

PROJECT NO. 39937

RULEMAKING TO CONSIDER	§	PUBLIC UTILITY COMMISSION
AMENDING SUBSTANTIVE RULE	§	
§26.403, RELATING TO THE TEXAS	§	OF TEXAS
HIGH COST UNIVERSAL SERVICE	§	
PLAN AND SUBSTANTIVE RULE	§	
§26.412, RELATING TO THE LIFELINE	§	
SERVICE PROGRAM	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §26.412,
REPEAL OF §26.403, AND NEW §26.403 AS APPROVED
AT THE JANUARY 26, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.412, relating to the Lifeline Service Program, the repeal of the current §26.403, relating to Texas High Cost Universal Service Plan (THCUSP), and new §26.403, relating to Texas High Cost Universal Service Plan (THCUSP). The amendments and new section are made to conform with Senate Bill 980 and House Bill 2295 of the 82nd Legislature, Regular Session, enacted in 2011. Additionally, the amendments and new section are proposed to comply with current §26.403(g), which requires a review of the THCUSP within 90 days of the Federal Communications Commission's (FCC) adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas. The FCC released such an order on November 18, 2011 in WC Docket No. 05-337. Project Number 39937 is assigned to this proceeding.

The proposed new §26.403 provides for a reduction in THCUSP support over a four year period that is equal to the amount of additional revenue that each telecommunications provider calculates will be generated if that telecommunications provider were to charge a reasonable rate,

as determined by the commission, for basic local telecommunications service to all residential customers.

Dr. Mark Bryant, Wholesale Market Economist, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Bryant has determined that for each year of the first five years that the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be compliance with Senate Bill 980 and House Bill 2295. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments or new section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Dr. Bryant has also determined that for each year of the first five years the proposed amendments and new section are in effect, there should be no effect on 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 APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for public hearing must be received by Thursday, March 1, 2012 (20 days after publication).

Comments on the proposed amendments and new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Thursday, March 1, 2012 (20 days after publication). Reply comments may be submitted by Friday, March 16, 2012 (35 days after publication). When commenting on the proposed amendments and new section, the commission is particularly interested in receiving specific, quantified estimates of how the proposed amendments and new section or any suggested amendments or alternatives to them will impact future disbursements from the Texas Universal Service Fund, and correspondingly, quantifications of the anticipated impact of the proposed amendment and new section or any suggested amendments or alternatives to them on customer rates. Sixteen copies of comments on the proposed amendments and new section and reply comments are required to be filed pursuant to §22.71(c) of this title. Comments and reply comments should be organized in a manner consistent with the organization of the sections. All comments should refer to Project Number 39937.

The amendment, repeal, and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (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 Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

Cross Reference to Statutes: PURA §14.002, Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

§26.403. Texas High Cost Universal Service Plan (THCUSP) is repealed, and replaced with the following:

§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 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.
 - (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) 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.

- (1) **Determining base support amount available to ETPs.** The initial annual base support amount for an ETP shall be the annualized monthly THCUSP support amount as of the effective date of this section, less the annualized amount of support received by the ETP from the federal universal service fund. The initial per-line monthly support amount for a wire center shall be the monthly per-line support amount for the wire center as of the effective date of this section, less each wire center's pro rata share of the total monthly support received by the ETP from the federal universal service fund. 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 ETP's existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the 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.
- (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 ETP shall calculate the amount of additional revenue that would result if the ETP were to charge the reasonable rate for basic local

telecommunications service to all residential customers. Without regard to whether an ETP increases its rates for basic local telecommunications service to the reasonable rate, the 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) **Review of Support Amounts.** The commission may review the amount of support provided to ETPs by the THCUSP at any time, upon its own motion or upon the motion of any affected party or commission staff.
- (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.

- (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;
 - (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 (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 §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) 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.

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(ii) – (vi) (No change.)

(2) (No change.)

(g) (No change.)

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 27th DAY OF JANUARY 2012 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**