PROJECT NO. 24526

RULEMAKING TO AMEND USF RULES REGARDING THE UNBUNDLED NETWORK ELEMENT SHARING MECHANISM	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

PROPOSAL FOR PUBLICATION AS APPROVED AT THE JANUARY 23, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes amendments to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP), as it concerns the adjustment for basic local telecommunications service provided solely and partially through the purchase of unbundled network elements (UNEs). In 1999, as part of Senate Bill 560 (SB 560), the Legislature enacted Public Utility Regulatory Act (PURA) §56.026 to ensure that eligible telecommunications providers (ETPs) receive prompt and efficient disbursement for provisioning basic local telecommunications services in rural areas from the universal service fund (USF). Specifically, under PURA §56.026(c)(2), the Legislature granted the commission the authority to reduce an electing company's amount of disbursement if its local end user customer switches to another local service provider that serves the customers solely or partially through the use of UNEs provided by the electing company. The commission is required to establish an equitable allocation formula for this disbursement. Accordingly, the commission initiates this rulemaking proceeding to establish an equitable formula to ensure that all residents within the state have access to affordable basic local telecommunications service. The proposed amendments are comprised of substantive revisions to §26.403(e)(3)(C). Project Number 24526 is assigned to this proceeding.

Substantive changes to rule language

Proposed §26.403(e)(3)(C)(i)-(iv) amends the adjustment for service provided solely and partially through UNEs. Specifically, the proposed amendments create a competitively neutral market in rural Texas for provisioning basic local telecommunications service provided solely or partially through the purchase of UNEs.

Lori Cobos, Policy Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. No reductions in costs to the state or local governments are estimated as a result of enforcing this section as proposed. No loss or increase in revenue to the state or local governments are estimated as a result of enforcing and administering this section as proposed.

Ms. Cobos has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to provide a sharing mechanism that permits all residents of the state to obtain affordable basic local telecommunications service needed to communicate with other residents, businesses, and governmental entities. There will be no effect on small businesses or micro-businesses as a result of enforcing this section.

Ms. Cobos has determined that there is minimal anticipated economic cost to persons who are required to comply with the section as proposed. The anticipated economic effect on companies will consist of administrative, legal, and miscellaneous costs associated with implementing the proposed section.

Ms. Cobos has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested under Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, beginning at 10:00 a.m. in the Commissioners' Hearing Room on Thursday, April 4, 2002. The request for public hearing must be received within 30 days after publication.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the proposed amendments. All comments should refer to Project Number 24526.

In addition to the general comments, the commission seeks comment on whether the proposed amendments to the UNE sharing mechanism in §26.403(e)(3)(C)(i)-(iv) are equitable. Specifically, are the proposed amendments competitively and technologically neutral?

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; specifically, PURA §56.021 which requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund; §56.023 which requires the commission to adopt rules for the administration of the universal service fund; and §56.026 which permits the commission to establish an equitable allocation formula for the disbursement of universal service funds if a local end user customer of an electing company switches to another local service provider that provisions service solely or partially through UNEs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021-56.028.

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

(a) — (d) (No change.)

(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) — (2) (No change.)

(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) — (B) (No change.)

(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) ETP provisioning service soley~~Solely~~ through UNEs. An ETP serving an end user solely through UNEs purchased from another ETP shall receive the lesser of the available THCUSP support or the amount of the appropriate retail cost additive.

~~(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) ETP provisioning service partially through UNEs. An ETP serving an end user partially through UNEs purchased from another ETP shall receive the lesser of the available THCUSP support or the amount of the appropriate retail cost additive, plus a pro rata share of any THCUSP support in excess of the retail cost additive. THCUSP support in excess of the retail cost additive shall be apportioned to the ETP serving the end user based upon the relative percentage of those UNEs that are self-provisioned. For purposes of this pro ration, the UNE costs for each wire center shall be based upon the HAI model costs for the following five UNEs: loop, line port, end-office usage, signaling, and transport. ~~Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the HAI model costs for five UNEs (line, line port, end office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.~~

(iii) ETP providing UNEs. The ETP providing UNEs to another ETP shall receive the difference, if any, between the total available THCUSP support amount and the THCUSP support amount allocated to the ETP serving the end user.

(iv) ETP retail cost additive. For the purposes of clauses (i) and (ii) of this subparagraph, the ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.

(f) — (g) (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 25th DAY OF JANUARY 2002 BY THE PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY