



**Report to the 83rd
Texas Legislature**

***Review and Evaluation of
the Texas Universal
Service Fund Pursuant to
Senate Bill 980, 82nd
Legislature, Regular
Session***

***Public Utility Commission of Texas
November 1, 2012***

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Public Utility Commission of Texas

November 1, 2012

Honorable Members of the 83rd Texas Legislature:

We are pleased to submit our report regarding our Review and Evaluation of the Texas Universal Service Fund (TUSF) pursuant to Senate Bill 980, 82nd Legislature, Regular Session.

Section 21 of S.B. 980 called for the Commission to initiate one or more proceedings to review and evaluate whether the TUSF is accomplishing its purposes, as prescribed by Public Utility Regulatory Act (PURA) § 56.021, or whether changes are necessary to accomplish those purposes. This report contains the results of that analysis and summarizes additional recent proceedings initiated by the Commission regarding the TUSF.

The report reviews and evaluates each of the eleven programs supported through the TUSF, along with the process by which Eligible Telecommunications Providers (ETPs) are designated to receive support from the fund. The report contains a history of each program's performance, identifies whether that program's purpose is being achieved, and addresses any changes that may be needed.

In summary, the Commission reports that the eleven programs of the TUSF, along with the process for designating ETPs, are fulfilling the fund's purposes, as prescribed by PURA § 56.021. Additionally, the Commission's rulemakings and contested cases being conducted regarding the Large and Small Company High Cost programs will result in continued decreased costs for those programs.

In addition to this report, the Commission is also preparing the *2013 Report to the 83rd Texas Legislature on the Scope of Competition in the Telecommunications Markets in Texas* (P.U.C. Project No. 40373), which will be delivered to the legislature by January 15, 2012.

For a further high-level review of the report, please see the Executive Summary, which offers a very brief synopsis of what the Commission studied and its findings.

We look forward to continuing to work with you on the implementation of SB 980 and other policy objectives related to the TUSF. If you need additional information about any issues addressed in the report, please do not hesitate to contact us.

Sincerely,



Donna L. Nelson
Chairman



Kenneth W. Anderson, Jr.
Commissioner



Rolando Pablos
Commissioner

LIST OF TABLES AND FIGURES.....	vii
EXECUTIVE SUMMARY.....	viii
CHAPTER I. INTRODUCTION	1
A. Report Rationale	1
B. Overview of TUSF Today	2
C. Current Commission TUSF Projects	2
D. Federal Universal Service Fund Change Affecting the TUSF.....	4
E. Fund Financials.....	4
CHAPTER II. LARGE COMPANY AREA HIGH COST PROGRAM.....	9
A. Overview	9
B. Disbursements and Eligible Lines	9
C. Results of Project No. 39937.....	10
CHAPTER III. SMALL AND RURAL COMPANY AREA HIGH COST PROGRAM (SRILEC USP)	12
A. Overview.....	12
B. Disbursements and Eligible Lines	12
C. Project No. 39938	12
CHAPTER IV. OTHER SUPPORT PROGRAMS	13
A. PURA § 56.025 (P.U.C SUBST. R. § 26.406)	13
B. Funding for Service to Uncertificated Areas	15
C. Funding for Successor Utilities	17
D. Additional Financial Assistance.....	17
CHAPTER V. SOCIAL SERVICES PROGRAMS.....	19
A. Lifeline	19
B. Relay Texas.....	21
C. Specialized Telecommunications Assistance Program	23

D. Audio Newspaper Program.....24

E. Small ILEC Schools & Libraries, Hospitals & Health Centers25

CHAPTER VI. DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS PROVIDERS TO RECEIVED TEXAS UNIVERSAL SERVICE FUNDS .. 29

A. Background29

B. Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021?29

C. What (if any) changes are necessary to accomplish that purpose regarding designation of ETPs?29

APPENDIX A – COMMENTS RECEIVED BY THE COMMISSION..... 30

APPENDIX B. UNIVERSAL SERVICE CONCEPT..... 31

APPENDIX C. HISTORY OF THE TEXAS UNIVERSAL SERVICE FUND 32

APPENDIX D. FINAL ORDER IN P.U.C. PROJECT 39937 34

APPENDIX E. FINAL ORDER IN P.U.C. PROJECT 39939 64

APPENDIX F. FINAL ORDER IN P.U.C. PROJECT 40521..... 90

List of Tables and Figures

Table 1 — TUSF Programs	1
Figure 1 — Total TUSF Assessment, FY 2005-2011.....	5
Figure 2 — Total TUSF Disbursement, FY 2005-2011	6
Figure 3 — TUSF Disbursements by Program, FY 2011.....	7
Figure 5 — Large Company Fund Disbursements, FY 2005-2011	9
Figure 6 — High Cost Access Lines, FY 2005-2011	10
Figure 7 — SRILEC USP Disbursements, FY 2005-2011	12
Figure 8 — PURA Fund Disbursements, FY 2005-2011	13
Figure 9 — Uncertificated Area Disbursements, FY 2005-2011	16
Figure 10 — Lifeline Enrollment in Texas, FY 2005-2011	19
Figure 11 — Lifeline Disbursement, FY 2005-2011	20
Figure 12 — Relay Service Disbursement, FY 2005-2011	22
Figure 13 — STAP Disbursement, FY 2005-2011	24
Figure 15 — Schools & Libraries, Hospitals & Health Center Fund Disbursements, FY 2005-2011	26

Executive Summary

Senate Bill 980, enacted in 2011 in the regular session of the 82nd Texas Legislature, required the Public Utility Commission of Texas (Commission) to initiate one or more proceedings to review and evaluate whether the Texas Universal Service Fund (TUSF) accomplishes its purposes, as prescribed by Public Utility Regulatory Act (PURA) § 56.021, or whether changes are necessary to accomplish those purposes.

This report reviews and evaluates each of the eleven programs supported through the TUSF and the process for designating Eligible Telecommunications Providers (ETPs). It contains a history of each program’s performance and identifies whether that program’s purpose has been achieved. These programs can generally be categorized as one of three types: assistance for high cost areas; assistance for low-income or disabled individuals; or assistance for schools and libraries. The eleven TUSF programs are:

Programs for high cost assistance:
Texas High Cost Universal Service Plan (THCUSP) (a/k/a Large Company Area High Cost Program)
Small and Rural ILEC Universal Service Plan (SRILEC USP)(a/k/a Small Company Area High Cost Program)
PURA § 56.025 – Maintenance of Rates and Expansion of Fund for Certain Companies
Uncertificated Areas
Successor Utilities
Additional Financial Assistance (AFA)
Programs for low-income or disability assistance:
Lifeline
Relay Texas (Telecommunications Relay Service)
Specialized Telecommunications Assistance Program (STAP)
Audio Newspaper Program (ANP)
Program for schools and libraries assistance:
IntraLATA (Schools & Libraries for non-58/59 companies)

In addition, this report reviews the effectiveness of the process by which ETPs are designated.

For all but the Large and Small Company Area High Cost programs, the Commission conducted a workshop and asked stakeholders (listed in Appendix A) to submit written comments on whether each program was fulfilling its purpose, and if not, what changes would be needed to accomplish that purpose. Public comments submitted generally indicate that the programs for low-income or disability assistance and schools and library assistance are fulfilling the legislative public purposes for which they were established. Rulemakings were conducted for the two High Cost programs, providing for the establishment, in contested cases, of a reasonable rate for basic telephone service. The Commission will undertake rulemakings to establish requirements for incumbent local exchange carriers (ILECs) to demonstrate their need for support from the TUSF.

A number of projects relating to TUSF resulted from SB 980. This report provides a synopsis of each and its status at the time of writing (some of the proceedings were still underway at the time the report is published).

In summary, the Commission reports that the eleven programs of the TUSF, along with the process for designation of ETPs, are fulfilling the fund's purposes, as prescribed by PURA § 56.021. Additionally, the Commission's rulemakings and contested cases being conducted regarding the Large and Small Company High Cost programs will result in continued decreased costs for those programs.

Chapter I. Introduction

A. Report Rationale

In 2011, the 82nd Legislature enacted Senate Bill 980, requiring the Public Utility Commission of Texas (Commission), to conduct a review and evaluation of whether the Texas Universal Service Fund (TUSF) accomplishes the fund's purposes as prescribed by Section 56.021 of the Public Utility Regulatory Act (PURA) or whether changes are necessary to accomplish those purposes. In this report, the Commission addresses each of the programs supported through the TUSF (see Table 1), including whether these programs are accomplishing the fund's purposes. The Commission also describes the process for designation of Eligible Telecommunications Providers (ETPs) to receive TUSF support (Chapter VI) and reports on other TUSF-related Commission proceedings.

Table 1 — TUSF Programs

Texas Universal Service Fund Programs			
Program	PURA §	P.U.C. Substantive Rule	Chapter in Report
Programs for high cost assistance			
Texas High Cost Universal Service Plan (THCUSP) (a/k/a Large Company Area High Cost Program)	56.021(1)	26.403	Chapter II
Small and Rural ILEC Universal Service Plan (SRILEC USP) (a/k/a Small Company Area High Cost Program)	56.021(1)	26.404	Chapter III
PURA § 56.025 – Maintenance of Rates and Expansion of Fund for Certain Companies	56.025	26.406	Chapter IV
Service to Uncertificated Areas	56.021(7)	26.421-423	Chapter IV
Funding for Successor Utilities	56.021(8)	n/a	Chapter IV
Additional Financial Assistance (AFA)	56.021(1)	26.408	Chapter IV
Programs for low-income or disability assistance			
Lifeline	56.021(5)-(6)	26.412	Chapter V
Relay Texas (Telecommunications Relay Service)	56.021(2)	26.414	Chapter V
Specialized Telecommunications Assistance Program (STAP)	56.021(3)	26.415	Chapter V
Audio Newspaper Program (ANP)	56.021(9)	26.424	Chapter V
Program for schools and libraries assistance			

Reimbursement for Certain IntraLATA Services for Non 58/59 Companies (Schools & Libraries, Hospitals & Health Centers)	56.028	26.410	Chapter V
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B. Overview of TUSF Today

The underlying purpose of the TUSF is to implement a competitively neutral mechanism to enable all residents of the State to obtain basic local telecommunications services (BLTS) needed to communicate with other residents, businesses, and governmental entities. The TUSF accomplishes this purpose by assisting telecommunications providers in providing BLTS at reasonable rates to customers in high cost rural areas and to qualifying low-income and disabled customers. The TUSF also funds another program identified by the Legislature in PURA § 56.028, which supports certain telecommunications services for schools and libraries. For a more in-depth discussion of the history of the universal service concept, please refer to Appendix B. of this report.

