PROJECT NO. 39937

RULEMAKING TO CONSIDER AMENDING SUBST. R. §26.403, RELATING TO THE TEXAS HIGH COST UNIVERSAL SERVICE PLAN AND SUBST. R. §26.412, RELATING TO THE LIFELINE SERVICE PROGRAM	§ § § § § § §	**PUBLIC UTILITY COMMISSION** **OF TEXAS**

ORDER ADOPTING THE REPEAL OF §26.403, NEW §26.403 AND AMENDMENT TO §26.412 AS APPROVED AT THE JUNE 13, 2012 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts the repeal of §26.403, relating to the Texas High Cost Universal Service Plan, with no changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 585); the adoption of a new §26.403, relating to the Texas High Cost Universal Service Plan, and amendment to §26.412, relating to the Lifeline Service Program, with changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 585). The new rule provides for reduction in support for local exchange carriers from the THCUSP based on the difference between current rates for basic local exchange service and a reasonable rate to be determined by the commission. The rule also provides an option whereby an incumbent local exchange carrier may choose to reduce its support to zero over a five-year period. The purpose of the amendments to §26.412 is to reflect new §26.403. Project Number 39937 is assigned to this proceeding.

The commission received comments on the proposed rule changes from AMA Techtel Communications (AMA Techtel), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Sprint Communications Company L.P., Texas Cable Association and tw telecom of

Texas, llc (collectively, the “USF Reform Coalition”), United Telephone Company of Texas, Inc. d/b/a CenturyLink, Central Telephone Company of Texas, Inc. d/b/a CenturyLink (CenturyLink), Valor Communications of Texas L.P. d/b/a Windstream Communications Southwest (Windstream), GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), TEXALTEL, the Office of Public Utility Counsel (OPUC), Cumby Telephone Cooperative, Inc., Panhandle Telecommunications Systems, Inc. d/b/a PTCI, Santa Rosa Telephone Cooperative, Inc., WT Services, Inc., XIT Telecommunications & Technology Ltd. d/b/a XT&T (collectively, “Rural CLECs”). Reply comments were filed by AMA TechTel, Rural CLECs, Verizon, Windstream, USF Reform Coalition, CenturyLink, AT&T, Josh Constancio, William Keley, Greg Clay, and Clay Ireland.

No party requested that a public hearing be held regarding the proposed changes to the commission’s rules.

(1) Issues Relating to the Timing of THCUSP support reductions

Verizon and AT&T requested that new §26.403 be modified to require that reductions in support should be concurrent with offsetting increases in rates for BLTS. AT&T also requested a modification to the proposed rule that would permit an ETP to accelerate its THCUSP support reduction in any year and increase the offsetting local rate increase in order to produce rounded rates.

Windstream recommended that the transition period in the proposed rule be five years rather than four years, to mirror the FCC's transition period for phase-in of the federal Access Recovery Charge.

Commission Response

The commission agrees with AT&T's recommendation that an ETP should have the ability to accelerate the reduction in its THCUSP support and increase the offsetting local rate increase that otherwise would be required in order to produce rounded rates. The rule has been changed accordingly.

The commission declines to adopt the recommendation by AT&T and Verizon that reductions in THCUSP support be made concurrent with offsetting increases in local rates. The proposed rule provides ETPs with the opportunity to increase local rates. Nothing in the rule requires such increases. Under the rule, each ETP has the discretion whether or not to raise its local rates to offset reductions in THCUSP support, as well as some control over the timing of those potential increases.

The commission also declines to adopt Windstream's recommendation that the period over which THCUSP reductions will be implemented should be increased to five years, to accord with the FCC's transition period for phase-in of the federal Access Recovery Charge. The proposed rule, with its rate rebalancing provisions, operates independently of changes in federal access rates and offsetting recovery mechanisms.

