

PROJECT NO. 26135

PUC RULEMAKING PROCEEDING	§	PUBLIC UTILITY COMMISSION
TO AMEND RULES REFERENCING	§	
TEL-ASSISTANCE	§	OF TEXAS

**PROPOSAL FOR PUBLICATION
AS APPROVED AT THE JULY 25, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.5, relating to Definitions; §26.31, relating to Disclosures to Applicants and Customers, §26.217, relating to Administration of Extended Area Service (EAS) Requests; §26.219, relating to Administration of Expanded Local Calling Service (ELCS) Requests; §26.221, relating to Application to Establish or Increase Expanded Local Calling Service (ELCS) Surcharges; §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; §26.401, relating to Texas Universal Service Fund (TUSF); §26.403, relating to Texas High Cost Universal Service Plan (THCUSP); and §26.420, relating to Administration of Texas Universal Service Fund (TUSF). The proposed amendments will eliminate references to the Tel-Assistance program which was repealed in September 2001 pursuant to House Bill 2156 (H.B. 2156), 77th Legislature (2001 Texas General Laws 5160), Relating to Eligibility Process for Certain Utility Customer Discounts, Public Utilities Regulatory Act (PURA) §55.015. In repealing the Tel-Assistance program (formerly, Public Utility Regulatory Act, Texas Utilities Code Annotated §§56.071 — .079), the Legislature stated in H.B. 2156, §4 and §5, respectively, that on September 1, 2001, "all funds, employees, and resources of the Public Utility Commission of Texas and the Texas Department of Human

Services dedicated to the tel-assistance service program become funds, employees, and resources dedicated to the lifeline service program under §55.015, Utilities Code" and that "all persons receiving benefits under the tel-assistance service program shall be automatically enrolled in the lifeline service program." Project Number 26135 is assigned to this proceeding.

Janis Ervin, Senior Telecommunications Analyst, Telecommunications Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Ervin has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be language that is current and consistent with the legislative mandate found in H.B. 2156. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed sections are 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) §2001.022.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendments. The commission requests that comments be limited to no more than 15 pages. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. All comments should refer to Project Number 26135.

SUBCHAPTER A

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

§26.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) — (10) (No change.)

(11) **Basic local telecommunications service** — flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline and tel-assistance services; and any other service the commission, after a

hearing, determines should be included in basic local telecommunications service.

(12) — (214) (No change.)

~~(215) **Tel assistance service** — A program providing eligible consumers with a 65% reduction in the applicable tariff rate for qualifying services.~~

(215)(216) **Telecommunications relay service (TRS)** — A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(216)(217) **Telecommunications relay service (TRS) carrier** — The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(217)(218) **Telecommunications utility** —

- (A) a public utility;
- (B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;
- (C) a specialized communications common carrier;
- (D) a reseller of communications;

- (E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;
- (F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned pay telephone service; and
- (G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

~~(218)~~(219) **Telephones intended to be utilized by the public** — Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

~~(219)~~(220) **Telephone solicitation** — An unsolicited telephone call.

~~(220)~~(221) **Telephone solicitor** — A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

~~(221)~~(222) **Test year** — The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

~~(222)~~(223) **Texas Universal Service Fund (TUSF)** — The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(223)(224) **Tier 1 local exchange company** — A local exchange company with annual regulated operating revenues exceeding \$100 million.

(224)(225) **Title IV-D Agency** — The office of the attorney general for the state of Texas.

(225)(226) **Toll blocking** — A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(226)(227) **Toll control** — A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(227)(228) **Toll limitation** — Denotes both toll blocking and toll control.

(228)(229) **Total element long-run incremental cost (TELRIC)** — The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the certificated telecommunications utility's (CTU's) provision of other elements.

(229)(230) **Transport** — The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a dominant certificated telecommunications utility.

(230)(231) **Trunk** — A circuit facility connecting two switching systems.