The current TUSF consists of eleven programs and reimburses state agencies for the cost of administering the fund and its programs. The TUSF is funded by a statewide uniform charge, or “assessment,” payable by each telecommunication provider that has access to the customer base. In most cases, telecommunications providers choose to recover their assessment via a fee that is flowed through to end users as part of the package of surcharges assessed on their bills.

Support is disbursed to telecommunications providers serving high cost lines and providing discounts to low-income consumers, and to support the nine other TUSF programs, including Relay Texas and the Audio Newspaper Program (ANP). Disbursement methodologies differ for each program; the particular methodology used for a program is discussed in the chapter covering that program.

C. Current Commission TUSF Projects

Senate Bill 980 required the Commission to “initiate one or more proceedings to review and evaluate whether the universal service fund accomplishes the fund’s purposes, . . . or whether changes are necessary to accomplish those purposes” and required the Commission to complete any such proceedings no later than November 1, 2012. In response, and in addition to this report (Project No. 39936), the Commission initiated several proceedings to implement SB 980’s mandate.

Project No. 39937 was initiated to review the THCUSP. The THCUSP provides assistance to the four largest telecommunications service providers, as well as ETPs serving in the territory of the largest carriers, in providing BLTS at reasonable rates in high cost areas. This project resulted in Commission-adoption, on June 13, 2012, of a

new rule governing the calculation of support provided to carriers in the large company areas. Pursuant to the new rule, the Commission initiated a contested case proceeding, P.U.C. Docket No. 40521, to determine a reasonable rate for BLTS. The new rule also provides an option for an incumbent local exchange carrier (ILEC) to elect to reduce its support from the THCUSP to zero over a five-year period. Local exchange carriers electing this option still will be subject to the support reductions described above, but the impact of these may be diminished due to reductions in support requirements resulting from the deregulation of telephone exchanges that meet the criteria outlined in PURA.

As stated above the contested case, P.U.C. Docket No. 40521, was initiated to determine a reasonable rate for BLTS in the high cost areas in the territory of the largest carriers. The Commission issued an Order on September 28, 2012 approving a settlement agreement among the parties to the case. Under the settlement agreement, a reasonable rate for BLTS of \$24 per month is approved for AT&T, Verizon, and CenturyLink, and a reasonable rate of \$23.50 per month is approved for Windstream. Both AT&T and Verizon opted to reduce their THCUSP support to zero over a five-year transition period, and will have the existing per-line support levels reduced by twenty percent per year over that period. CenturyLink and Verizon will have their support reduced by the difference in revenue that would be produced if they were to charge the reasonable rate for basic local telecommunications service instead of their existing rates. This support reduction will be phased in in equal amount over a four-year period beginning January 1, 2013.

P.U.C Project No. 39939 was opened to implement the portion of Senate Bill 980 that ordered the Commission to undertake a proceeding to improve transparency and accountability in the administration of the TUSF. This rulemaking amended Chapter 26, Subchapter P (Relating to Administration of the TUSF) by the addition of § 26.402, which requires carriers receiving both TUSF and Federal USF subsidies to provide a five-year plan of upgrades to supported areas and annual updates to the plan. The new rule also requires the Commission to publish quarterly cash flow reports on the TUSF.

In addition, P.U.C. Project No. 40342 was initiated to establish, by rule, the requirements for ILECs to demonstrate their need for support from the THCUSP. This rule is expected to be adopted by the Commission during the first quarter of 2013. During 2013, a contested case proceeding would follow to implement the provisions of the new rule. The results of the new rule and contested case proceeding would be implemented on January 1, 2014.

Project No. 39938 was initiated to review the SRILEC USP. This program provides assistance to the small companies that serve the most rural areas of the state. A new proposed rule has been published in the Texas Register for comment that would make changes in the SRILEC USP similar to those adopted for the THCUSP, with reductions in support offset by increases in rates for BLTS over a transitional period. The Commission anticipates adopting a new rule in this project by the end of 2012, with a subsequent contested case proceeding initiated to implement the provisions of the rule.

The results of the new rule and contested case proceeding are anticipated to be implemented on January 1, 2014.

During 2013, a new rulemaking project is expected to be initiated to provide the requirements for the larger small ILECs to demonstrate their need for support from the SRILEC USP which is expected to be adopted by the Commission during the last quarter of 2013, followed by a contested case during 2014 which would implement the provisions in the new rule. The results of the new rule and contested case proceeding are anticipated to be implemented on January 1, 2015.

D. Federal Universal Service Fund Change Affecting the TUSF

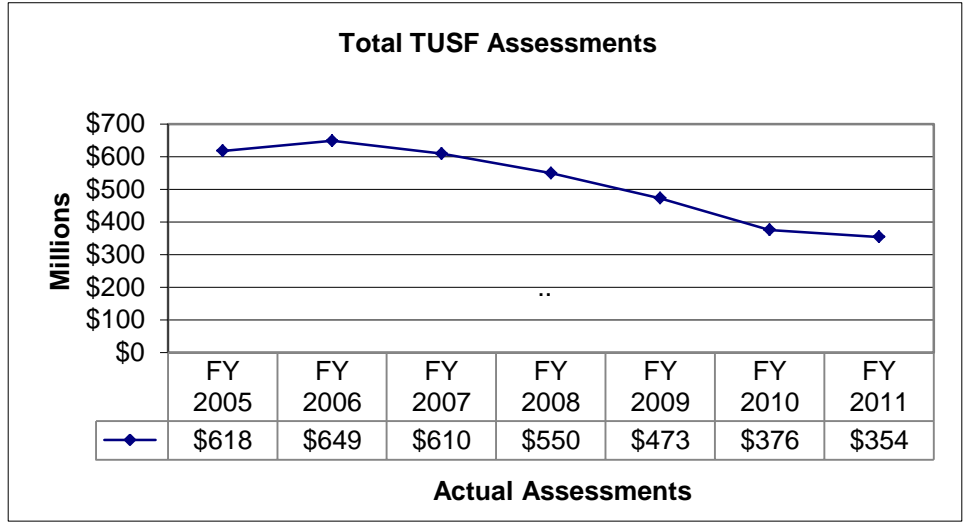
The Federal Communications Commission (FCC) recently issued the USF/ICC Transformation Order that provided a major overhaul of the federal universal service fund (FUSF) and intercarrier compensation (ICC) mechanism. The reforms to the FUSF/ICC led to reductions in federal support for numerous eligible telecommunications carriers (ETCs) in Texas. PURA § 56.025 allows certain companies to request additional funds from TUSF to offset these losses in revenue. Under these provisions, the Commission will process providers' requests for TUSF replacement for many of these FUSF reductions.

E. Fund Financials

1. Revenues

Currently, P.U.C. SUBST. R. 26.420(f) establishes an assessment methodology based on assessing a Commission-ordered percentage of a telecommunications provider's total intrastate taxable telecommunications receipts pursuant to Chapter 151 of the Texas Tax Code. Telecommunications receipts exempt from assessment include payphone service providers, interstate and international receipts, and the TUSF surcharge on the customer bill. Figure 1 shows total annual assessments for fiscal years 2005 through 2011, which have declined by approximately 43% over that period as a result of decreases in the assessment rate and decreases in taxable intrastate telecommunications receipts. This decrease in receipts largely results from customers' disconnection of traditional telephone lines, finding them redundant to their mobile phones.(see Figure 1 below).

Figure 1 — Total TUSF Assessment, FY 2005-2011



SOURCE: Solix, Inc.

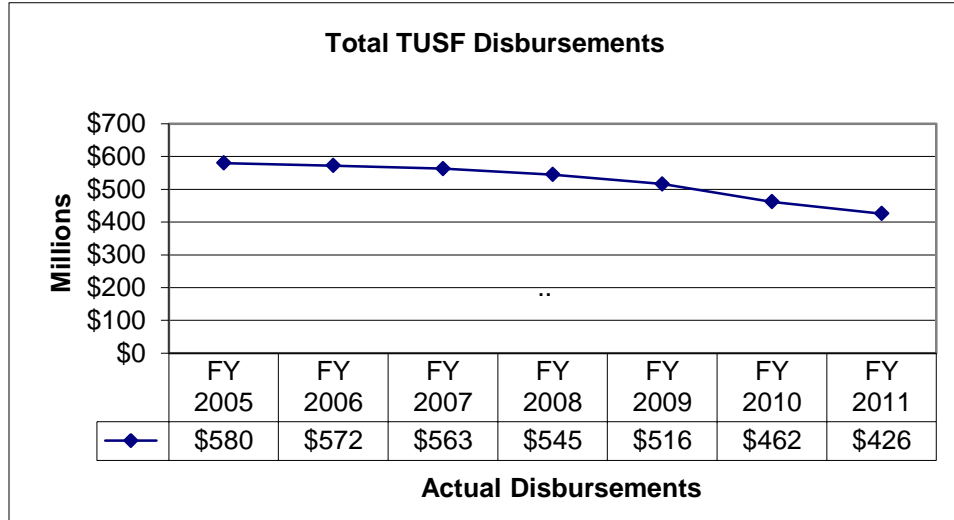
2. Fund Disbursements

The fund’s total disbursements in fiscal year 2011 totaled \$426 million. Disbursement methodologies vary by program. For example, under some programs, such as Relay Texas and ANP, the TUSF reimburses a Commission-selected third-party vendor who provides the service. In the case of high cost, ETPs receive fixed monthly per-line support amounts.

Support from the Large Company Area High Cost Program and Small Company Area High Cost Programs is available to ETPs, including ILECs, Competitive Local Exchange Carriers (CLECs) and wireless providers, on a technology-neutral basis, as long as the provider meets the Commission’s eligibility criteria in P.U.C. SUBST. R. 26.417.

Total disbursements have declined by approximately 27% since 2005 (see Figure 2 – Total TUSF Disbursement, FY 2005-2011).