(2) Issues Relating to Deregulated Exchanges

AT&T proposed modifications to the proposed rule that would provide that any support lost to an ILEC due to the deregulation of an exchange will offset any reductions in support calculated under the rule. Verizon also proposed that the rule be modified so that any reductions in support experienced by an ILEC due to the deregulation of exchanges would be credited to the annual reduction in THCUSP support required under the rule. Windstream agreed with the concept proposed by AT&T and Verizon that companies receive a "credit" against the reductions that they would otherwise be required to take for support lost in exchanges deregulated subsequent to the effective date of this rule. Windstream, however, pointed out that each of the proposals vary in terms of how they would accomplish this result and also have differing dates for determining line counts for the initial support reductions.

The USF Reform Coalition opposed the edits to the proposed rule offered by AT&T concerning the treatment of deregulated exchanges. According to the USF Reform Coalition, these edits simply add complexity to the rule without improving the legitimacy of the reform.

In its reply comments, AT&T offered a new proposal under which an ILEC's THCUSP support reductions would be offset by support reductions due to the ILEC's deregulation of exchanges only if the ILEC committed to receive zero support from the THCUSP after December 31, 2017.

Commission Response

The commission declines to adopt the recommendations of those parties who advocated that loss of support due to exchange deregulation should be used as an offset to scheduled

reductions due to rate rebalancing in cases where the ILEC does not elect to total elimination of support after a four year period. These proposals would unnecessarily complicate the calculation of the support due to each carrier in each month. The commission prefers an approach that would result in a more predictable reduction in the amount of support provided for each exchange.

The commission, however, adopts a revision to the rule similar to that proposed by AT&T. If an ILEC ETP voluntarily agrees to reduce its THCUSP support to zero over a five-year period, then the ILEC should be permitted to manage the annual reductions to its support through a combination of exchange deregulation and scheduled rate rebalancing. The mechanism adopted by the commission, in the event that an ILEC ETP voluntarily agrees to reduce its THCUSP support to zero beginning January 1, 2017, provides that the ILEC's support will be reduced over a four year period beginning January 1, 2013 by the difference in revenue that would result if a reasonable rate for basic local exchange service were charged in those exchanges where the current rate for BLTS is below the reasonable rate. At the end of the four year period, support for an ILEC electing this option will be reduced to zero. Loss THCUSP support resulting from the deregulation of exchanges may be credited against the support reductions produced by rate rebalancing. The commission also requires an ILEC making such an election to notify the commission of its commitment within 10 days of the effective date of this rule. The proposed rule has been revised accordingly.

(3) Issues Relating to THCUSP support of CLECs serving Rural Exchanges

AMA Techtel argued that support should continue to be portable with the consumer. Elimination of the portability provision of the current rule would, in AMA TechTel's view, result in the reestablishment of a monopoly over telecommunications service in deregulated markets, providing ILECs with the benefits of deregulation without the checks that a competitive market provides. AMA TechTel also argued that it would reduce incentives for investment in rural markets.

AT&T did not disagree with AMA TechTel that support from the THCUSP should be portable with the end user. CenturyLink also supported AMA Techtel's suggestion that the rule be made clear to show that support is portable. CenturyLink, however, conditioned its support for AMA TechTel's position upon adoption of CenturyLink's proposal that the monthly per line support amounts available to any ETP should be based on ILEC-specific calculations. Finally, the USF Reform Coalition did not oppose AMA TechTel's proposal that THCUSP support continue to be portable with the end user.

The Rural CLECs pointed out that the proposed rule appears to permit ILECs to elect to deregulate exchanges and thereby terminate THCUSP support for a particular exchange unilaterally. The Rural CLECs argued that the continuation of THCUSP support should not be dependent solely on the discretion of ILECs in this fashion. Rather, they argued that the commission should incorporate language into the proposed rule permitting any ETP in a given exchange, regardless of whether it is deregulated or not, to petition the commission for continued support under the THCUSP.