(231)(232) **Two-primary interexchange carrier (Two-PIC) equal access** — A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(232)(233) **Unauthorized charge** — Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(233)(234) **Unbundling** — The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(234)(235) **Unit cost** — A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(235)(236) **Usage sensitive blocking** — Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(236)(237) **Virtual private line** — Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(237)(238) **Voice carryover** — A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation

and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(238)(239) **Volume insensitive costs** — The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(239)(240) **Volume sensitive costs** — The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(240)(241) **Wholesale service** — A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(241)(242) **Working capital requirements** — The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(242)(243) **"0-" call** — A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(243)(244) **"0+" call** — A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(244)(245) **311 answering point** — A communications facility that:

- (A) is operated, at a minimum, during normal business hours;
- (B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;
- (C) is the first point of reception by a governmental entity of a 311 call; and
- (D) serves the jurisdictions in which it is located or other participating jurisdictions.

(245)(246) **311 service** — A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(246)(247) **311 service request** — A written request from a governmental entity to a certificated telecommunications utility requesting the provision of 311 service. A 311 service request must:

- (A) be in writing;
- (B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;
- (C) contain an outline from the governmental entity for implementation of 311 service;

- (D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and
- (E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(247)(248) **311 system** — A system of processing 311 calls.

(248)(249) **911 system** — A system of processing emergency 911 calls, as defined in Texas Health & Safety Code §772.001, as may be subsequently amended.

SUBCHAPTER B

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

§26.31. Disclosures to Applicants and Customers.

(a) **Certificated telecommunications utilities (CTU).** These disclosure requirements shall apply only to residential customers and business customers with five or fewer customer access lines.

(1) — (3) (No change.)

(4) **Customer rights.** A CTU shall provide information regarding customer rights to customers in writing and free of charge at the initiation of service.

(A) — (B) (No change.)

(C) The following information shall be included:

(i) — (xviii) (No change.)

- (xix) if a CTU is offering Lifeline ~~or Tel Assistance~~, how information about customers who qualify for Lifeline ~~or Tel Assistance~~ may be shared between state agencies and their local phone service provider.

(5) — (6) (No change.)

- (b) **Dominant certificated telecommunications utility (DCTU).** In addition to the requirements of subsection (a) of this section, the following requirements shall apply to residential customers and business customers with five or fewer customer access lines.

- (1) **Prior to acceptance of service.** Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:

(A) (No change.)

(B) that clearly informs applicants about the availability of Lifeline service ~~and Tel Assistance~~.

(2) (No Change.)

- (c) (No change.)

SUBCHAPTER J

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

§26.217. Administration of Extended Area Service (EAS) Requests.

- (a) (No change.)
- (b) **Extended Area Service.** The term "utility(ies)" in this section refers to dominant certificated telecommunications utility(ies).
 - (1) — (4) (No change.)
 - (5) **EAS rate additives.**
 - (A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility(ies) shall file recommendations

for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

(i) — (ii) (No change.)

~~(iii) — Tel Assistance subscribers in the metropolitan exchange will not be assessed this rate additive.~~

(B) — (C) (No change.)

(D) The EAS rate additive to be used in the affected exchange(s) must meet the following standards.

(i) No increase in rates shall be incurred by the subscribers of non-benefiting~~nonbenefiting~~ exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.

(ii) — (iv) (No change.)

(6) — (8) (No change.)

§26.219. Administration of Expanded Local Calling Service Requests.

(a) — (f) (No change.)

(g) **Calculation of ELCS Fees.** ELCS fees shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula. Key formula terms are defined in §26.221(b) of this title.

(1) (No change.)

(2) **ELCS fee formula.** First, sum lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Divide the annual ELCS requirement by 12 to obtain the monthly requirement, which is the numerator. Second, obtain the most current count of access lines in the petitioning exchange. Multiply the number of business lines by two ~~and multiply the number of Tel Assistance lines by 35%.~~ Add the doubled business lines ~~and the 35% of Tel Assistance lines~~ to the number of residential lines. This total is the denominator. Third, divide the numerator by the denominator to obtain the monthly ELCS fee per residential line. Multiply the monthly ELCS fee per residential line by two to obtain the monthly ELCS fee per business line. ~~Multiply the monthly fee per residential line by 35% to obtain the monthly ELCS fee per Tel Assistance line.~~ Round ELCS fees up or down to the nearest penny.

(3) — (4) (No change.)

(h) — (i) (No change.)