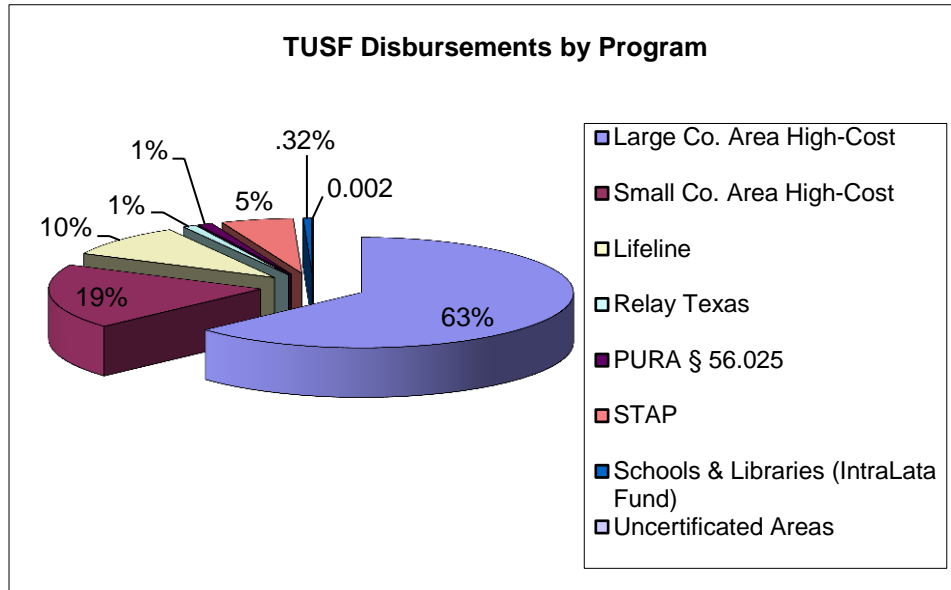
Figure 2 — Total TUSF Disbursement, FY 2005-2011



SOURCE: Solix, Inc.

As of Fiscal Year 2011, disbursements from the Large Company Area High Cost Program accounted for 63% of the fund’s total disbursements. Disbursements from the Small Company Area High Cost Program to providers serving the small ILEC study areas accounted for 19% of the fund’s total. The other nine programs account for approximately 17% of the fund’s disbursements, totaling roughly \$77 million. The cost to administer the TUSF was approximately \$4.9 million, or about 1.15% of the total fund disbursements (See Figures 3 –TUSF Disbursements by Program, FY 2011 and Figure 4 – TUSF Disbursements by Program, FY 2005-2011).

Figure 3 — TUSF Disbursements by Program, FY 2011



SOURCE: Solix, Inc.

3. Surcharge Recovery from Customers

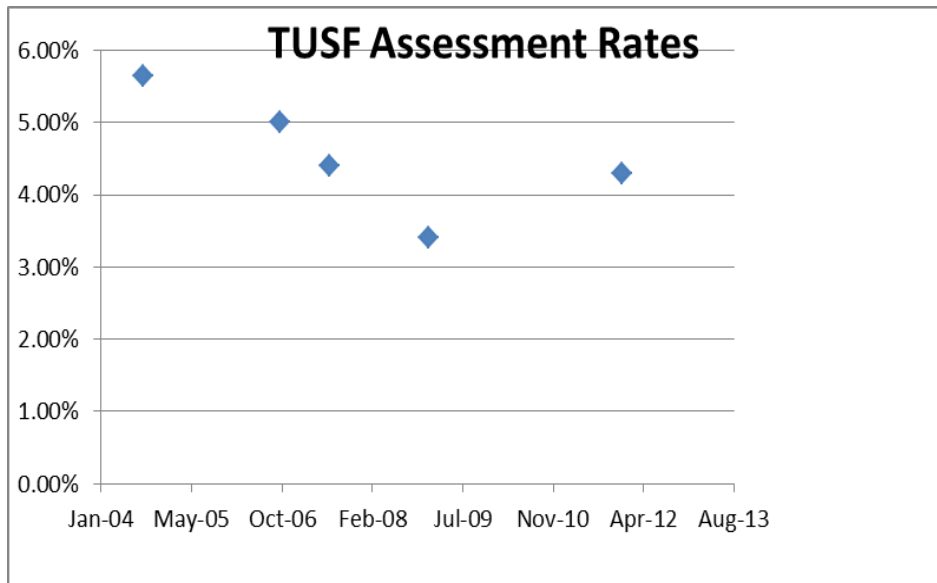
Pursuant to P.U.C. SUBST. R. 26.420(f)(6), telecommunications providers may recover their assessment through a surcharge on customers’ bills, except for Lifeline and LinkUp customers. Currently, the surcharge is 4.3%, and is assessed on intrastate telecommunications services provided to end-user customers. If a provider chooses to pass through the assessment to its customers, it must explicitly identify the surcharge on the customer’s bill as “Texas Universal Service.”

Factors affecting surcharge rates:

- Telecommunications revenue grew through 2008, but declined rapidly from 2008-2011. A combination of declining revenue and declining assessment rates meant Texas paid about \$300 million less in 2011 vs. 2006.
- Expenses also fell by \$140 million from 2006-2011, a 25% decrease, but not as fast as revenues.

Figure 4 below depicts the changes in the assessment rate over time.

Figure 4 – TUSF Surcharge Assessment Rates



Chapter II. Large Company Area High Cost Program

A. Overview

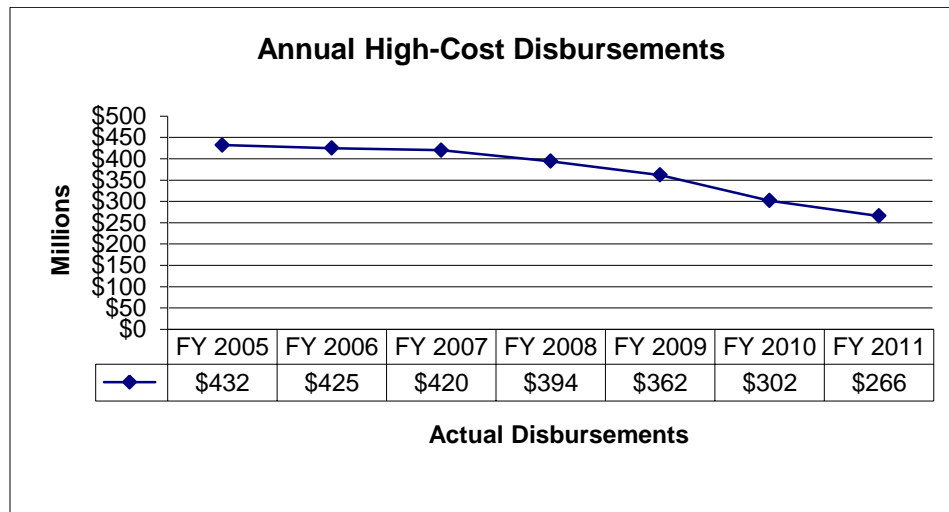
The THCUSP provides financial support to ETPs that serve high cost, rural areas of Texas where a large carrier (AT&T Texas, Verizon, CenturyLink, or Windstream Valor) is the incumbent. Support is provided to the carriers on a monthly per-line basis and is portable to ETPs serving the customer.

The program was created to help maintain reasonable rates for BLTS in the high cost rural areas of these incumbent carriers.

B. Disbursements and Eligible Lines

As shown in Figure 5, the large company area high cost program disbursements have dropped significantly (-38%) since 2005 due to the decrease in number of lines eligible for support and support adjustments made in P.U.C Docket No. 34723.

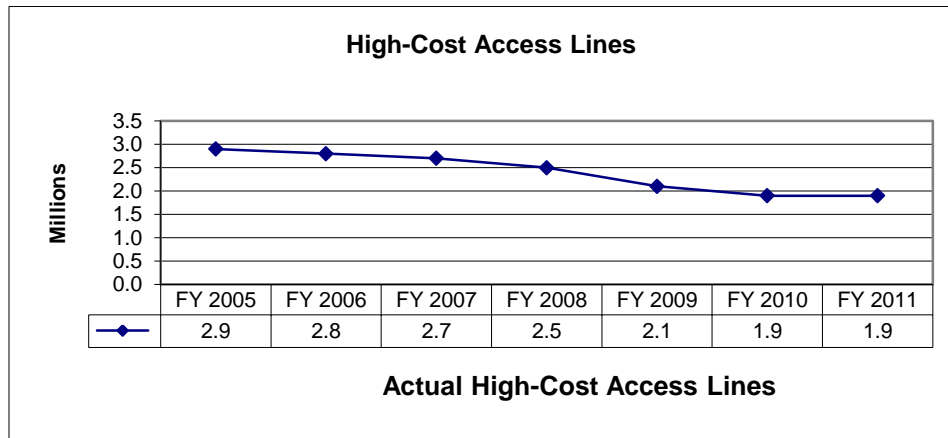
Figure 5 — Large Company Fund Disbursements, FY 2005-2011



SOURCE: Solix, Inc.

As shown in Figure 6, the number of lines eligible to receive large company area high cost program support has decreased 34% since 2005. This decline is attributable to several developments, including the displacement of second lines in favor of digital subscriber line (DSL) service or cable-modem service for internet access and the substitution of wireless service for landline service.

Figure 6 — High Cost Access Lines, FY 2005-2011



SOURCE: Solix, Inc.

C. Results of Project No. 39937

Project No. 39937 was initiated to review the THCUSP. The THCUSP provides assistance to the four largest telecommunications service providers, as well as ETPs serving in the territory of the largest carriers, in providing BLTS at reasonable rates in high cost areas. This project resulted in Commission-adoption, on June 13, 2012, of a new rule governing the calculation of support provided to carriers in the large company areas. Pursuant to the new rule, the Commission initiated a contested case proceeding to determine a “reasonable rate” for BLTS. The difference between this reasonable rate and each Incumbent Local Exchange Carrier’s (ILEC’s) current rate will then be calculated, and the amount of additional revenue that would result if each carrier were to charge the reasonable rate will be deducted from each carrier’s support under the THCUSP over a four-year transition period. The ILECs will be provided with the opportunity, but are not required, to increase rates for BLTS to the reasonable rate as support from the THCUSP is reduced. Annually, increases to monthly BLTS rates cannot exceed \$2.00. The new rule also provides an option for an ILEC to elect to reduce its support from the THCUSP to zero over a five-year period. Local exchange carriers electing this option still will be subject to the support reductions described above, but the impact of these may be diminished due to reductions in support requirements resulting from the deregulation of telephone exchanges that meet the criteria outlined in PURA.

