

The Public Utility Commission of Texas (commission) proposes amendments to §§26.401, 26.403, 26.404, 26.413, 26.414, 26.415, 26.417, 26.418, 26.420 and new §26.410 relating to the Texas Universal Service Fund (TUSF). Project Number 21163 has been assigned to this proceeding. The proposed amendments and new rule 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), and Senate Bill 1441 (SB 1441) Act of May 26, 1999, 76th Legislature, Regular Session, chapter 1553, 1999 Texas Session Law Service 5342 (Vernon) (to be codified as amendments to PURA, Texas Utilities Code Annotated §56.1085).

General changes to rule language:

Several amended sections reflect the insertion of "telecommunications provider" in the place of "local exchange carrier." These changes are necessary to implement PURA §56.021 and §56.023, as amended by SB 560.

Specific changes to rule language.

Proposed §26.403(e)(3)(D) amends the adjustments that may be considered when calculating the support amount by providing for services provisioned through partial unbundled network elements (UNEs).

Proposed §26.403(f) and §26.404(g) amend the reporting requirements to include any information necessary to access contributions to and disbursements from the Texas Universal Service Fund (TUSF). These amendments implement PURA §56.024(a), as amended by SB 560.

Proposed §26.404(e)(3) and §26.417(c)(2)(C) address access service rate reductions. The amendments implement PURA §56.026(d), as amended by SB 560.

Proposed new §26.410 will implement PURA §56.028, as amended by SB 560. The proposed new section allows an incumbent local exchange company that is not an electing company under PURA Chapters 58 or 59 to be reimbursed for reduced intraLATA interexchange high capacity service for certain entities.

Proposed §26.413(a) applies the section's requirements imposed on local exchange carriers to also apply to telecommunications providers that receive TUSF support. Proposed §26.413(b) inserts the new "or 65 years of age or older" eligibility requirement for Tel-Assistance. The amendments implement PURA §56.071(b) and §56.072(b)(1), as amended by SB 560.

It is the commission's intent in the proposed amendments to §26.414(b)(1)(C), §26.417(c)(1)(D) and §26.417(g)(3)(B) to encompass the commission's telecommunications service quality standards. The service quality standard rule sections currently exist in §23.61(c) - (f) and are in transition under Project Number 19666, *Review and Proposed New Sections to Replace §23.61(c) - (f) relating to Quality of Service*. At the October 21, 1999 Open Meeting, under Project Number 19666, the commission approved publication of the repeal of §23.61 relating to Telephone Utilities and publication of proposed new §§26.52 - 26.55 concerning quality of service to replace §23.61(c) - (f). The proposed amendments in Project Number 21163 refer to proposed new §§26.52 - 26.54 on quality of service which may be found in the November 12, 1999 *Texas Register* (24 TexReg 9927) or on the commission's web site at www.puc.state.tx.us/rules/rulemake/19666/19666.cfm. It is the intent of the commission to adopt the amendments in Project Number 21163 after the completion of Project Number 19666. The amendments in Project Number 21163, upon adoption, will refer to the quality of service standards as they exist upon the completion of Project Number 19666. Parties interested in Project Number 21163 may want to monitor or participate in Project Number 19666, since the service quality rules developed in that project will affect eligible telecommunications providers in the TUSF program.

Proposed §26.414(d) addresses special features for the Telecommunications Relay Service (TRS). The section implements PURA §56.1085, as amended by SB 1441.

Proposed §26.414(e) amends the selection of members of the Relay Texas Advisory Committee (RTAC) as prescribed in PURA §56.110, as amended by SB 1441. Proposed §26.414(e) also implements PURA §56.111, as amended by SB 1441, by expanding the reporting responsibilities of the RTAC.

Proposed §26.415(c)(2) allows the commission to delay payment of a voucher to a Specialized Telecommunications Assistance Program (STAP) distributor of devices or a service provider and provides for alternative dispute resolution. The amendments implement PURA §56.153, as amended by SB 1441.

Proposed §26.418(f)(1) has been revised to correct a typographical error.

Proposed §26.420(g)(5)(a)(1) reflects the new line item label approved by the commission in Project Number 19655, *Implementation of PUC Substantive Rule §23.150 (f) and (g)*.

Proposed §26.420(h)(3)(B) restricts the commission from reducing the amount of TUSF disbursements except under specific circumstances. The amendment implements PURA §56.026(c), as amended by SB 560.