AT&T was opposed to the Rural CLECs' proposal that support for CLECs should be continued even if support for the ILEC is phased out. In AT&T's view, if support for the ILEC is eliminated, then there is nothing left to port. They further noted that the change in the rule proposed by the Rural CLECs was contrary to PURA. The USF Reform Coalition likewise opposed the Rural CLEC's proposal that CLECs be permitted to petition the commission for continued THCUSP support in exchanges where the ILEC has been deregulated. The USF Reform Coalition specifically argued that it was inappropriate for consumers throughout Texas to subsidize the expansion of one ILEC into the territory of another ILEC.

Commission Response

The commission agrees with those parties that argued that support from the THCUSP should continue to be portable with the customer. Ensuring that support is portable with the customer ensures that support under the THCUSP will be provided in a competitively neutral manner. The proposed rule has been changed to incorporate the portability language in the current rule.

The commission declines to adopt the proposals by AMA TechTel and the Rural CLECs that support should continue to be made available to CLECs in exchanges where support to the ILEC has been eliminated because the exchange has been deregulated. To continue to provide support to a CLEC when support to the ILEC has been eliminated would grant an unwarranted competitive advantage to the CLEC vis-à-vis the ILEC with which it competes.

(4) Issues Relating to Line Counts Used in Support Calculations

AT&T proposed that the definition of "business lines" be eliminated from §26.403(b)(2) and that the reference to business lines be removed from §26.403 (d)(1)(a). In addition, AT&T proposed a modification of §26.403(e) that would clarify that the term "basic local telecommunications service" refers only to residential services, and that the terms "wire center" and "exchange" refer only to regulated exchanges and wire centers.

Verizon requested a clarification in the rule that the reductions in the amount of support calculated under the rule should be based upon the difference between current residential rates for BLTS and the reasonable rate determined by the commission, multiplied by the ETP's regulated residential lines. Verizon also requested that the rule be clarified such that lines in service used in the support calculation be those lines in service as of a specific date: September 30, 2012.

In reply comments, Verizon opposed the proposal by the USF Reform Coalition that line counts used in calculating the amount of support reductions under the rule should be based on 2011 line counts. Verizon argued that because line counts are steadily declining, this approach would result in a lack of opportunity for ETPs to offset reductions in THCUSP support with increases in rates for BLTS. Verizon supported either AT&T's proposal to use line counts as of November 1, 2012 or its original proposal to use line counts as of September 30, 2012. Verizon also pointed out that the use of 2011 line counts would include lines in exchanges that already have been deregulated. Verizon also reiterated its proposal that the rule be clarified to ensure that only residential lines in regulated exchanges be counted in the calculation of required support reductions.

In reply comments, the USF Reform Coalition opposed AT&T's proposal to restrict the line counts used in calculating THCUSP reductions to residential lines. The USF Reform Coalition argued in particular that the definition of BLTS contained in PURA specifically includes business local exchange service. The USF Reform Coalition further stated that if business lines are eligible for support, then they should be included in the calculation of support reductions.
The USF Reform Coalition also opposed Verizon's proposal to restrict the lines used in calculating support reductions to regulated exchanges. The USF Reform Coalition claimed that the proposals that it suggested address this issue. They do so by proposing a date certain to establish the amount and schedule of reductions. As such, this issue was moot. The USF Reform Coalition further opposed Verizon's proposal to use lines in service as of September 30, 2012 in the calculation of support reductions. They argued that the use of lines as of this date, rather than the USF Reform Coalition's proposed date of December 31, 2011, would allow ILECs to reduce the amount of support reductions by excluding lines that are deregulated in 2012.

Windstream opposed AT&T's proposal that business lines be excluded from the definition of "basic local exchange service." According to Windstream, eliminating business lines would create an additional loss of support beyond that already included within §26.403(e)(1). Windstream pointed out that AT&T offers no basis for this proposed change other than to say that the terms of its 2008 THCUSP settlement, which was based only on residential lines, should control the structure of THCUSP going forward for all the THCUSP companies.