§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

(a) — (b) (No change.)

(c) **General Principles.** The commission shall consider these general principles when establishing or increasing ELCS surcharges.

(1) — (7) (No change.)

(8) ELCS surcharges shall be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers ~~and Tel Assistance subscribers are billed 35% of the monthly per line charge billed to residential subscribers.~~

(d) — (f) (No change.)

(g) **Calculation of initial ELCS surcharges.** An initial ELCS surcharge shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

(1) (No change.)

(2) **Denominator.** First, obtain the most current count of residential and business ~~and Tel Assistance~~ lines served by the ILEC in Texas. Second, multiply the number of business lines by two ~~and multiply the number of Tel Assistance lines~~

by 35%. Third, add the doubled business lines ~~and the 35% of Tel Assistance lines~~ to the number of residential lines. This total is the denominator.

- (3) **ELCS surcharge formula.** Divide the numerator in paragraph (1) of this subsection by the denominator in paragraph (2) of this subsection to obtain the monthly ELCS surcharge per residential line. Multiply the monthly ELCS surcharge per residential line by two to obtain the monthly ELCS surcharge per business line. ~~Multiply the monthly ELCS surcharge per residential line by 35% to obtain the monthly ELCS surcharge per Tel Assistance line.~~ Round ELCS surcharges up or down to the nearest penny.

(h) — (i) (No change.)

§26.224. Requirements Applicable to Basic Network Services for Chapter 58

Electing Companies.

(a) — (b) (No change.)

(c) **Basic network services.**

- (1) **Services included in basic network services.** Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services pursuant to PURA §58.051(a):

(A) — (B) (No change.)

(C) Lifeline and tel-assistance service;

(D) — (K) (No change.)

(2) — (5) (No change.)

(d) — (l) (No change.)

SUBCHAPTER P

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

§26.401. Texas Universal Service Fund (TUSF).

(a) (No change.)

(b) **Programs included in the TUSF.**

(1) — (9) (No change.)

(10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); ~~and~~

- (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));-
- (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
- (13)_ Section 26.422 of this title (relating to Subsequent Petitions for Service to Uncertificated Areas); and
- (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service).

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

(a)—(c) (No change.)

- (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) — (I) (No change.)

(J) lifeline service and tel-assistance services.

(2) (No change.)

(e) — (g) (No change.)

§26.420. Administration of Texas Universal Service Fund (TUSF).

(a) (No change.)

(b) **Programs included in the TUSF.**

(1)—(6) (No change.)

~~(7) — Section 26.413 of this title (relating to Tel-Assistance Service);~~

(7)(8) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));

(8)(9) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

(9)(10) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

(10)(11) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and

(11)(12) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));-

(12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);

(13)_ Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas); and

(14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service).

(c)—(d) (No change.)

(e) **Determination of the amount needed to fund the TUSF.**

(1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.

(A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:

(i) — (vi) (No change.)

~~(vii) — Tel Assistance Service, §26.413 of this title;~~

(vii)(viii) Telecommunications Relay Service, §26.414 of this title; and

~~(viii)(ix) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title.~~

(B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), ~~any costs incurred by the Texas Department of Human Services caused by its administration of the Tel Assistance program,~~ and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.

(C) (No change.)

(2) (No change.)

(f) **Assessments for the TUSF.**

(1) — (4) (No change.)

(5) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment only from its retail customers who are subject to tax under Chapter 151 of the Tax Code, except for Lifeline, and Link Up, ~~and Tel-Assistance~~ services. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Tax Code. The commission may order modifications in a telecommunications provider's method of recovery.

(A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills;

(i) (No change.)

(ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline and ; Link Up, ~~and Tel-Assistance~~ services.

(B) — (D) (No change.)

(6) (No change.)

(g) **Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.**

(1) **ETPs, ILECs, other entities, and agencies.**

(A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

(i) (No change.)

(ii) Small and Rural ILEC Universal Service Plan; and/or

(iii) Lifeline Service and Link Up Service.; and/or

~~(iv) Tel Assistance Service.~~

(B) — (D) (No change.)

(2) — (3) (No change.)

(h) — (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 9th DAY OF AUGUST 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**