. The commission, the Texas Department of Human Services, the Texas Commission for the Deaf and Hard of Hearing, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of PURA Chapters 56 and 57.
- (2) **Reporting requirements.**
- (A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

- (B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.
  - (C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.
- (3) **Disbursements.**
- (A) The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 45 days of the due date of their reports except as otherwise provided.
  - (B) Prior to August 31, 2007, if an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:
    - (i) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of unbundled network elements, the electing LEC's disbursement may be reduced by the amount attributable to that customer under PURA §56.021(1); or

- (ii) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing LEC, the electing LEC's disbursement attributable to that customer under PURA §56.021(1) may be reduced according to the commission established equitable allocation formula for the disbursement as described in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).
- (C) The commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations.
- (h) **True-up.** The assessment amount determined pursuant to subsections (e) and (f) of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over-reporting.
- (i) **Sale or transfer of exchanges.**
  - (1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §26.404 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the sale or transfer.

- (2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant to §26.403 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the transfer of the exchanges.
- (j) **Proprietary information.** The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:
  - (1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.
  - (2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information "PROPRIETARY PURSUANT TO PUC SUBST. R. §26.420(j)".
  - (3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to the commission and its designated representatives without notifying the telecommunications provider.
  - (4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for

information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), and §26.420, relating to Administration of Texas Universal Service Fund (TUSF), are hereby adopted with no changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS the 30th day of OCTOBER 2006.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**

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