CenturyLink did not agree with AT&T's proposal that references to "business lines" should be eliminated in order for the commission to treat all ILECs the same. Unlike AT&T, CenturyLink finds this proposal to be too dramatic a step. CenturyLink also opposed TEXALTEL's proposal to include deregulated lines in the rate rebalancing calculation. CenturyLink reiterated its Initial Comments by stating that the commission's jurisdiction over Chapter 65 lines is extremely limited.

In reply comments, AT&T opposed the USF Reform Coalition's recommendation that business lines be included in the calculation of THCUSP support reductions. AT&T noted that the existing settlement in Docket No. 34723 provided for support of business lines only during the first year of the settlement term for AT&T, and that the intent of the proposed rule is to now treat all ILECs the same for purposes of calculating settlement amounts.

Commission Response

The commission agrees that the rule should specify the date upon which lines in service should be counted for purposes of calculating the reduction in THCUSP support. The commission does not, however, agree with the proposal by the USF Reform Coalition that line counts should be "back-dated" to the end of 2011. Lines in exchanges that have been deregulated since that time currently receive no support. It therefore would be

inappropriate and illogical to calculate the THCUSP support reductions required under the rule as if they did receive support.

The rule has been modified to provide that line counts used to calculate the support reduction shall be those lines in service as of the end of the month prior to the effective date of this rule.

Regarding the question of whether references to business lines should be removed from the rule, as proposed by AT&T and opposed by Windstream and Century Link, the commission notes first that the nature of lines used in the calculation of the reduction in THCUSP support required by §26.403(e)(3) is a separate question than that of how the per-line support amount will be distributed. The commission's intent in adopting this new rule is that the reductions in THCUSP support required by the rule will be based upon the difference between current residential rates and the reasonable rate established by the commission in a subsequent contested case proceeding. For this purpose, it makes sense that only residential lines be used in calculating the required reduction.

Once the required reduction is calculated, it is immaterial how that reduction is distributed. While the rule requires the reduction be distributed proportionally among all regulated exchanges supported by the THCUSP, it makes little difference whether that reduction is distributed to residential lines or business lines or both. What is critical is that total dollar amount of the reduction must be achieved over the time frame specified in the rule. In fact, the rule is silent as to how the required reduction is distributed to lines served

by that wire center. This is an issue that will be determined in the subsequent contested case contemplated by this rule. Moreover, eliminating any support for business lines regardless of whether those lines currently receive support could have the unintended consequence of reducing support for some carriers beyond the support reductions achieved through rate rebalancing.

Accordingly, the commission declines to adopt AT&T's proposed elimination of the definition of "business line" in §26.403(b)(2) and its proposed elimination of the reference to business lines in §26.403(d)(1)(A). Because AT&T's proposed revision to §26.403(e), however, refers to the calculation of the required reduction in THCUSP support through rate rebalancing, this proposed revision is adopted in the rule. The commission intended the term "basic local telecommunications service" to refer only to residential services, and that the terms "wire center" and "exchange" refer only to regulated exchanges and wire centers. The change proposed by AT&T clarifies the intent of the rule.

(5) Issues Relating to Federal Support Used to Offset THCUSP Support

Windstream proposed a clarifying amendment to the proposed rule to define the federal USF support offset. The amendment proposed by Windstream would make clear that the proposed new §26.403(e)(1) required the offset of existing, and now frozen, federal support for High Cost Loop, High Cost Model, Safety Net Additive and Safety Valve Support, at the frozen level, and to exclude federal support for other purposes, including the CAF I incremental support and CAF II Support. Additionally, with Windstream's proposal, the federal offset amount would remain at the 2011 frozen amount, even if at a later date, the frozen amount is reduced. The result would be that as federal support is reduced, state support would not be correspondingly increased. CenturyLink also proposed that the rule should specifically define the types of federal universal service support that have been used under the current rule to create an offset to THCUSP support.