Mr. Martin Wilson, Attorney, Office of Regulatory Affairs has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Wilson has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be 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. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Wilson has also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The definition of "telecommunications provider" is taken from PURA §51.002(10), which states:

"Telecommunications provider:

(A) means:

- (i) a certificated telecommunications utility;
- (ii) a shared tenant service provider;
- (iii) a nondominant carrier of telecommunications services;

- (iv) a provider of commercial mobile service as defined by §332(d), Communications Act of 1934 (47 U.S.C. §151 *et seq.*), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), except that the term does not include these entities for the purposes of Chapter 17 or 55 or 64;
 - (v) a telecommunications entity that provides central office based PBX-type sharing or resale arrangements;
 - (vi) an interexchange telecommunications carrier;
 - (vii) a specialized common carrier;
 - (viii) a reseller of communications;
 - (ix) a provider of operator services;
 - (x) a provider of customer-owned pay telephone service; or
 - (xi) another person or entity determined by the commission to provide telecommunications services to customers in this state; and
- (B) does not mean:
- (i) a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services; or
 - (ii) a state agency or state institution of higher education, or a service provided by a state agency or state institution of higher education."

This new definition will be added to Substantive Rule §26.5 (relating to Definitions) when that rule is amended in early 2000. Comments regarding this definition, however, may be filed in this project.

Comments on the proposed amendments and new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section.

In addition to general comments on the proposed rules, the commission seeks comment on the following sections. SB 560 amends PURA §56.028 to provide reimbursement for reduced rates for certain intraLATA interexchange high capacity (1.544 Mbps) services. The commission invites specific comments interpreting which intraLATA interexchange high capacity (1.544 Mbps) services are eligible for reimbursement. The commission also seeks comments addressing how §26.410 should interact with the educational percentage discounts (e-rate) in §26.216 of this title (relating to Educational Percentage Discount Rate (E-Rate)). Additionally, the commission seeks comment addressing how the lowest rate, as referenced in §26.410(c), should be determined considering §26.141(e) and (f) of this title (relating to Distance Learning Information Sharing Programs, and Interactive Multimedia Communications).

SB 560 amends PURA §56.026 regarding universal service fund disbursements. For the purposes of this rule, how should the commission interpret PURA §56.026(c) and (d)? The commission seeks suggested interpretations of the statute's requirements. The commission also invites specific comments

regarding proposed §26.420(h)(3)(B). Additionally, the commission seeks comment on whether the disbursements identified in the section are total disbursements or dollar/line disbursements. All comments should refer to Project 21163.

The amendments and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1999) (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 carriers 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 ~~local exchange companies (LECs)~~ 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, Link Up 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 ~~device distribution service for the hearing impaired and speech impaired~~; 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) - (4) (No change.)

(5) ~~Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);~~

(6)~~(5)~~ Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);

(7)~~(6)~~ Section 26.413 of this title (relating to Tel-Assistance Service);

(8)~~(7)~~ Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));

(9)~~(8)~~ Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

(10)~~(9)~~ Section 26.417 of this title (relating to Designation ~~of Local Exchange Companies~~ as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

(11)~~(10)~~ Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds (FUSF)); and

(12)~~(11)~~ Section 26.420 of this title (relating to Administration of ~~the~~ Texas Universal Service Fund (TUSF)).

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

- (a) (No change.)
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) - (3) (No change.)
- (4) **Eligible telecommunications provider (ETP)** — A telecommunications provider ~~local exchange company (LEC)~~ designated by the commission pursuant to §26.417 of this title (relating to Designation ~~of Local Exchange Carriers~~ as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
- (5) (No change.)
- (c) **Application.** This section applies to telecommunications providers ~~LECs~~ that have been designated ETPs by the commission pursuant to §26.417 of this title.
- (d) (No change.)
- (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) ~~paragraph (4)~~ of this subsection.

(1) - (2) (No change.)

(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) - (C) (No change.)

(D) Adjustment for service provided partially through the purchase of UNEs. If an ETP provides supported services over an eligible line partially through the purchase of UNEs, the commission shall determine the manner in which any THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs.

(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) - (2) (No change.)

(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) (No change.)

§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 rural ILECs areas and small ILECs' areas 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) (No change.)

(2) **Eligible telecommunications provider (ETP)** — A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to the Designation of Local Exchange Companies 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) (No change.)
- (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](#) [LECs](#) 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) (No change.)
- (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 test year, as certified by the TUSF ~~Texas Universal Service Fund (TUSF)~~ administrator.
 - (B) (No change.)
- (2) (No change.)
- (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) (No change.)
- (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) - (2) (No change.)

(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) (No change.)

