

PROJECT NO. 28708

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND P.U.C. SUBST. R. 26.420(f) –	§	
ASSESSMENTS FOR THE TEXAS	§	OF TEXAS
UNIVERSAL SERVICE FUND (TUSF)	§	

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §26.420(f)
AS APPROVED AT THE MARCH 30, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §26.420(f), relating to Assessments for the TUSF. The proposed amended rule will revise the existing rule to reflect the current assessment methodology adopted by the commission in Docket No. 21208 (see Docket No. 21208, Order Regarding TUSF Assessment of Intrastate Telecommunications Services Receipts, July 29, 2004). The Order in Docket No. 21208 was adopted in response to the decision of the United States Court of Appeals for the Fifth Circuit in *AT&T Corp. v. Public Utility Commission of Texas*, 373 F. 3d 641 (5th Cir. 2004) (*AT&T Decision*). Project Number 28708 is assigned to this proceeding.

Rosemary McMahill, Sr. Policy Analyst, Communications Industry Oversight Division, and Jim Tourtelott, Staff Attorney, Telecommunications Legal Section, have determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McMahill and Mr. Tourtelott have determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing this section will be the ability of the commission to ensure that providers are complying with the TUSF assessment mechanism and the *AT&T Decision*. There will be no adverse economic effect on

small businesses or micro-businesses as a result of enforcing this section. There is some anticipated economic cost to persons who are required to comply with the section as proposed, but the public benefit of ensuring that providers are complying with the TUSF assessment mechanism should outweigh those costs.

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

Comments on the proposed section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project Number 28708.

This amended section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.023, which requires the commission to adopt procedures to fund the TUSF.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, and §56.023.

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

(a)-(e) (No change.)

(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~~Assessments shall be made to each telecommunications provider based upon its monthly taxable actual intrastate~~taxable~~ 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. Pay telephone service revenues received by providers of pay telephone services are exempt from the TUSF assessment pursuant to the Public Utility Regulatory Act §56.022(c)(2).

(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)(E) *Revenue* 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)(3) *Assessment.* Each telecommunications provider shall pay its TUSF assessment each month ~~as calculated using the following procedures.~~

(A) *Calculation of assessment rate.* ~~The TUSF administrator shall determine an assessment rate to be applied to all telecommunications providers on a periodic basis approved by the commission.~~

~~(B) Calculation of assessment amount. Payments to the TUSF shall be computed~~
by multiplying the commission-approved assessment rate ~~determined pursuant~~
~~to subparagraph (A) of this paragraph~~ by the basis for assessments as
determined pursuant to paragraph ~~(3)(2)~~ of this subsection.

~~(5)(4)~~ **Reporting requirements.** Each telecommunications provider shall ~~be required to~~
report its taxable intrastate telecommunications services receipts under Chapter
151 of the Tax Code ~~to as required by~~ 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)(5)~~ **Recovery of assessments.** A telecommunications provider may recover the
amount of its TUSF assessment based on its intrastate telecommunications
services receipts only 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 provider 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)(6) **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)-(j) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 30th DAY OF MARCH 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**