The USF Reform Coalition opposed Windstream and CenturyLink's proposal that the offset to THCUSP support of federal universal service support exclude federal support through the Interstate Access Support (IAS), Interstate Common Line Support (ICLS) and Local Switching Support (LSS) mechanisms. While the USF Reform Coalition agrees with these companies that THCUSP support should be reduced by the frozen federal high cost support amounts, the USF Reform Coalition argues that the IAS, ICLS, and LSS support mechanisms are also considered by the FCC to be high-cost support and should be included in the federal offset. The USF Reform Coalition agrees that Connect America Fund I (CAF-I) should not be included in the federal offset.

Commission Response

It is the commission's intent that the federal high cost support amounts that are offset from THCUSP support should be the same categories of federal high cost support amounts that are deducted under procedures currently in effect. The proposal of the USF Reform Coalition would have the effect of increasing the amount of the deduction for federal universal service support, and therefore would reduce support beyond the amount that would be produced through rate rebalancing. The amendments to the rule proposed by Windstream are therefore incorporated in the rule.

(6) Issues Relating to the Calculation of the Support Amount

AMA TechTel opposed the method proposed in the published rule for calculation of each ETPs support amount. In particular, AMA TechTel argued that the rule, as published, would require a calculation of a different support amount for each ETP, based on the difference between each ETP's rate for BLTS and the target rate adopted by the commission. According to AMA TechTel, this would result in a burdensome and time-consuming process, that ultimately will result in rewarding carriers with escalating costs and declining cost of service, and would result in the re-creation of monopoly telephone service in areas that currently support competition. AMA TechTel argued that support amounts should be provided in a competitively neutral manner, based on the rates charged by the incumbent carrier, and that support not be limited to carriers that have a Provider of Last Resort (POLR) obligation.

CenturyLink argued that non-ILEC ETPs providing service in a THCUSP ILEC service area (*i.e.*, wire center) should not receive more per-line support than the THCUSP ILEC. CenturyLink asserted that this situation could occur because the new provisions regarding a "reasonable rate" and reductions in base and per-line support amounts in §26.403(e) appear to apply to all ETPs when they should only apply to ILEC ETPs. CenturyLink further noted that the proposed new §26.403 broadly applies to all ETPs that receive THCUSP in high cost rural areas of the state and suggested that the term "THCUSP ILEC" or "ILEC ETP" should be used for all references to "ETP" in §26.403(e)(1), (2), and (3).

TEXALTEL noted that there is some question as to how the proposed rule will handle a situation in which an ILEC's rates are above the reasonable rate set in a subsequent contested case proceeding. TEXALTEL suggests adding language requiring the calculation only in situations in which rates are below the reasonable rate.

In reply comments, AMA TechTel noted that CenturyLink, and perhaps Verizon, all agreed with its position that the per-line support amount should be the same for all ETPs in an exchange. Stating that Verizon's comments could be interpreted in two different ways, AMA TechTel stated that it agreed with Verizon if its comments supported the idea that all ETPs in each exchange should be subject to the same reduction in support, but disagreed with Verizon if instead its comments were meant to support the same support reduction being applied to all exchanges. According to AMA TechTel, requiring all ILEC ETPs to reduce support by the same percentage in all exchanges would ignore cost variances among wire centers.

Commission Response

The commission agrees with those parties that propose that calculation of the reduction in THCUSP support should be based upon the difference between the ILEC's rate for basic local telecommunications service and the reasonable rate adopted by the commission in a future contested case proceeding. To calculate a separate reduction for each non-ILEC ETP, based on the difference between each ETP's rate and the reasonable rate would be unduly complicated, and would make portability of support problematic. The commission further agrees with CenturyLink's recommendation that, for purposes of clarity, the term "ILEC ETP" should be substituted for all occurrences of the term "ETP" in §26.403(e)(1), (2), and (3), and has amended the rule accordingly.