§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 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.** An ILEC awarded support under this section shall provide the TUSF administrator:

- (1) The number of lines eligible for support
- (2) The ILEC's tariffed rate, as of January 1, 1998, for the service.
- (3) The lowest rate offered for the service by any local exchange company electing incentive regulation under PURA Chapter 58.

§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) - (2) (No change.)

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

(1) - (2) (No change.)

(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) subsection (b)(2) 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) - (C) (No change.)

(e) - (i) (No change.)

§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) - (B) (No change.)
- (C) sufficient operators and facilities to meet the ~~following~~ grade and quality of service standards established by the commission for TRS, including :
- ~~(i)~~ — the operator answering performance standards listed in §26.54(c)(2)(A) and (D) of this title (relating to Service Objectives and Performance Benchmarks), §26.61(e)(3)(A)(i) and (3)(B) of this title (relating to Telephone Utilities); and
- ~~(ii)~~ — not more than one out of one hundred calls shall encounter a busy signal when calling the TRS numbers;
- (D) - (M) (No change.)
- (2) (No change.)
- (3) **Rates and charges.** The following rates and charges shall apply to TRS:
- (A) - (B) (No change.)
- (C) **Access charges.** Telecommunications providers ~~Local exchange companies~~ 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 ~~local exchange companies~~ shall provide billing and collection services in support of this service at just and reasonable rates.

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

(1) - (2) (No change.)

(3) **Contract administration.**

(A) (No change.)

(B) **Reports.** The TRS carrier(s) ~~carrier~~ 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) ~~carrier~~ 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) - (iii) (No change.)

(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 to 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)(4)~~ **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 ~~equipment distribution program~~, as specified by the Public Utility Regulatory Act (PURA) §56.111 Texas Utilities Code Annotated §56.111 (Vernon 1998) ~~and 1997 Texas General Laws Chapter 149, §3~~. 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 that impair the ability to effectively access the telephone network other than disabilities of hearing or speech;

~~(B)(A)~~ one deaf person recommended by the Texas Deaf Caucus;

~~(C)(B)~~ one deaf person recommended by the Texas Association of the Deaf;

~~(D)(C)~~ one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

~~(E)(D)~~ one hearing-impaired person recommended by the American Association of Retired Persons;

~~(F)(E)~~ one deaf and blind person recommended by the Texas Deaf/Blind Association;

~~(G)(F)~~ one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;

~~(H)(G)~~ 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)(H)~~ 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)(F)~~ two public members recommended by organizations representing consumers of telecommunications services.

(2) (No change.)

(3) **Responsibilities.** The RTAC shall undertake the following responsibilities:

(A) - (C) (No change.)

(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 ~~equipment distribution program.~~

(4) - (5) (No change.)

§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 ~~an equipment distribution program~~ and for reimbursement to vendors and service providers who submit vouchers issued under the program.
- (b) **Program responsibilities.**
- (1) (No change.)
- (2) **Commission responsibilities.** The commission is responsible for:
- (A) (No change.)
- (B) Administering the TUSF to ensure adequate funding of the specialized telecommunications assistance program ~~equipment distribution program~~; and
- (C) Appointing and providing administrative support for the Relay Texas Advisory Committee (RTAC) ~~RTAC~~, in accordance with the Public Utility Regulatory Act (PURA), ~~PURA, Texas Utilities Code Annotated~~ §56.110 and §56.112 ~~(Vernon 1998)~~.
- (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 the~~ vendor's 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 equipment distribution 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 equipment distribution program.

(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 of ~~Local Exchange Companies~~ 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 ~~local exchange companies (LECs)~~ 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 ~~LECs~~ 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 ~~LEC~~ 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) (No change.)

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

- (1) **Telecommunications Providers ~~LECs~~.** A telecommunications provider ~~LEC~~, 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 ~~LEC~~ 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 (FUSF)), and provides the federally designated services to customers in order to receive federal universal service support;

- (B) the telecommunications providerLEC 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 providerLEC 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 providerLEC 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)~~§23.61(c),(d) and (e) of this title (relating to Telephone Utilities)~~;
- (E) the telecommunications providerLEC 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 ~~LEC~~ 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 ~~of the Public Utility Regulatory Act~~ it shall either:
- (i) - (ii) (No change.)
- (B) ~~If #~~the ILEC is not regulated pursuant to PURA Chapter 58 or 59 ~~of the Public Utility Regulatory Act~~ 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) (No change.)

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

(1) At any time, a telecommunications provider ~~LEC operating with a certificate of convenience and necessity (CCN) or a certificate of operating authority (COA)~~ may seek commission approval to be designated an ETP for a requested service area.

(2) - (3) (No change.)

