

PROJECT NO. 34060

PUC RULEMAKING TO REVISE	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE §26.403 TEXAS	§	
HIGH COST UNIVERSAL SERVICE	§	OF TEXAS
PLAN (THCUSP)	§	

**ORDER ADOPTING AN AMENDMENT TO §26.403
AS APPROVED AT THE JUNE 22, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP) with no changes to the proposed text as published in the April 27, 2007 issue of the *Texas Register* (32 TexReg 2347).

This rule amendment is necessary and appropriate in order to allow the commission to determine in a contested proceeding, the appropriate eligible lines to be supported, and the benchmark or benchmarks to be used to calculate the support from the THCUSP, based upon current information and conditions in the telecommunications industry, law, and policy.

The amendment deletes existing rule language as to the specific eligible lines to be supported and the specific methodology of determining benchmarks. With the flexibility provided to the commission by this amendment, after notice and opportunity for hearing, the commission will determine which eligible lines should receive support under this section and will also determine benchmark(s) to be used to calculate the support amounts from the THCUSP. This amendment is adopted under Project Number 34060.

A public hearing, if requested, was scheduled for Monday, June 4, 2007. No request for the public hearing was received; therefore, no public hearing was conducted.

The commission received initial comments on the proposed amendment from AT&T Texas, Verizon Southwest, and Texas Cable & Wireless Association and Time Warner Telecom of Texas, L.P. (Coalition) and reply comments from Embarq and the Coalition. A summary of the stakeholders' filed comments and commission responses are set forth hereafter.

All parties filing comments supported the amendments to this section; however, parties sought clarifications of the amendments. The commentors expressed approval of the proposed amendments to the rule and approval of the flexibility and range these amendments afforded the commission in the subsequent contested proceeding in which benchmarks and lines to be supported by the THCUSP will be determined. The Coalition noted that the proposed amendments would remedy any constraints that the current rule language might impose on the commission's ability to decide and implement policy changes, and urged expeditious adoption.

AT&T Texas, Verizon, and Embarq expressed concern that the effect of this rulemaking may create a risk of invalidating the current THCUSP and disrupting the support flows to the eligible telecommunications providers (ETPs) who receive support from the THCUSP. Verizon noted that it is reasonable to assume that whatever changes are made will be prospectively implemented upon issuance of a final order in the follow-on substantive proceeding. These commentors requested that language be included in either the Adoption Order in this project or in the rule amendment that clarifies the continuation of the *status quo* pending notice and opportunity for hearing on the substantive issues. AT&T specifically requested that the commission clarify that ETPs be permitted to continue to submit their monthly claims for

reimbursement pursuant to the Texas Universal Service Fund (TUSF) rules currently in effect until the commission provides notice and opportunity for a hearing on any possible changes.

Commission response

Notwithstanding changes to §26.403, all companies currently participating in the THCUSP operate under, and are subject to, the provisions of the Final Order in Docket Number 18515 until such time as, after notice and opportunity for hearing, the order from Docket Number 18515 is superseded by a subsequent commission order.

In reply comments, the Coalition agreed with AT&T and Verizon that the commission must provide notice and an opportunity for a hearing prior to implementing any change in the THCUSP and that such changes must be prospective, not retroactive. However, the Coalition noted that such requirement for notice and opportunity for hearing would be satisfied at the conclusion of Phase I of a contested case. Therefore, the Coalition disagreed with the concept that the commission must wait until it has issued a final order in the future contested case to implement changes to the support amounts disbursed pursuant to the THCUSP. The Coalition also urged the commission to make decisions that affect the policies of §26.403 during Phase 1 of the future contested proceeding.

Commission response

Decisions regarding what may or may not be implemented by the commission during a contested proceeding are unrelated to this rule change, and would be addressed in the context of the contested proceeding. Also, the administrative schedule for the forthcoming

contested proceeding has yet to be established. Decisions regarding how many phases there will be in the contested case, and what issues are covered at what point in the contested case, will be made in the contested case proceeding.

The Coalition argued that the commission's decisions in the TUSF contested case may eventually require further revisions to this section in order to conform the final language of the rule to the policy, cost methodology, and other determinations made by the commission in the contested case. The Coalition pointed out this fact because it believed that these initial changes should not be interpreted as precluding or otherwise hampering the commission's ability to make policy changes in the contested case that may ultimately require additional rule changes.

Commission response

It would be premature at this time to stipulate *a priori* regarding results from the future proceeding and any potential impact on this Rule. The commission will make any changes to this rule section as necessary in the future, based on the outcome of the contested proceeding. The amendments to this rule broaden the guidelines regarding the THCUSP, and therefore enhance the commission's ability to make policy changes in a subsequent contested case, rather than hamper them.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (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 §56.021 which requires the commission to

adopt and enforce rules to establish a universal service fund to assist local exchange companies in providing basic local telecommunications services at reasonable rates in high cost rural areas of the state.

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

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

- (a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Benchmark** -- The per-line amount above which THCUSP support will be provided.
 - (2) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.
 - (3) **Eligible line** -- A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.
 - (4) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

- (5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.
- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.
- (d) **Service to be supported by the THCUSP.** The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state'. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.
- (1) **Initial determination of the definition of basic local telecommunications service.** Basic local telecommunications service shall consist of the following:
- (A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;
 - (B) tone dialing service;
 - (C) access to operator services;
 - (D) access to directory assistance services;
 - (E) access to 911 service where provided by a local authority;
 - (F) telecommunications relay service;
 - (G) the ability to report service problems seven days a week;
 - (H) availability of an annual local directory;
 - (I) access to toll services; and
 - (J) lifeline service.

(2) **Subsequent determinations.**

(A) Timing of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) **Criteria for determining amount of support under THCUSP.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection and as adjusted by the requirements of paragraph (3) of this subsection.

(1) **Determining base support amount available to ETPs.** The monthly per-line support amount available to each ETP shall be determined by comparing the

forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.

(A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.

(B) Determination of the benchmark. After notice and opportunity for hearing, the commission shall establish an appropriate benchmark or benchmarks.

(C) Support available under the THCUSP.

(i) After notice and opportunity for hearing, the commission shall determine which eligible lines shall receive support.

(ii) Support under the THCUSP is portable with the consumer.

(2) **Proceedings to determine THCUSP base support.**

(A) Timing of determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from September 1, 1999.

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

UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.

(i) Solely through UNEs.

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

- (II) $USF\ cost > RB > (UNE\ rate + R)$. The ILEC would receive the difference between USF cost and RB. In this case, where $USF\ cost > RB > (UNE\ rate + R)$, giving $(USF\ cost - RB)$ to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover $(USF\ cost - RB)$ would minimize financial harm to the ILEC; or
- (III) $(UNE\ rate + R) > USF\ cost > RB$. The ETP would receive the difference between USF cost and RB. Where $(UNE\ rate + R) > USF\ cost > RB$, giving $(USF\ cost - RB)$ to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover $(USF\ cost - RB)$ would minimize financial harm to the ETP.
- (ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be

derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate benchmark.

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

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

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

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

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

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

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

(3) **Other reporting requirements.** An ETP shall report any other information that is required by the commission or the TUSF administrator, including any

information necessary to assess contributions to and disbursements from the TUSF.

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

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 §26.403 relating to Texas High Cost Universal Service Plan (THCUSP) is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF JUNE 2007.

PUBLIC UTILITY COMMISSION OF TEXAS

PAUL HUDSON, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

BARRY T. SMITHERMAN, COMMISSIONER