(7) Other Issues Addressed in Comments

The Rural CLECs proposed that the rule be modified to explicitly permit the determination of a reasonable rate in each market or exchange, rather than a single statewide reasonable rate. This position was supported by AMA in reply comments.

Responding to the Rural CLECs' proposal that the "reasonable rate" should be established on a market-specific basis, the USF Reform Coalition argued that this proposal is premature, and should be the subject of the contested case proceeding required under the proposed rule.

TEXALTEL raised a concern that the rule does not address a situation where the current rate for BLTS is above the commission-determined "reasonable rate" and suggests language to address this situation.

AT&T stated that the language in §26.403(e)(4) is not consistent with PURA §56.031, which provides that changes in the monthly support amounts from the THCUSP may be made only after notice and an opportunity for hearing, and limits the initiation of a review of support amounts only to the commission itself.

Commission Response

With regard to the geographic basis for establishing a reasonable rate for BLTS, the commission notes that the rule does not specify whether the reasonable rate to be determined in a subsequent contested case proceeding must be a statewide rate or whether some other geographic basis might be more appropriate. The commission determines that this is an issue that should be addressed in the contested case proceeding, and not in the rule.

With regard to the concern raised by TEXALTEL, the commission agrees that this point is in need of clarification. The commission has adopted the language proposed by TEXALTEL to clarify that, for an ILEC whose current rate for BLTS is above the commission-determined reasonable rate, THCUSP support will not be increased to offset decreases in the BLTS rate.

Finally, with regard to AT&T's concern with the proper language relating to future reviews of per-line support amounts, the commission agrees that the rule must be consistent with the statute, and deletes the subsection in question as superfluous.

(8) Issues Relating to Effects of the Proposed Rule on Small Business

As an initial matter, the Rural CLECs raised questions regarding the commission's finding that the proposed rule will have no direct adverse impact on small businesses. They noted the depending upon the application and interpretation of the proposed rule, rural CLECs that qualify as small businesses could potentially be adversely impacted. Specifically, the Rural CLECs focused on the possibility that CLECs may be adversely impacted if they lose THCUSP support in exchanges that are deregulated by an ILEC.

AMA TechTel likewise argued that, contrary to statements made by commission staff in the preamble to the Proposal for Publication, the rule as published would have significant adverse impacts on small businesses, specifically on the business operations of the small CLECs that serve rural communities. Without support from the TUSF, according to AMA TechTel, there is “no viable economic model to serve high cost rural areas.” The elimination of competitive alternatives to the ILECs, in AMA TechTel’s view, would result in a “loss of the inherent value that comes with a competitive marketplace.”

AT&T rejected the Rural CLECs’ complaint that the commission’s publication of the rule in the Texas Register did not properly address the impact of the rule changes on small business by noting that nothing in the rule affects business lines; the rate rebalancing and support reductions contemplated by the rule affect only residential lines. The USF Reform Coalition also disagreed with the Rural CLECs’ argument that the commission’s notice in this project did not comply with statutory requirements because it failed to consider the impact on small businesses that are customers of the Rural CLECs. According to the Coalition, the Rural CLECs cited no case law that requires an agency to consider the impact on customers of regulated entities, and that none exists.

Commission Response

The commission disagrees with the comments of the Rural CLECs and AMA TechTel. In enacting a rule, the commission is required to conduct an economic impact study and regulatory flexibility analysis only if there is a direct, adverse economic impact on small businesses subject to the proposed rule. The commission determined that there will be no adverse economic impacts on small or micro-businesses as a result of adopting the new §26.403 and amended §26.412. The rule builds upon the 2008 settlement approved by the Public Utility Commission in Docket Number 34723 by continuing to require reductions in THCUSP funding, but equally offering providers with the opportunity to raise their rates. This agreement ended on January 1, 2012. The new rule continues to provide small businesses with the same opportunity to increase rates charged for BLTS in an amount corresponding to any reductions in THCUSP support as provided under the previous settlement agreement. As such, the commission does not agree that there will be any adverse impact to those small businesses subject to the new rule. With regard to the Rural CLECs' specific concerns about the potential impacts of §26.403(e)(5), the commission notes that this provision merely restates the existing law as set forth in PURA §56.032. Because the proposed rule reiterates existing law, it cannot have an "adverse" impact on small or micro-business. The Rural CLECs also noted that the commission did not consider the impact of potential rate increases on small businesses served by the Rural CLECs. The commission, however, need only consider direct adverse economic impacts on small businesses subject to the rule, *i.e.*, ETPs that are small businesses. Indirect impacts, if any, on small businesses that are not subject to the rule are beyond the required scope of the commission's economic or regulatory flexibility analysis.

