

PROJECT NO. 35632

RULEMAKING RELATING TO	§	PUBLIC UTILITY COMMISSION
MODIFYING TEXAS HIGH-COST	§	
UNIVERSAL SERVICE PROGRAM	§	OF TEXAS
REPORTING REQUIREMENTS	§	

**ORDER ADOPTING AMENDMENT TO §26.403
AS APPROVED AT THE SEPTEMBER 11, 2008, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.403, relating to the Texas High Cost Universal Service Program (THCUSP) with changes to the proposed text as published in the June 20, 2008 issue of the *Texas Register* (33 TexReg 4773). The amended rule addresses reporting requirements for eligible telecommunications providers (ETPs) in accordance with the final order adopting the parties' Unanimous Settlement Agreement in Docket Number 34723, *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.031*. Project Number 35632 is assigned to this proceeding.

On July 10, 2008, the commission received written comments from the following entities: Office of Public Utility Counsel (OPC); Verizon Southwest (Verizon); Sprint Communications Company, LP, SprintCom, Inc., Sprint Spectrum, LP, Nextel of Texas, Inc., NPCR, Inc., tw telecom of texas, llc, Time Warner Cable Information Services (Texas), LLC, and TWC Digital Phone, LLC (collectively, the "USF Reform Coalition" or "URC"); XO Communications Services, Inc. (XO); McLeodUSA Telecommunications Services, Inc., (McLeodUSA); and Southwestern Bell Telephone, LP, d/b/a AT&T Texas (AT&T Texas). A public hearing was not held.

Although reply comments were not elicited in this proceeding, AT&T Texas provided an additional comment on July 23, 2008.

General Comments

OPC was supportive of the rule, saying that it met requirements for public access to information and openness and transparency regarding disbursement of THCUSP funds.

Subsection (f)(2)

AT&T Texas recommended that the term “receipt” be used rather than “disbursement,” as the former better describes the funds with respect to the reporting entities.

Commission Response

The commission concurs and modifies the rule language accordingly.

Verizon stated that it was more practical to have the period for the initial report begin on May 1, 2008 rather than April 25, 2008, citing the fact that Verizon tracks this information on a monthly basis and that inclusion of a single week’s data from April would not be of use in comparing future month-to-month submissions. As a second alternative, they proposed consideration of April 1, 2008 as a start date for the initial report.

Commission Response

The commission agrees that reporting a partial month serves no purpose and adopts Verizon's second alternative recommendation. Because paragraph 12 of the settlement in Docket Number 34723 stipulates that reporting be made retroactive to the date of the commission's final order in the settlement, the commission finds that a beginning date of April 1, 2008 meets this requirement while avoiding the issues identified in Verizon's comments.

AT&T Texas stated that the requirement that reports be due on the twentieth business day after the end of the reporting period would create potential ambiguity because of differences in holiday schedules and would sometimes too closely coincide with the due date for filing of the Texas Universal Service Fund Remittance and Support Worksheet. As an alternative, AT&T Texas proposed that the due date be changed to the thirtieth calendar day.

Commission Response

The commission concurs and modifies the rule language accordingly.

URC, XO, and McLeodUSA stated that, while staff's description of the proposed amendment indicated that filed THCUSP reports would be public, the rule does not make that explicit, opening the possibility of claims that the filed information is proprietary or confidential by later THCUSP recipients who were not signatories to the settlement. They further expressed concern that companies might seek to aggregate disbursements received by multiple ETPs into single

reports. In its July 23, 2008 comments, AT&T Texas stated that they and URC agreed that to avoid confusion, the reports to be made public should be more clearly identified.

Commission Response

The commission concurs and adopts language prohibiting the aggregation of data from multiple ETPs into single reports and making explicit the public availability of all reports filed pursuant to subsection (f)(2) of the rule.

URC, XO, and McLeodUSA stated that the commission should consider initiating rulemaking proceedings to examine means and standards for reporting to provide accountability as to how moneys disbursed from the THCUSP are used.

Commission Response

The commission may consider in the future opening a new proceeding to add reporting requirements.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§12.001 and 14.002 (Vernon 2007 and Supp. 2008), which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §51.001, which gives the commission the authority to make

and enforce rules necessary to protect customers consistent with the public interest; PURA §52.051(1)(A), which provides the commission the authority to preserve universal service; PURA §52.002, which authorizes the commission to regulate rates, operations, and services so that the rates are just, fair, and reasonable and the services are adequate and efficient; PURA §§56.021(1) and 56.021(5), which provide the commission with the authority to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas and reimburse the providers for providing lifeline service; and PURA §56.023 which, among other things, requires the commission to assure reasonable rates for basic local telecommunications service and approve procedures for the collection and disbursement of revenue from the universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §§12.001, 14.002, 51.001, 51.008, 52.051, 52.002, 56.021, and 56.023 (Vernon 2007 and Supp. 2008).

§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) $USF\ cost > (UNE\ rate + retail\ cost\ additive\ (R)) > revenue\ benchmark\ (RB)$. 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) **Quarterly reporting requirements.** An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.
- (A) The initial report shall cover the period of April 1, 2008, through June 30, 2008.
- (B) Subsequent reports shall cover each calendar quarter, beginning July 1, 2008.
- (C) Reports for quarters which end prior to this rule's effective date shall be due within 90 days of that date. Reports for subsequent quarters shall be filed no later than 3:00 p.m. on the 30th calendar day after the end of the reporting period.
- (D) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the reporting period.
- (E) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this subsection.
- (F) All reports filed pursuant to paragraph (2) of this subsection shall be publicly available.
- (3) **Annual reporting requirements.** An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

- (4) **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 the Texas High Cost Universal Service Program is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS this the _____ day of September 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER