

PROJECT NO. 34060

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

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §26.403
AS APPROVED AT THE APRIL 12, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP). This amendment is proposed in order to accommodate changes that have occurred in the telecommunications industry of potential impact to the THCUSP.

The section establishes the guidelines for determining financial assistance to eligible telecommunications providers that service the high cost rural areas of the state, other than the study areas of small and rural incumbent local exchange companies so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner. Further, the section sets forth the criteria for determining the amount of the support and which eligible lines shall receive support.

The proposed amendment would revise certain provisions of subsections (d) and (e) of this section. Subsections (d) and (e) would be revised to delete the existing rule language as to the specific eligible lines to be supported. Under the amendment, after notice and opportunity for hearing, the commission would determine which eligible lines should receive support under this section. Subsection (e) would be further modified to remove the

existing rule language regarding the determination of the benchmark used to calculate the support amounts and to require the commission, after notice and opportunity for hearing, to establish an appropriate benchmark or benchmarks to be used in calculating the support amounts. In addition, two conforming revisions are reflected in subsection (e)(3)(C)(ii).

Considerable change has occurred in the telecommunications industry and in state law and policy regarding the telecommunications industry since the original adoption of this section in January 1998 and the implementation of this section in 2000. This section needs to be modified to allow the commission to determine the appropriate eligible lines to be supported and the benchmark or benchmarks to be used to calculate the support based upon current information and conditions in the telecommunications industry, law, and policy. The actual determination of which eligible lines will be supported and what benchmark(s) will be used to calculate support going forward would be made after notice and opportunity for hearing.

Project Number 34060 is assigned to this proceeding.

Marshall Adair, Director, Communications Industry Oversight Division and Gary Mann, Attorney, Legal Division, 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

Mr. Adair and Mr. Mann 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 the section

will be that the commission will be able to determine the appropriate support to be made available in the high cost rural areas of the state affected by this section.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Adair and Mr. Mann 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.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, June 4, 2007, at 10:00 a.m. The request for a public hearing must be received within 32 days after publication.

Comments on the proposed amendment 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 20 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 32 days after publication. Comments should be organized in a manner

consistent with the organization of the proposed rule(s). 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. All comments should refer to Project Number 34060.

This amendment is proposed 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 ~~and is limited to those services carried on all flat rate residential lines and the first five flat rate single line business lines at a business customer's location.~~ Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.
- (1) **Initial determination of the definition of basic local telecommunications service.** Basic local telecommunications service shall consist of the following:
- (A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;
 - (B) tone dialing service;
 - (C) access to operator services;
 - (D) access to directory assistance services;

- (E) access to 911 service where provided by a local authority;
 - (F) 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~~The commission shall establish two benchmarks for the state, one for residential service and one for single line business service. The benchmarks for both residential and single line businesses will be calculated using the statewide average revenue per~~

~~line as described in clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.~~

~~(i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.~~

~~(ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single line business lines served for the same period, divided by 12.~~

(C) Support 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. An ETP shall receive support for residential and the first five single line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.

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

(A) Timing of determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from 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) $\text{USF cost} > (\text{UNE rate} + \text{retail cost additive (R)}) > \text{revenue benchmark (RB)}$. 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 **HAI** model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate ~~(residential or business) revenue~~ benchmark.

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

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

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

- (i) the total number of access lines on the ETP's network,
- (ii) the total number of access lines sold as UNEs,

- (iii) the total number of access lines sold for total service resale,
 - (iv) the total number of access lines serving end use customers,
and
 - (v) the total number of eligible lines for which the ETP seeks
TUSF support;
 - (B) the rate that the ETP is charging for residential and single-line
business customers for the services described in subsection (d) of this
section; and
 - (C) a calculation of the base support computed in accordance with the
requirements of subsection (e)(1) of this section showing the effects
of the adjustments required by subsection (e)(3) of this section.
- (2) **Annual reporting requirements.** An ETP shall report annually to the TUSF
administrator that it is qualified to participate in the THCUSP.
- (3) **Other reporting requirements.** An ETP shall report any other information
that is required by the commission or the TUSF administrator, including any
information necessary to assess contributions to and disbursements from the
TUSF.
- (g) **Review of THCUSP after implementation of federal universal service support.**
The commission shall initiate a project to review the THCUSP within 90 days of the
Federal Communications Commission's adoption of an order implementing new or
amended federal universal service support rules for rural, insular, and high cost
areas.

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 12th DAY OF APRIL 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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