(9) Issues Relating to Reporting Requirements

AT&T proposed modifications to the rule as published that would reduce reporting requirements by eliminating the requirement that ETPs report the rate that the ETP charges for residential and single-line business service, because these rates are already on file at the commission or posted on ILEC web sites. AT&T also proposed that the TUSF administrator not be permitted to request information that is not expressly required by the rule.

In reply comments, Verizon supported AT&T's proposal to reduce reporting requirements for providers receiving support from the THCUSP.

The USF Reform Coalition proposed a modification to the proposed rule that would require all reports filed with the commission pursuant to §26.403(f) to be made publicly available.

In reply comments, AT&T opposed the Coalition's proposal that all THCUSP reports should be filed publicly, arguing that much of this information is protected from public disclosure under the Open Records Act.

Commission Response

The commission agrees that the rates charged for residential and single-line business basic local exchange service are already on file with the commission or otherwise publicly available, and has changed the rule accordingly. The commission declines to limit the ability of the TUSF administrator to request such information as is required to assess contributions to and disbursements from the fund.

The commission also declines to adopt the proposal by the USF Reform Coalition that would have the rule require that all reports filed with the commission be made publicly available. Information filed by ETPs relating to disbursements from the fund may be commercially sensitive information. In addition, the commission currently is conducting a separate proceeding under Project No. 39939 to determine what information should be made available in order to ensure transparency and accountability in the administration of the TUSF. The commission believes Project No. 39939 is the proper venue for discussion of what information may or may not be made available without harming the commercial interests of companies that participate in the fund.

(10) Other Issues

Various residents of the Rising Star, Texas also submitted comments opposing any changes to the THCUSP. Specifically, Josh Constancio, the Fire Chief of the Rising Star Volunteer Fire Department, William Kelcy, the Chief of Police of the Rising Star Police Department, Greg Clay, and Clay Ireland all filed letters detailing the benefits to their community resulting from the current operation of the THCUSP.

Commission Response

In Senate Bill 980, the legislature specifically called upon the commission to conduct a review and evaluation of the THCUSP. Based on the commission's review of the THCUSP, the proposed changes will improve the overall operation of the program and reflect sound public policy.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the new and amended sections, the commission makes changes to clarify its intent.

The amendments, repeal, and new section are adopted under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §56.021, which requires the commission to adopt rules concerning the Texas universal service fund.

Cross Reference to Statutes: PURA §14.002 and §56.021.

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

NEW §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) **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.

(2) **Eligible line** -- A residential line or 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.

(3) **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)).

(4) **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) Initiation 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 commission shall determine the amount of per-line support to be made available to ETPs in each eligible wire center. The amount of support available to each ETP shall be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection. As used in this subsection, “basic local telecommunications service” refers to services available to residential customers only, and “exchange” or “wire center” refer to regulated exchanges or wire centers only.

(1) **Determining base support amount available to ILEC ETPs**. The initial annual base support amount for an ILEC ETP shall be the annualized monthly THCUSP support amount for the month preceding the effective date of this section, less the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support as determined by the Universal Service Administration Company pursuant to 47 C.F.R. §54.312(a). The initial per-line monthly support amount for a wire center shall be the per-line support amount for the wire center for the month preceding the effective date of this section, less each wire center’s pro rata share of one-twelfth of the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support determined by the Universal Service Administration Company pursuant to 47 C.F.R §54.312(a) . The initial annual base support amount shall be reduced annually as described in paragraph (3) of this subsection.

(2) **Determination of the reasonable rate**. The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. To the extent that an ILEC ETP’s existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the

ILEC ETP may, over time, increase its rates for basic local telecommunications service to an amount not to exceed the reasonable rate. The increase to the existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding**.** An ILEC ETP may, in its sole discretion, accelerate its THCUSP reduction in any year by as much as 10% and offset such reduction with a corresponding local rate increase in order to produce rounded rates. In no event shall any such acceleration obligate the ETP to reduce its THCUSP support in excess of the total reduction obligation initially calculated under paragraph (3) of this subsection.

(3) **Annual reductions to THCUSP base support and per-line support recalculation**. As part of the contested proceeding referenced in paragraph (2) of this subsection, each ILEC ETP shall, using line counts as of the end of the month preceding the effective date of this rule, calculate the amount of additional revenue that would result if the ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers for those services where the price, or imputed price, are below the reasonable rate. Lines in exchanges for which an application for deregulation is pending as of June 1, 2012 shall not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP shall, within 20 days of the final order denying such application, submit revised calculations including the lines in those exchanges for which the application for deregulation was denied. Without regard to whether an ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the ILEC

ETP's annual base support shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period. This reduction shall be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) **Portability**. The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(5) **Limitation on availability of THCUSP support.**

(A) THCUSP support shall not be provided in a wire center in a deregulated market that has a population of at least 30,000.

(B) An ILEC may receive support from the THCUSP for a wire center in a deregulated market that has a population of less than 30,000 only if the ILEC demonstrates to the commission that the ILEC needs the support to provide basic local telecommunications service at reasonable rates in the affected market. An ILEC may use evidence from outside the wire center at issue to make the demonstration. An ILEC may make the demonstration for a wire center before or after submitting a petition to deregulate the market in which the wire center is located.

(6) **Total Support Reduction Plan**. Within 10 days of the effective date of this section, an ILEC may elect to participate in a Total Support Reduction Plan (TSRP) as prescribed in this subsection, by filing a notification of such participation with the commission. The TSRP would serve as an alternative to the

reduction plan prescribed in paragraph (3) of this subsection. The TSRP will be implemented as follows:

(A) For an ILEC making this election, the ILEC shall reduce its THCUSP funding in accordance with paragraph (3) of this subsection with the exception that THCUSP reductions due to exchange deregulation may be credited against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.

(B) In no event shall an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if it would otherwise be entitled to such funding as of this date.

(f) **Reporting requirements**. An ETP that receives support pursuant to this section shall report the following information:

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

(A) the total number of eligible lines for which the ETP seeks TUSF support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.

(2) **Quarterly filing requirements**. An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) 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 calendar quarter reporting period.

(B) 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 paragraph.

(C) All reports filed pursuant to paragraph (3) 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 of the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

§26.412. Lifeline Service Program.

(a) – (e) (No change.)

(f) **Lifeline support and recovery of support amounts.**

(1) **Lifeline discount amounts.** All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

(A) – (E) (No change.)

(F) Additional Texas High Cost Universal Service Plan (THCUSP) ILEC Area Discount –

(i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support*

Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. SUBST. R. §26.403 (Rate Increase) and with new §26.403 of this title adopted by the commission in Project Number 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program*.

(ii) – (vi) (No change.)

(2) (No change.)

(g) (No change.)

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 Plan is hereby adopted with changes to the text as proposed and §26.412, relating to the Lifeline Service Program is amended with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the ______ day of JUNE 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

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DONNA L. NELSON, CHAIRMAN

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KENNETH W. ANDERSON, JR., COMMISSIONER

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ROLANDO PABLOS, COMMISSIONER

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