(f) **Requirements for application for ETP designation and commission processing of application.**

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

(A) (No change.)

(B) **Contents of application.** A telecommunications provider ~~LEC~~ 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 ~~LEC~~. The application shall:

(I) show that the applicant is a telecommunications provider ~~LEC~~ as defined in §26.5 of this title;

(II) - (XI) (No change.)

(ii) (No change.)

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

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider LEC 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) - (v) (No change.)

(B) - (D) (No change.)

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

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

(A) (No change.)

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's LEC's customers; and

(C) (No change.)

- (2) **Area where the relinquishing telecommunications provider LEC is the sole ETP.** In areas where the relinquishing telecommunications provider LEC is the only ETP, the commission may permit it to relinquish its ETP designation upon:
- (A) written notification that the telecommunications provider LEC seeks to relinquish its ETP designation; and
 - (B) (No change.)
- (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 LEC 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 their ETP service area.
- (h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider LEC 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) - (2) (No change.)

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

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

(f) Proceedings to designate eligible telecommunications carriers.

(1) At any time, a common carrier may seek commission approval to be designated an ETC ~~ETP~~ for a requested service area.

(2) - (3) (No change.)

(g) - (i) (No change.)

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

(a) (No change.)

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

(1) - (4) (No change.)

~~(5)~~ Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);

~~(6)(5)~~ Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);

~~(7)(6)~~ Section 26.413 of this title (relating to Tel-Assistance Service);

~~(8)(7)~~ Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));

~~(9)(8)~~ Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

~~(10)(9)~~ Section 26.417 of this title (relating to Designation ~~of Local Exchange Companies~~ as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

~~(11)(10)~~ Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and

~~(12)(11)~~ Section 26.420 of this title (relating to Administration of Texas Universal Service Funds (TUSF)).

(c) - (d) (No change.)

~~(e) — Transition from existing USF programs to the TUSF.~~

- ~~(1) — Continuation of assessments and disbursements for periods prior to the implementation of TUSF programs. The TUSF administrator shall administer all outstanding assessment and disbursement obligations to support mechanisms existing on the effective date of this section, for periods prior to the implementation date of the programs in subsection (b) of this section.~~
- ~~(2) — Implementation of programs included in the TUSF and termination of existing support mechanisms. The TUSF administrator shall ensure that the collection of assessments from telecommunication providers pursuant to subsection (g) of this section, the disbursement of support amounts to ETPs pursuant to subsection (h) of this section, and the termination of support mechanisms existing on the effective date of this section, occur on a uniform date. In the event that interim assessments and disbursements are necessary prior to the establishment of final assessment and disbursement levels, they shall be subject to true-up to the final level of funding.~~

~~(e)~~ (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)(v) Lifeline Service and Link Up Service, §26.412 of this title;

(vii)(vi) Tel-Assistance Service, §26.413 of this title;

(viii)(vii) Telecommunications Relay Service, §26.414 of this title; and

(ix)(viii) Specialized Telecommunications Assistance Program (STAP), §26.415 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), any costs incurred by the Texas Department of Human Services caused by its administration of the Lifeline, Link Up, and Tel-Assistance programs, and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing and the Texas Department of Housing and Community Affairs 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)(g)~~ **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) **Basis for assessments.** Assessments shall be made to each telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151, Tax Code.
- (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 assessment rate determined pursuant to subparagraph (A) of

this paragraph by the basis for assessments as determined pursuant to

paragraph (2) of this subsection ~~subsection (g)(2) of this section.~~

- (4) **Reporting requirements.** Every month, each telecommunications provider shall be required to report taxable telecommunications receipts under Chapter 151, Tax Code to the commission or the TUSF administrator.
- (5) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment only from its retail customers who are subject to tax under Chapter 151 of the Tax Code, except for Lifeline, Link Up, and Tel-Assistance services. 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" "~~TX-USF Charge x.xx%~~"; and
 - (ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline, Link Up, and Tel-Assistance 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 changes. A telecommunications provider choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes to its tariff 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.
- (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)(h)~~ **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;

- (iii) Lifeline Service and Link Up Service; and/or
 - (iv) Tel-Assistance 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; and/or
 - (ii) Specialized Telecommunications Assistance 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 the TUSF.
- (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 30 days of the due date of their reports.
- (B) 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) and (D) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(h)(+) **True-up.** The assessment amount determined pursuant to subsections (e) and (f) ~~subsections (f) and (g)~~ 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 §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)(k)~~ **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)~~ §26.420(~~k~~)".
- (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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 12th DAY OF NOVEMBER 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**