

PROJECT NO. 47668

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES RELATING TO	§	
TELECOMMUNICATIONS TO	§	OF TEXAS
CONFORM TO PURA 56.023(p) AND	§	
56.023(r) PURSUANT TO S.B. 1476	§	

**PROPOSAL FOR PUBLICATION OF NEW RULE §26.409
AS APPROVED AT THE JUNE 13, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new rule 16 Texas Administrative Code (TAC) §26.409, relating to the review of Texas Universal Service Fund (TUSF) support received by competitive Eligible Telecommunications Providers (ETPs). Senate Bill 1476 of the 85th Legislature, Regular Session (2017), amended Public Utility Regulatory Act (PURA) §56.023(p) and (r). Under PURA §56.023(p), in an exchange where an incumbent local exchange company or cooperative is ineligible for TUSF support under a plan established by PURA §56.021(1), a competitive ETP will continue receiving TUSF support until the commission determines that support should be discontinued by PURA §56.023(r). PURA §56.023(r) directs the commission to review the per-line support amounts of a competitive ETP in an exchange where the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines served by competitive ETPs in that exchange on December 31, 2016 and determine whether TUSF support should be eliminated for that exchange. The purpose of this new rule is to establish the criteria and process for determining whether TUSF support should be eliminated under the provisions of PURA §56.023(p) and (r).

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required by Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Mariah Benson, Economist, has determined that for the first five year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government by Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mariah Benson, Economist, has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits and costs expected as a result of the adoption of the proposed new rule will have little to no impact under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required by Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded by subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with 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 a public hearing must be received within 20 days after publication.

Public Comments

Comments on the proposed amendment may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 20 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed by 16 TAC §22.71(c). Reply comments are not requested at this time. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to project number 47668.

Statutory Authority

This new rule is proposed under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and PURA §56.023(r), which directs the commission to adopt rules to establish the criteria to determine whether the TUSF support for certain competitive ETPs should be eliminated.

Cross reference to statutes: Public Utility Regulatory Act §§14.002 and 56.023.

§26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.

- (a) **Purpose.** This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under 16 TAC §26.403 to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.
- (b) **Application.** This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under 16 TAC §26.403.
- (c) **Commission review.**
- (1) The commission must review the per-line TUSF support amount for each exchange identified by subsection (d)(1)(B) of this section to determine whether support should be eliminated. The first review of an exchange must be completed not later than the end of the year following the year in which the exchange was reported under subsection (d)(1)(B) of this section.
- (2) The commission must base its decision on the following criteria:
- (A) The total number of access lines in the exchange served by competitive ETPs receiving TUSF support;
- (B) The number of competitors providing comparable service in the exchange;
and
- (C) Whether continuing the TUSF support is in the public interest.

- (d) **Identification of exchanges for review.**
- (1) No later than April 30 of each year, for each exchange described in subsection (b) of this section, commission staff must report:
- (A) The number of access lines served by competitive ETPs on December 31 of the previous year; and
- (B) The exchanges in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016.
- (2) Commission staff must file its report in central records under a control number designated for that purpose.
- (e) **Initiation of proceeding.** For each exchange identified under subsection (d)(1)(B) of this section, commission staff will file an application to initiate a proceeding to review the per-line TUSF support amount for that exchange.
- (1) The application must include a memorandum, supported by an affidavit, describing commission staff's determination that the number of access lines served by competitive ETPs in the exchange decreased by at least 50% compared to the number of access lines served by competitive ETPs in that exchange on December 31, 2016.
- (2) Commission staff must serve a copy of the application to the competitive ETPs receiving TUSF support in the exchange by email, regular mail, and certified mail.

- (f) **Competitive ETP's response to commission staff's application.**
- (1) A competitive ETP serving access lines in an exchange identified under subsection (d)(1)(B) may respond to commission staff's application no later than 20 days after the application is filed.
 - (2) A competitive ETP's response must address the criteria listed in subsection (c) of this section.
 - (3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71.
- (g) **Commission staff's recommendation.** In accordance with the schedule established by the presiding officer, but no earlier than 30 days after filing the application described in subsection (e) of this section, commission staff will file a recommendation, supported by affidavit, on whether the commission should eliminate TUSF support in the identified exchange. In its recommendation, commission staff must address the criteria listed in subsection (c) of this section.
- (h) **Competitive ETP's response to commission staff's recommendation.** No later than 10 days after commission staff files its recommendation, a competitive ETP may file a response to commission staff's recommendation. The response must state whether the competitive ETP agrees or disagrees with commission staff's recommendation and may include a request for a hearing.
- (i) **Commission determination.**

- (1) If a competitive ETP does not request a hearing within the time prescribed by subsection (h) of this section, the commission will determine whether to eliminate TUSF support for the exchange based on the filings submitted by commission staff and the competitive ETPs.
- (2) If a competitive ETP requests a hearing, the proceeding will be conducted as a contested case.
- (j) **Further review.** If the commission does not eliminate TUSF support for an exchange after a review conducted under subsections (c) – (i) of this section, the commission must review the TUSF per-line support amount for that exchange at least every three years.

This agency 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 13th DAY OF JUNE 2019 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**