The contested case (P.U.C. Docket No. 40521) proceeding required under the new rule was initiated on July 9th, and concluded with a commission Order on September 28th approving a settlement agreement among the parties to the case. Under the settlement agreement, a reasonable rate for BLTS of \$24 per month is approved for AT&T, Verizon, and CenturyLink, and a reasonable rate of \$23.50 per month is approved for Windstream. Both AT&T and Verizon opted to reduce their THCUSP support to zero over a five-year transition period, and will have the existing per-line support levels reduced by twenty percent per year over that period. CenturyLink and Verizon will have their support reduced by the difference in revenue that would

be produced if they were to charge the reasonable rate for basic local telecommunications service instead of their existing rates. This support reduction will be phased in in equal amount over a four-year period beginning January 1, 2013.

Chapter III. Small and Rural Company Area High Cost Program (SRILEC USP)

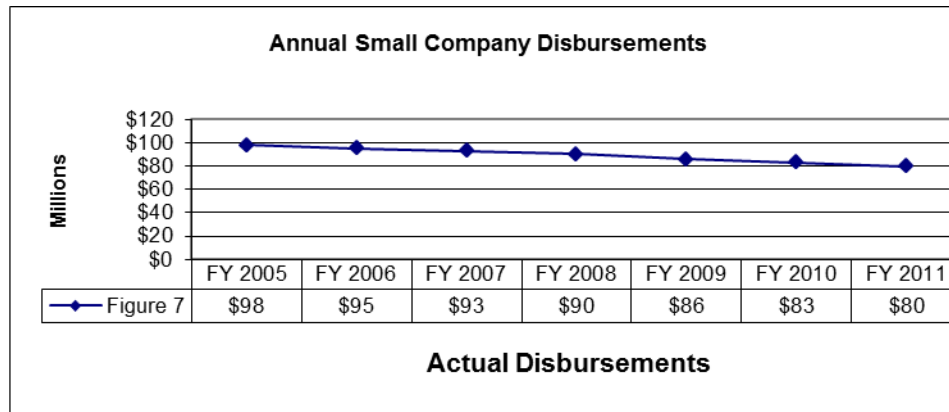
A. Overview

The SRILEC USP provides financial assistance to ETPs that serve high cost, rural areas of Texas where a small and rural carrier is the incumbent. Support is provided to the carriers on a monthly per-line basis and is portable to eligible carriers serving the customer. The program was created to help maintain reasonable rates for BLTS in the high cost, rural areas of these incumbent carriers. For a detailed history of this program see Appendix E.

B. Disbursements and Eligible Lines

The disbursements for the SRILEC USP have declined by 18% since 2005 (see Figure 7 – SRILEC USP Disbursements, FY 2005-2011).

Figure 7 — SRILEC USP Disbursements, FY 2005-2011



SOURCE: Solix, Inc.

C. Project No. 39938

The Commission has published a proposed rule that would provide for a rate rebalancing mechanism, with an accompanying reduction in support under the SRILEC USP similar to that which has been implemented for the large company fund. The Commission currently is receiving comments on the proposed rule, and anticipates that, after adoption of the new rule, a contested case proceeding to establish a reasonable rate for BLTS in the small and rural company areas will be undertaken early in 2013.

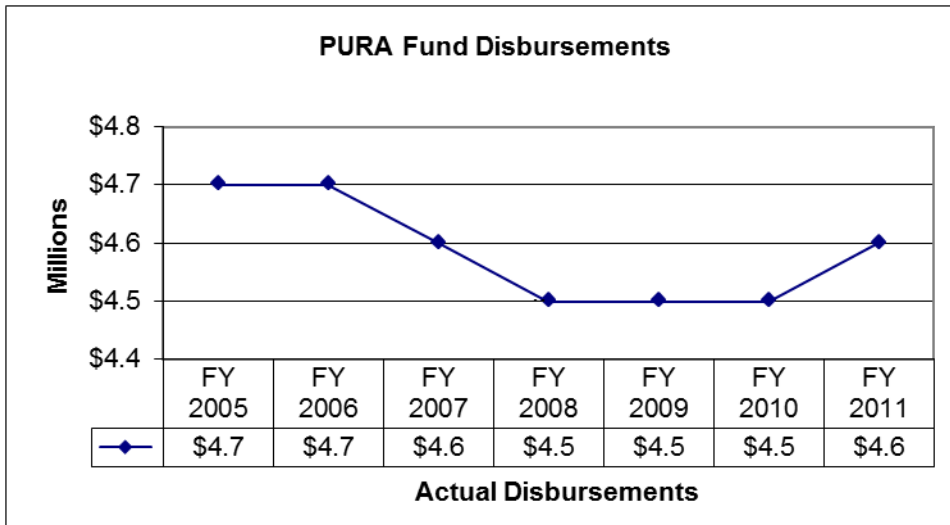
Chapter IV. Other Support Programs

A. PURA § 56.025 (P.U.C SUBST. R. § 26.406)

1. Background/Program Totals (2005-2011)

This program of the TUSF compensates providers for loss of revenues that result from certain regulatory actions, and also reimburses ILECs for other revenue shortfalls resulting from regulatory actions. Specifically, PURA 56.025 provides TUSF support to ILECs with fewer than 31,000 access lines to: (1) replace the reduction in high cost assistance revenue caused by a Commission or other agency order, rule, or policy; (2) replace the projected change in revenue caused by a Federal Communications Commission order, rule, or policy that changes the FUSF revenue of a company or costs or revenue assigned to the intrastate jurisdiction, and (3) replace the reasonably projected reduction in contribution caused by a change of Commission policy regarding intraLATA “1-plus” dialing access.

Figure 8 — PURA Fund Disbursements, FY 2005-2011



SOURCE: Solix, Inc.

2. Is the program accomplishing its purpose, as prescribed by Utilities code § 56.025?

Parties' Positions

TSTCI commented that it believed that the Commission’s denial of Poka Lambro’s petition for relief under P.U.C. SUBST. R. 26.406 was contrary to the purposes

of this program. (In 2010, the Commission dismissed Poka Lambro Telephone Cooperative's petition for replacement of TUSF support in P.U.C. Docket No. 38652.)¹

3. What (if any) changes are necessary to accomplish that purpose regarding § 56.025 mechanisms?

Parties' Positions

AT&T and TTA observed that PURA § 56.025(f) provides for replacement of revenues under the circumstances outlined in PURA § 56.025(c)-(e) either by increased revenues or funding from the TUSF. They recommended modification of P.U.C. SUBST. R. § 26.406 to include a process by which small ILECs and cooperatives could replace the revenue by using increased rates, thus harmonizing the substantive rule with the statute.² TTA recommended that the change to § 26.406 allow for an administrative compliance filing in the event that the Commission determines that an increase in rates would have an adverse effect on universal service, thus ensuring LEC's ability to efficiently implement the Commission's decision. TSTCI concurred that the rule should be harmonized with the statute, and opined that should the determination be made that a rate increase would harm universal service, approval of TUSF funding should occur within sixty days.³

Regarding use of the fund for replacement of revenues, Verizon suggested that consideration be given to what level of funding might be required in the future and the impact this might have on TUSF funding.⁴

Commission Comments

The Commission suggests no changes to the program at this time, but in light of changes currently underway at the FCC regarding support from the Federal Universal Service Fund, which may result in a number of petitions for replacement of revenues under PURA § 56.025(f), the Commission will continue to monitor this process.

The Commission disagrees with TSTCI's assertion that the Commission's dismissal of Poka Lambro's petition was contrary to the purpose of the program. Rather, in that docket the Commission determined that Poka Lambro did not receive the type of support eligible for replacement under the program.

The Commission disagrees with the suggestion that P.U.C SUBST. R. 26.406 should be amended to provide for an administrative compliance filing for rate increases

¹ P.U.C. Docket No. 38652, Petition of Poka Lambro Telephone Cooperative, Inc., pursuant to PURA § 56.025 and P.U.C. SUBST. R. 26.406.

² AT&T Comments at 2; TTA Comments at 2.

³ TSTCI Comments at 3.

⁴ Verizon Comments at 2

to offset revenue losses under the circumstances outlined in PURA § 56.025(c)-(e). The Commission concludes that the appropriate mechanism for seeking an increase in rates, pursuant to PURA § 56.025(f), is a contested case; in that type of proceeding, a record can be developed to support fact-specific determinations such as the appropriate rate increase, if any, or whether a rate increase would adversely affect universal service.

B. Funding for Service to Uncertificated Areas

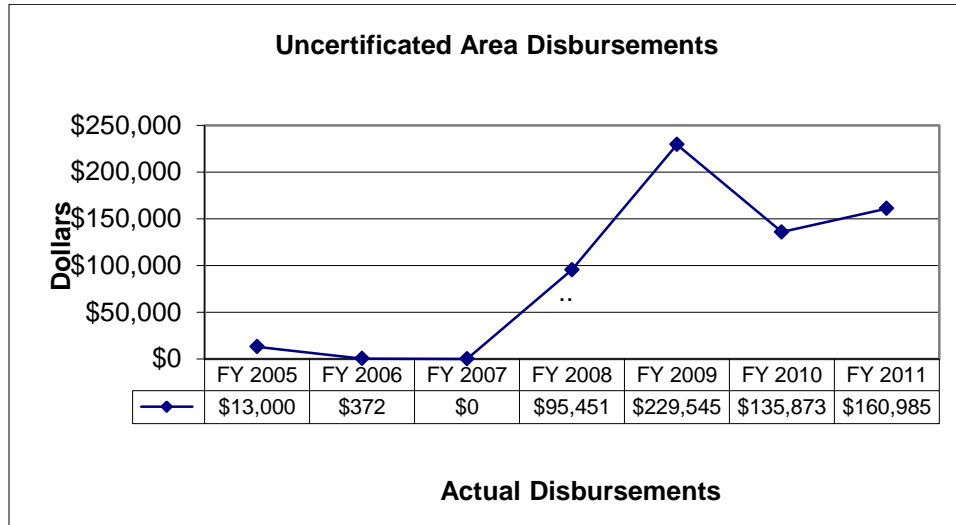
1. Background/Program Totals (2005-2011)

In 2001, the 77th Legislature adopted House Bill 2388, enacting new Chapter 56, Subchapter F of the PURA, enabling ETPs providing voice-grade services to customers living outside of ILEC certificated areas to receive support from the TUSF. The program seeks to enhance the availability of basic local telecommunications service throughout the State, especially in areas where service has not otherwise been provided.

In 2002, the Commission adopted two rules to implement reimbursement mechanisms for ETPs serving uncertificated areas. Under P.U.C. SUBST. R. 26.421 Subchapter F, customers may petition the Commission to compel a provider to serve them if none volunteers. ETPs assigned to serve the customers are reimbursed for the actual cost of deployment and serving each line, including capital expenditures and monthly recurring costs not captured by the customer's monthly rate. Under P.U.C. SUBST. R. 26.423, an ETP may initiate a proceeding to serve an area, but will not be reimbursed capital expenditures; instead, the ETP receives a monthly per line support amount based on the average TUSF monthly per line support amount received by adjacent ILECs.

Since 2003, the Commission has received several requests for support in uncertificated areas. Some of these requests were denied because the areas in question were actually in previously certificated areas, or the ILEC agreed to provide service to said area. In fiscal year 2011, \$160,985 was disbursed to providers in uncertificated areas (see Figure 9 – Uncertificated Area Disbursements, FY 2005-2011).

Figure 9 — Uncertificated Area Disbursements, FY 2005-2011



SOURCE: Solix, Inc.

2. Is the program accomplishing its purpose, as prescribed by Utilities Code § 56.021?

Parties’ Positions

AT&T, Verizon, and TTA said that the program appears to be meeting its purpose.

TSTCI noted that there have been at least two cases in which individuals have petitioned the Commission for service under P.U.C. SUBST. R. 26.421 but have been denied on the basis of cost, thus the goal of universal service has not been met. TSTCI further commented that the small ILECs who were required to participate in these cases did so at considerable cost which could not be recovered.

3. What (if any) changes are necessary to accomplish that purpose?

Parties’ Positions

TSTCI suggested that the Commission should consider whether it is appropriate under the statute to deny service on the basis of cost.

TTA recommended that the statute be amended to allow the Commission to deny a petition if service is not available from an alternative service provider using technologies such as terrestrial wireless or satellite. While they supported the position that only providers eligible to receive TUSF funds should be designated as service providers under the statute, TTA suggested that availability of voice service from other providers should be considered.

Commission Comments

The Commission notes in response to TSTCI's comment regarding denial of petitions for extension of service that PURA § 56.206 stipulates that a petition for service in an uncertificated area shall be denied if the Commission determines that services cannot be extended to the petitioning premises at a reasonable cost.

The Commission suggests no changes to the program at this time.

C. Funding for Successor Utilities**1. Background/Program Totals 2005-2011**

In 2003, the 78th Legislature adopted Senate Bill 1829, adding Subchapter G to Chapter 54 of PURA, allowing telecommunications providers other than ILECs to be designated the provider of last resort (POLR) in an area. SB 1829 also added Subchapter G to PURA Chapter 56, to provide support from the TUSF to such "successor utilities"⁵ inheriting the POLR obligation. Under these provisions, the Commission determines the amount of TUSF support the successor utility may receive for serving the affected area and complying with the Commission's service quality rules.⁶

Since its adoption, the Commission has not yet received a request for support under this program, therefore no disbursements have been made.

2. Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021? What (if any) changes are necessary to accomplish that purpose regarding Successor Utilities?

The Commission received no comments regarding this program.

Commission Comments

In light of the fact that this program has never been used and no comments were received, the Commission has no recommendations regarding this program at this time.

D. Additional Financial Assistance**1. Background/Program Totals 2005-2011**

⁵ As defined in PURA § 54.301(3), a successor utility is "a telecommunications utility that holds a certificate...and that is or is designated to become the provider of last resort for the defined geographic area previously served by an exiting utility."

⁶ PURA § 56.253.

The Commission adopted P.U.C. SUBST. R. 26.408 on January 22, 1998 in P.U.C Project No. 14929 as part of its wholesale restructuring of the TUSF to reflect state and federal legislation opening local markets to competition. This program seeks to ensure that all customers throughout the state have access to basic local telecommunications services at reasonable rates. The rule allows ILEC ETPs which have not elected PURA § 58, 59 or 65 to apply for additional financial assistance from the TUSF – in addition to the TUSF reimbursement received under the Large Company Area High Cost Program, the Small Company Area High Cost Program, and implementation of PURA § 56.025 – to meet that goal.

Since the adoption of the rule, the Commission has not received a request for TUSF support under this program.

2. Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021?

Parties' Positions

TSTCI stated that, while they were unaware of this program having been used, they questioned whether it has accomplished its purpose.

3. What (if any) changes are necessary to accomplish that purpose regarding Additional Financial Assistance?

Parties' Positions

It was TSTCI's position that the current wording of the rule does not clearly differentiate the process for a service provider to gain additional funding under § 56.021 from a service provider seeking additional funding through a rate case. TSTCI and TTA contended that the Commission should streamline and clarify the process by which a service provider would seek additional funds under this rule.

Commission Comments

The Commission will consider a rulemaking to streamline the process for seeking additional financial assistance.

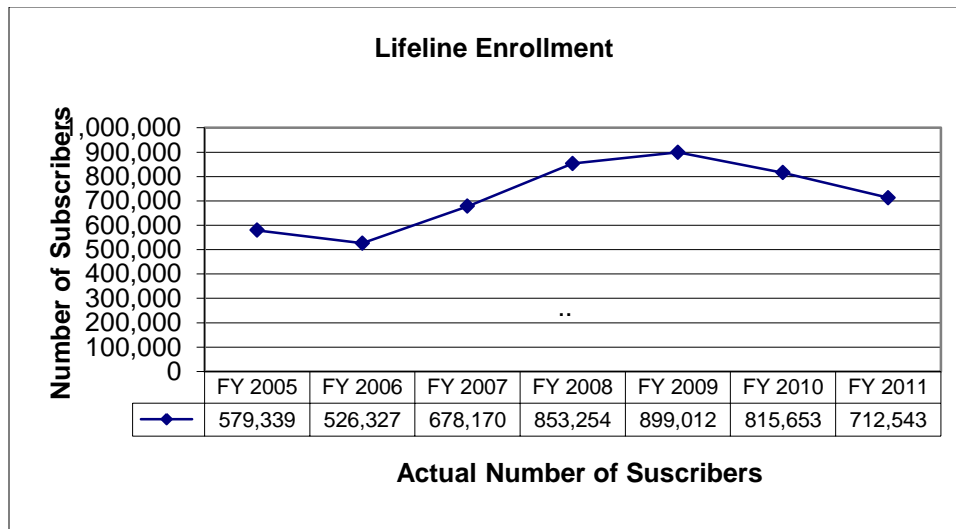
Chapter V. Social Services Programs

A. Lifeline

The Lifeline program requires certificated telecommunications providers, pursuant to Section 55.015 of PURA, to offer telephone service at discounted rates to qualifying low-income households. Each certificated telecommunications provider is required to provide a discount on its local service rates which includes waiving the Federal Subscriber Line Charge (SLC). For a detailed history of the Lifeline program see Appendix G.

As of FY 2011, there were over 712,000 Lifeline subscribers in Texas. (see Figure 10 – Lifeline Enrollment, FY 2005-2011).

Figure 10 — Lifeline Enrollment in Texas, FY 2005-2011

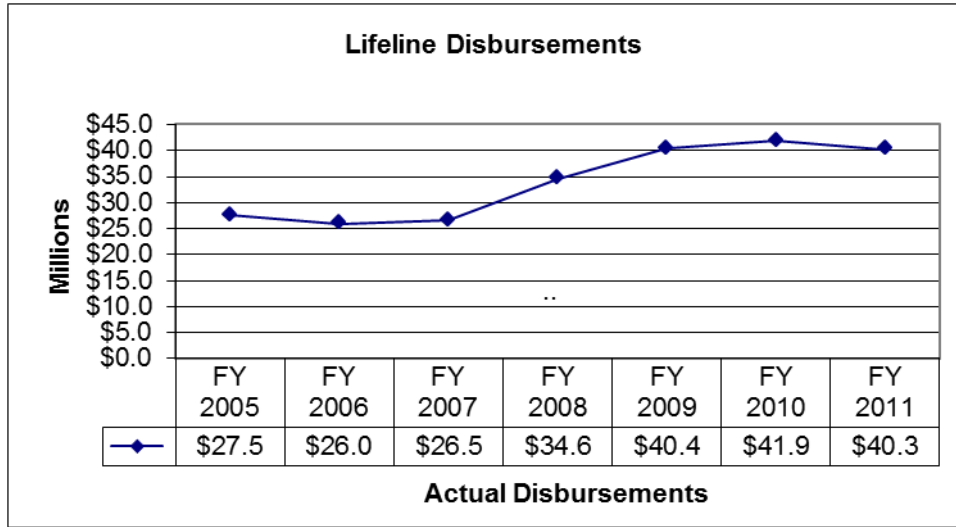


SOURCE: Solix, Inc.

In fiscal year 2011, participating ETPs received \$40.3 million (or 10% of the total fund) in reimbursement for serving Lifeline customers (see Figure 11 – Lifeline Disbursement, FY 2005-2011).

The increase in total disbursements while enrollment decreased over the last two years is due to an increase in the level of discounts resulting from P.U.C. Docket No. 34723.

Figure 11 — Lifeline Disbursement, FY 2005-2011



SOURCE: Solix, Inc.

- 1. Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021?**

Parties' Positions

AT&T and Verizon affirmed that the Lifeline program is accomplishing its purpose. The Coalition saw no reason to believe that the program is not achieving its purpose, but joined TTA in expressing concerns regarding the possibility of use of program funds for purposes not intended by the statute.

- 2. What (if any) changes are necessary to accomplish that purpose regarding Lifeline assistance?**

Parties' Positions

AT&T, the Coalition and TSTI said that the program should be amended to reflect recent changes by the FCC to the FUSF, but Verizon stated that the Commission has taken appropriate action in this regard.

The Coalition cited a recent media report indicating abuses of the FUSF Lifeline program and was concerned that the TUSF Lifeline program might be vulnerable to similar abuses; they urged the Commission to consider whether amendment to SUBST. R. 26.412 might be needed to prevent abuses and to penalize offenders.

TSTCI contended that changes to the procedure were needed when determining to which residences the service should be made available. They cited an example in which a person eligible to receive the service might live in a home in which the head of the

household does not request or desire the service, saying that in such a circumstance the service provider was still required to provide Lifeline assistance. TSTCI also cited an instance in which a subsequent customer received the discount because the previous customer who had the same telephone number had qualified for the discount. TSTCI suggested that the coordination between the Commission and the Department of Health and Human Services be reviewed to avoid similar situations in the future. TSTCI suggested that procedures should be reviewed to ensure that consumers are not receiving duplicate discounts from more than one provider.

Texatel suggested that applications for ETC and ETP designation should be encouraged so that persons qualifying for Lifeline assistance could be offered a range of service providers and plans, and that Staff should be directed to offer meetings with ETC and ETP applicants to assist in application preparation to ensure that these are deemed compliant. It was Texatel's opinion that this approach would ensure that all materials Staff required, such as mapping of service areas, would be included.

Commission Comments

Regarding the comments from Texatel, the Commission notes that it has no authority to modify the FCC's ETC requirements, and that these are the requirements implemented by the Commission when processing ETC applications. Additionally, the Commission notes that ETC designation is not part of the TUSF program and therefore does not provide comment in this report as to whether that federal program is meeting its goal. The Commission contends that Staff frequently meets with applicants seeking ETC or ETP designation and is available to do so upon request.

The Commission is aware of the recent changes to the FUSF by the FCC and will be undertaking rulemakings to amend its substantive rules to include certain FCC requirements such as customer certification and duplicative support.

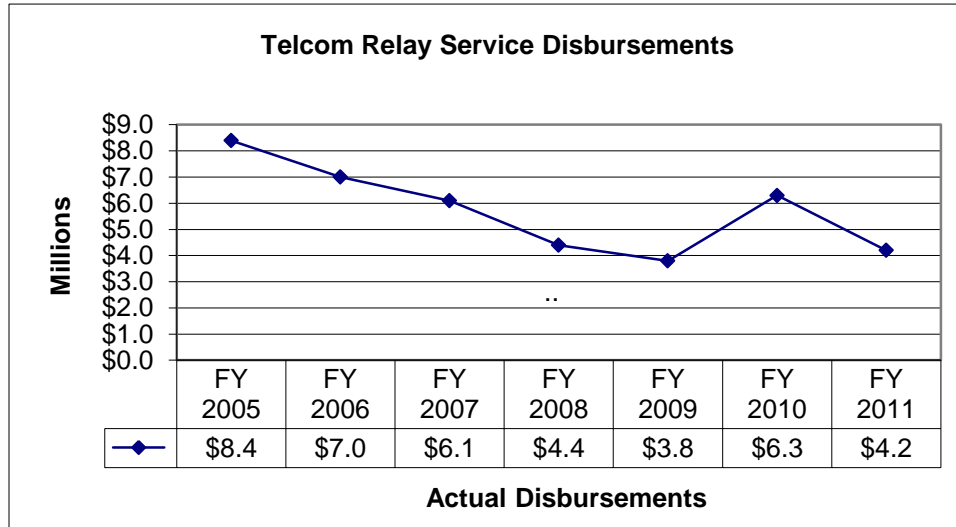
The Commission finds that this program is functioning in a manner that is consistent with its purpose.

B. Relay Texas

1. Background

The overall costs of Relay Texas have decreased since 2005; in fiscal year 2006, the fund distributed \$4.2 million (or 1.1% of the total fund) to fund Relay Texas. There was a sharp increase in disbursements for fiscal year 2010 as a result of payments made that year that should have been made in the prior two years (see Figure 12 – TRS Disbursement, FY 2005-2011). For a detailed history of Relay Texas, see Appendix H.

Figure 12 — Relay Service Disbursement, FY 2005-2011



SOURCE: Solix, Inc.

2. **Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021?**

Parties' Positions

AT&T stated that the program is meeting its purpose.

3. **What (if any) changes are necessary to accomplish that purpose regarding Relay Service?**

Parties' Positions

It was AT&T's position that, once a bid has been awarded, losing bidders (and the public) should be given access to pertinent information used in awarding the bid (e.g. rating sheets and price submissions) so that they can better understand why they were not selected and thereby gain a basis to improve future bids. AT&T contended that any portions of a bid marked as confidential should include the bidder's basis for this designation, both during and after the bid, but that neither pricing terms nor the total award amount should be deemed as confidential.

Commission Comments

The Commission will consider undertaking a proceeding to make the bidding and awarding of bids more transparent, but in general finds that this program is functioning in a manner that is consistent with the legislation by which it was created.

C. Specialized Telecommunications Assistance Program

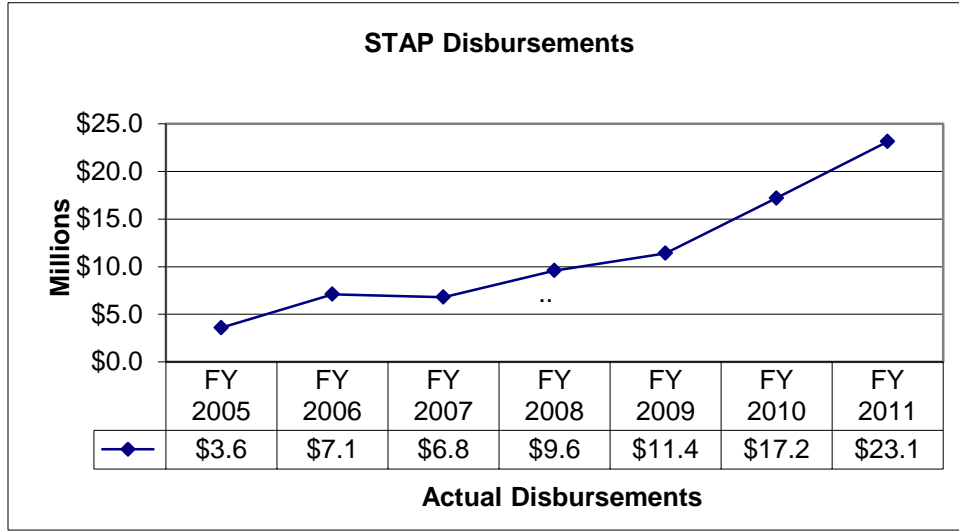
1. Background

The Specialized Telecommunications Assistance Program (STAP), enacted by the 75th Legislature in 1997 and codified in Chapter 56, Subchapter E of the PURA, was created to provide financial assistance to persons with disabilities to purchase basic specialized telecommunications equipment to access the telephone network. Pursuant to PURA §56.021(3), support from the TUSF is provided to vendors and service providers that offer for telecommunications equipment and services for hearing, speech, and vision-impaired customers.

STAP is coordinated by two agencies: the Department of Assistive and Rehabilitative Services (DARS, formerly known as the Texas Commission for the Deaf and Hard of Hearing) and the Commission. The Commission is responsible for registering and reimbursing vendors from the TUSF. DARS is responsible for the bulk of operations, from developing applications, to approving equipment, to issuing vouchers to persons with disabilities. Under the voucher system, qualified persons pay a \$35 application fee and receive a voucher to purchase the telecommunications equipment. Unlike many other states, the equipment becomes the property and responsibility of the purchaser. Approved products, such as teletypewriters (TTYs), amplified phones, speech aids, and video software, assist persons with a wide variety of disabilities in using the telephone, some for the very first time.

In fiscal year 2011, STAP accounted for 5.5% (\$23.1 million) of the fund (see Figure 13 – STAP Disbursement FY 2005-2011).

Figure 13 — STAP Disbursement, FY 2005-2011



SOURCE: Solix, Inc.

2. **Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021? What (if any) changes are necessary to accomplish that purpose regarding STAP?**

The Commission received no comments regarding this program.

Commission Comments

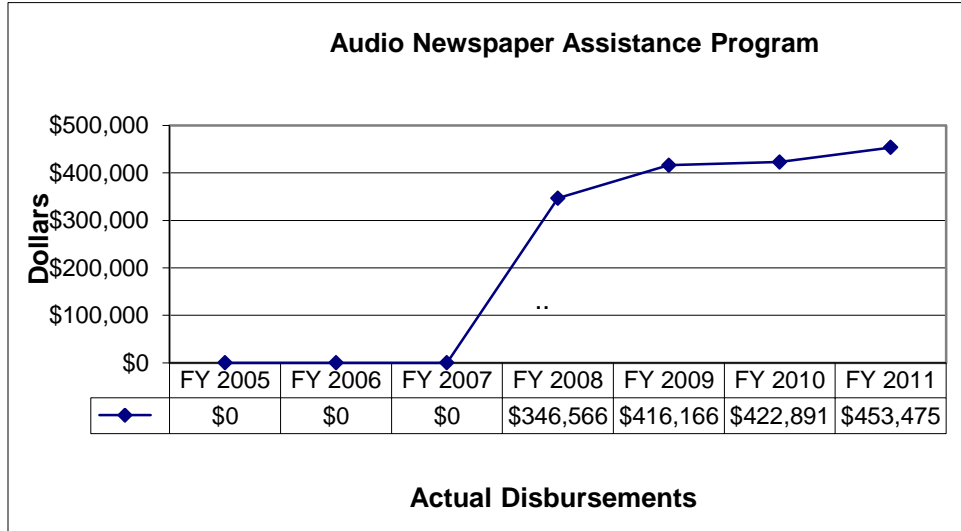
The Commission finds that this program is functioning in a manner that is consistent with the legislation by which it was created.

D. Audio Newspaper Program

1. Background/Program Totals

This program, enacted by the 79 Legislature in Senate Bill 5 (new PURA §56.301), provides support from the TUSF for an audio newspaper program (ANP) that provides the text of newspapers using synthetic speech to blind and visually-impaired persons. In 2006, the Commission adopted P.U.C. SUBST. R. 26.424 implementing the ANP, issued a request for proposals (RFP) for potential vendors to provide the service, and, in September 2006, awarded the RFP to the Texas Chapter of the National Federation of the Blind. No payments were issued during FY 2006 or 2007. Payments began in 2008 with \$346,566 and have increased slightly each year to \$453,475 in 2011 (See Figure 14 – ANP Disbursement, FY 2005-2011)

Figure 14 – ANP Disbursement, FY 2005-2011



SOURCE: Solix, Inc.

2. **Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021? What (if any) changes are necessary to accomplish that purpose regarding Additional Financial Assistance?**

The Commission received no comments in this regarding this program.

Commission Comments

The Commission finds that this program is functioning in a manner that is consistent with the legislation by which it was created.

E. Small ILEC Schools & Libraries, Hospitals & Health Centers

1. Background

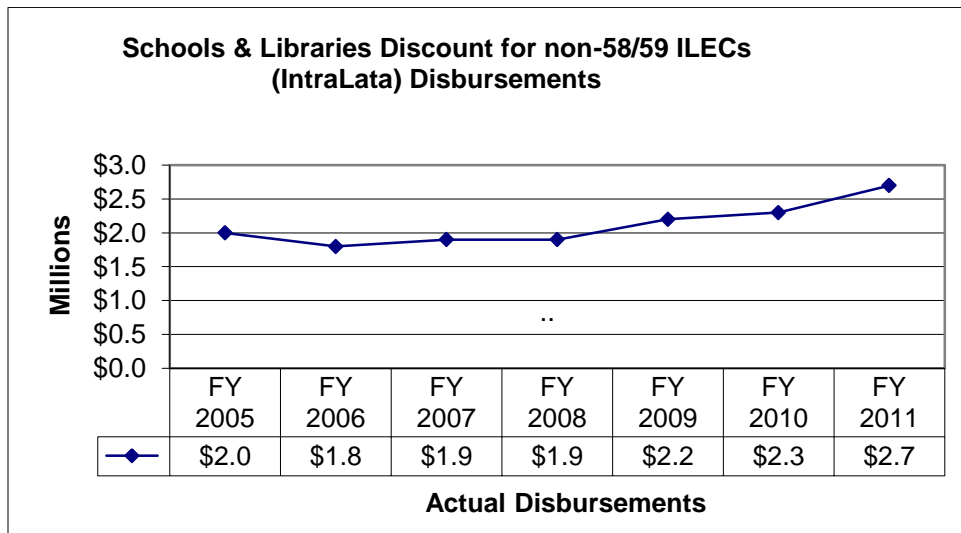
The 76th Legislature added Section 56.028 to (PURA) in 1999 to provide support from the TUSF to companies that provide high-speed services at a discount to certain entities, including schools, libraries, and non-profit hospitals.⁷ Under this program (referred to as the “IntraLATA Program” or the “Schools & Libraries Program”), ILECs

⁷ Eligible entities include educational institutions, accredited primary or secondary schools, accredited institutions of higher education, the Texas Education Agency, regional education service centers, the Texas Higher Education Coordinating Board, public libraries or regional library systems, libraries operated by institutions of higher education or school districts, nonprofit telemedicine centers, public or not-for-profit hospitals, and legally constituted consortia or group of any of these entities. PURA §§ 56.028, 58.253(a).

that have not elected incentive regulation (generally the smaller ILECs) and provide intraLATA, interexchange, high capacity (1.544 Mbps) service at reduced rates to entities described under PURA § 58.253(a) are reimbursed from the TUSF. The amount of reimbursement per line equals the difference between the tariffed rate for the service as of January 1, 1998, and the lowest rate for that service offered by any Chapter 58 company (generally the larger ILECs).

The amount of funding provided from the TUSF for digital signal level 1 (DS-1), 1.544 Mbps, services provided by non-electing companies has increased since 2005, increasing from \$2 million in Fiscal Year 2005 to approximately \$2.7 million by 2011 (or 0.63% of the fund’s total) (see Figure 15 – Schools & Libraries, Hospitals & Health Centers Fund Disbursements, FY 2005-2011).

Figure 15 — Schools & Libraries, Hospitals & Health Center Fund Disbursements, FY 2005-2011



SOURCE: Solix, Inc.

2. **Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021?**

Parties’ Positions

TTA stated that the program is currently serving its purpose well as customers in rural and high cost areas of Texas are able to obtain services at rates similar to those paid in urban areas.

3. **What (if any) changes are necessary to accomplish that purpose regarding Additional Financial Assistance?**

The Commission received no comments identifying proposed changes to this program.

Commission Comments

The Commission finds that this program is functioning in a manner that is consistent with its purpose.

Chapter VI. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds

A. Background

P.U.C SUBST. R. 26.417, adopted in 2000 pursuant in part to current PURA § 56.023, provides the requirements for the Commission to designate telecommunications providers as ETPs to receive funds from the TUSF, and establishes the circumstances in which an ETP designation can be relinquished.

B. Is the program accomplishing its purpose, as prescribed by Utilities code § 56.021?

Parties' Positions

AT&T and TTA indicated that the program appears to be meeting its purpose.

C. What (if any) changes are necessary to accomplish that purpose regarding designation of ETPs?

Parties' Positions

The Commission considered and approved support for certain facilities-based wireless technologies in P.U.C Docket Nos. 30765 and 30812. TTA stated that they believe that the transmitting and routing facilities criteria to determine high cost universal service support eligibility should not include mobile handsets and antennas used in mobile satellite service or rooftop or pole-mounted antennas used in fixed satellite service.

Commission Comments

The Commission stands by the decisions made in Dockets 30765 and 30812, and recommends no changes to the program at this time.

Appendix A – Comments Received by the Commission

The following is a list of the six stakeholders that provided written comments to the Commission regarding Project No. 39936 – *Report to the Legislature of the Commission’s Findings and Orders Regarding its Review and Evaluation of the Texas Universal Service Fund*:

Entity Name	Comments Filed
Southwestern Bell Telephone Company (d/b/a AT&T) (“AT&T”)	4/2/2012
Sprint Communications, Texas Cable Telecommunications Association. And TW Telecom of Texas, LLC (“Coalition”)	4/2/2012
TEXALTEL	4/2/2012
Texas Statewide Telephone Cooperative, Inc. (“TSTCI”)	4/2/2012
Texas Telephone Association (“TTA”)	4/2/2012
Verizon	4/2/2012

Appendix B. Universal Service Concept

Historically, the primary goal of telecommunications regulation has been to ensure universal service, i.e., that all customers throughout the nation, in urban and rural areas, have access to affordable, basic telephone service.

The concept has its foundation in the preamble of the Communications Act of 1934, which calls for a “rapid, efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges.” It was not until 1996, in legislation transitioning to a competitive local telephone environment, that Congress set forth explicit principles for universal service. In the Federal Telecommunications Act of 1996 (FTA), Congress identified six explicit goals for federal universal service in the new competitive environment. In addition, the FTA provided direction for state USF programs, requiring state mechanisms to be “specific, predictable, and sufficient” and not “rely on or burden Federal universal service support mechanisms.”

In Texas, PURA contains several explicit policy directives that reflect an underlying universal service goal of enabling every person in the state to access high-quality telecommunications services at reasonable rates, regardless of geographic location. The universal service fund specifically provides for a fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas of Texas and financial assistance for programs such as relay and lifeline services.

Appendix C. History of the Texas Universal Service Fund

The TUSF was originally authorized in 1987 by the 70th Legislature's revisions to PURA. From then until 1995, the fund consisted of three programs: (1) Tel-Assistance, which provided discounted telephone service to low-income consumers; (2) Relay Texas, similar to the current Relay Texas program, which allows individuals that are hearing-impaired or speech-impaired to communicate via specialized telecommunications (STAP) devices and operator translations; and (3) the High Cost Assistance Fund (HCAF), created by P.U.C. SUBST. R. 23.53 in 1993, which replaced revenues lost by ILECs that reduced intrastate switched access rates.

In 1995 and 1996, there were major changes in telecommunications regulation at both the state and federal level, which included opening local telephone markets to competition, impacted the structure of universal service and prompted a major restructuring. In 1995, the 74th Texas Legislature adopted House Bill 2128, which expanded the TUSF by adding a provision to provide support to companies with less than 5 million lines affected by reduced access rates, or by a state or federal rule, order or policy (the current PURA § 56.025 program). HB 2128 also provided for competition in the local telephone market and established a means by which ILECs traditionally subject to rate-of-return regulation could elect incentive regulation and the ability to flexibly price certain services in the new competitive local market. One year later, in 1996, Congress enacted the FTA, which contained explicit universal service goals and federal guidelines for competition in local telephone markets.

To implement these changes made at both the federal and state levels, major changes were required for the TUSF program. The Commission initiated a rulemaking proceeding (Project No. 14929) and on January 22, 1998, adopted rules implementing wholesale changes in the TUSF, including: (1) eligibility criteria for providers to receive federal and state USF; (2) a program (Large Company Area High Cost Program) for providers to receive TUSF support in large ILEC wire centers based on a forward-looking cost model;⁸ (3) a program for providers to receive TUSF support in small rural ILEC study areas (Small Company Area High Cost Program); (4) implementing PURA § 56.025, Maintenance of Rates and Expansion of Fund for Certain Companies; (5) Lifeline and LinkUp program parameters; (6) a mechanism for providers to seek additional financial assistance from the TUSF if needed; and (7) parameters for the administration of the fund.

In 1999, the Commission transitioned the way universal service was funded from an implicit to an explicit support mechanism. Until 1999, the goal of universal service (affordable local phone rates) was implicitly subsidized by charges paid to ILECs by long-distance carriers to access the local telephone network ("switched access charges"). Long-distance carriers passed on the cost of these switched access charges to their retail customers in the form of long-distance charges. Thus, the restructuring of switched access rates, an embedded source of support for universal service, was crucial in the transition to a competitive marketplace.

In 1999, the 76th Legislature adopted Senate Bill 560 which required long-distance carriers to pass through these reductions to their customers in the form of lower long-distance rates. SB 560 also established a state Lifeline program with automatic enrollment and a support mechanism for small rural companies that do not elect incentive regulation to receive reimbursement for providing high-speed services to schools and libraries (PURA § 56.028). In addition, SB560 made TUSF support portable to competitive

⁸ In establishing support amounts for high-cost rural areas, the Commission recognized that small ILECs (those with less than 100,000 access lines), were on a different competitive footing than large ILECs (*e.g.*, AT&T, Verizon, Sprint and Windstream) and evaluated TUSF support in two bifurcated proceedings (Docket Nos. 18515 and 18516), which resulted in final orders issued on January 14, 2000.

telecommunications providers, further expanded pricing flexibility for electing companies, and adopted additional requirements to address customer protection in a competitive market. The Legislature also adopted SB 1441, which required the Commission and Department of Assistive and Rehabilitative Services (DARS, formerly the Texas Commission for the Deaf and Hard of Hearing) to establish STAP to provide TUSF support to individuals with disabilities to access the telephone network.

In 2001, the 77th Legislature again expanded the fund to support providers serving customers outside of ILEC certificated areas, and in 2003, the 78th Legislature added provisions for successor utilities inheriting provider of last resort obligations (POLR) to receive funding.

The TUSF was expanded in 2005 by Senate Bill 5, adopted by the 79th Legislature during the Second Called Session. SB 5 established the Audio Newspaper Program, required recipients of TUSF to file an annual affidavit attesting to the proper use of the funds, required the Commission to submit a review and evaluation of the fund's performance, and, as of September 1, 2007, allows the Commission to revise the per monthly support amounts received by providers serving large ILEC high cost, rural wire centers and small ILEC study areas.

Appendix D. Final Order in P.U.C. Project 39937

PROJECT NO. 39937

<p>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</p>	<p>§ § § § § § §</p>	<p>PUBLIC UTILITY COMMISSION OF TEXAS</p>
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**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 18th day of JUNE 2011.


PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER

Appendix E. Final Order in P.U.C. Project 39939

PROJECT NO. 39939

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND CHAPTER 26, SUBCHAPTER	§	
P-RELATING TO ADMINISTRATION	§	OF TEXAS
OF THE TEXAS UNIVERSAL	§	
SERVICE FUND (TUSF)	§	

**ORDER ADOPTING NEW §26.402
AS APPROVED AT THE OCTOBER 12, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.402, relating to Transparency and Accountability in the Administration of the Texas Universal Service Fund with changes to the proposed text as published in the June 29, 2012 issue of the *Texas Register* (37 TexReg 4777). The purpose of the new rule is to further ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF) by means of reports by recipients of high cost support regarding planned network upgrades and publication of quarterly reports by the commission regarding TUSF cashflows, total deposits, and total disbursements. This new section is adopted under Project Number 39939.

The commission received written comments from the following parties: AMA TechTel Communications (AMA); CenturyLink (CenturyLink); GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, and Cellco Partnership and its commercial mobile radio service provider subsidiaries operating in the state of Texas d/b/a Verizon Wireless (Verizon); Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); Sprint Communications Company LP, Texas Cable Association and TW Telecomm of Texas LLC (Coalition); TEXALTEL (TEXALTEL); Texas Statewide Telephone Cooperative, Inc. (TSTCI); and Texas Telephone Association (TTA).

All comments, including any not specifically referenced herein, were fully considered by the commission.

No party requested that a public hearing be held regarding the proposed new rule.

Comments

Section 26.402(a) Purpose.

CenturyLink commented that they believe that the “purpose” statement was appropriate and comports with PURA §56.023(d), and that it also reflects that the commission already has rules in place to ensure reasonable transparency and accountability in the administration of the TUSF. CenturyLink contended that the new language in §56.023(d) would serve as a safeguard against future changes to existing rules that might diminish transparency and accountability. But, CenturyLink stated, §56.023(d) does not require the commission to adopt new rules or reporting requirements, and PURA Chapter 56 confers upon the commission broad discretion in administration of the TUSF, including the discretion not to act at all if it believes that it has sufficient rules in place.

The Coalition replied that CenturyLink’s statement strains credibility, that the TUSF is so opaque that, until 2008, even the amount of the subsidy to Texas High Cost Universal Service Plan (THCUSP) recipients was not publicly available, and that even today there is no requirement or proposal that small ILEC TUSF recipients publicly file the amount of their TUSF receipts as is required by recipients of monies from the THCUSP. The Coalition argued that under the *status quo* those who fund the TUSF (Texas telephone consumers) have no visibility into what TUSF subsidies are paid, to whom they are paid, and how the funds are used.

The Coalition also took issue with CenturyLink's assertion that PURA §56.023(d) does not mandate the commission's adoption of new transparency and accountability rules if the commission believes current rules are sufficient; the Coalition argued that the Legislature would not have told the commission that it "shall" adopt rules that "ensure" transparency and accountability if it were satisfied with the *status quo*. The Coalition stated that the Legislature not only authorized, but required the commission to adopt rules to ensure transparency and accountability in the TUSF, and the Coalition noted that PURA §56.023(d) is more recent than any statutory language upon which CenturyLink relied.

Commission Response

The commission adopts the proposed language without modification, given that no party suggested changes to this subsection, and adoption of new §26.402 reflects the commission's intent to better meet the legislative mandate set forth in PURA §56.023(d).

Section 26.402(b) Application.

No comments were received regarding this subsection. However, AMA, CenturyLink, Verizon, AT&T, the Coalition, TEXALTEL, TSTCI, and TTA each expressed concern, in comments regarding other proposed subsections, with the public disclosure of confidential company information.

Commission Response

Noting that no party suggested changes to this subsection, the commission adopts the proposed language of this subsection, correcting the internal references to other subsections to reflect deletions of specific proposed subsections, as further discussed below. Additionally, in response to comments regarding the submission of confidential information to the commission, the commission adopts language to make clear

that all filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed pursuant to the commission's procedural rules relating to pleadings and other documents. These procedural rules include processes addressing the filing and handling of materials designated by the filing party as confidential information. The commission notes that if a person submits a request for information filed pursuant to this rule and that the filing party designated as confidential, the request will be processed in compliance with the Public Information Act, Texas Government Code Chapter 552.

Section 26.402(c)(1) Reports required for a price cap carrier designated as an ETP that receives Texas USF high cost support.

The Coalition opined that the proposed rule should include the number of supported lines as well as the support received per line (for carriers other than those who have elected to eliminate their high cost support through the Total Support Reduction Plan), contending that this information is required to be filed publicly by recipients of federal High Cost model support and is critical to understanding how much support is being provided to an ETP in each exchange and whether the support is warranted or should be examined in a separate need inquiry.

CenturyLink replied that they believed the Coalition was overstating the federal requirements. CenturyLink stated that it does not object to filing information regarding the amount of support per line in each exchange, but it does object to filing line counts by wire center, which it considers to be highly sensitive confidential information. CenturyLink stated that this requirement should be rejected.

AMA replied that the Coalition's proposals here exceed the scope of what the Legislature required and what should be approved by the commission. AMA took issue with the Coalition's allegation that the Legislature

directed the commission to “take action to ensure transparency and accountability of the TUSF” while the statute language requires rules to “include procedures to ensure reasonable transparency and accountability in the administration of the universal service fund.” AMA argued that the Coalition’s positions go beyond the Legislature’s concern for transparency and accountability in the *administration* (AMA’s emphasis) of the TUSF. AMA opined that the Coalition’s proposals would effectively give oversight of the TUSF to competitors of the fund’s recipients.

AMA stated that the commission should not make a provider’s costs available to third parties, once again arguing that the statute calls for transparency and accountability in the *administration* of the fund rather than the fund itself. AMA said that there is a great difference between ensuring that the commission is administering the fund in a transparent and accountable manner and what AMA characterizes the Coalition’s position as requiring that all monies received and spent by a carrier be accounted for publicly. AMA stated that the five-year plans required by subsections (c) and (d) include specific descriptions of proposed improvements or upgrades to the reporting carrier’s network, and that these should not be made public, or be accessible under a standard protective order. AMA indicated that it is not aware of any provisions in Texas law similar to those proposed by the Coalition. The Coalition gave the example of the Comptroller office which does not allow members of the public to have access to sales tax or revenue reports. AMA said that there has been no suggestion that the Comptroller should provide more transparency of its operations by allowing the public to second-guess the process of revenue collections.

AMA indicated that they support continued transparency to the commission for administration of the fund, but found no need to change current rules to allow third parties to evaluate the fund. AMA observed that PURA charges the commission with responsibility to adopt and enforce rules relating to the TUSF, and that the

commission has adopted rules for eligibility and collection and disbursement of TUSF revenues, and that there is no evidence that the commission has failed to meet its obligations in administration of the fund. AMA stated that SB 980 did not abridge these obligations, nor did it direct the commission to allow third party evaluation of the fund, and that the commission is capable of discharging its responsibilities without providing unfettered access to confidential company information to competitors of TUSF recipients or the public.

Verizon did not oppose inclusion of this subsection in the rule.

CenturyLink noted that it considers the booked value of expenses, categorized according to the proposed rule, to be confidential and trade secret information, and that the rule is unclear as to whether all the expense value inputs must be filed or whether only the output from the formula needed to be filed. CenturyLink stated that this should be clarified. CenturyLink contended that if the expense line items were to be filed, it should be done confidentially.

The Coalition expressed skepticism regarding the square mile allocation factor, stating that while some costs are related to density it is not clear that square miles are an appropriate indicator of density when compared to factors such as line/road miles. The Coalition expressed concern that Project No. 40342 had been undertaken to a needs-based reform system for provision of TUSF support and that the allocation method now being proposed might be characterized as conferring commission support for a methodology that has no evidentiary basis. The Coalition was unclear as to what the allocation would accomplish, how it would inform the commission and public of a carrier's need for support. It was the Coalition's position that the proposed allocation cost factor fails to prove a need for TUSF support in any area, nor does it prove that the support being provided is used to provide service in an area.

CenturyLink said that the Coalition's concerns were overstated, and that any issues the Coalition might have with the square mile allocation methodology for purposes of any "needs based" inquiry could be addressed in comments to Project No. 40342.

CenturyLink replied that use of a line/road mile allocation factor would require extensive annual geocoding which would be burdensome to most carriers and impossible for others. CenturyLink said that the square mile allocation methodology strikes a fair balance between the goals of allocating cost and the burdens of performing an allocation exercise.

CenturyLink said that, while it does not directly measure line density, the proposed rule appears to be a reasonable allocation of costs to supported exchanges, and that any allocation is susceptible to criticism compared to a direct measure of costs, but that allocations are almost always used when determining costs, and while square miles may not be a perfect allocation factor the legal standard for adoption is not perfection.

CenturyLink, in response to TEXALTEL's supplemental comment in which it proposed an alternative allocation factor based on telephone customer counts rather than square miles in subsection (d)(1), contended that if this alternative was made available to some carriers, it should be available to all, both in subsection (d)(1) and (c)(1).

Commission Response

The commission declines to adopt this paragraph, concluding that the issues surrounding implementation of this proposed reporting, coupled with considerable concerns about such a report's benefits, outweigh its value as a contributor to transparency and accountability in the administration of the TUSF.

Section 26.402(c)(2)(A) Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal universal service fund (FUSF) USF high cost support.

Verizon stated that this subsection should not be adopted at this time because it is intended to reflect FCC reporting requirements which have not been finalized, pending a petition filed at the FCC by the Wireless Association® (CTIA) and the United States Telecom Association (USTA).

CenturyLink asserted that the granular wire center results of the FCC regression model have never been put to use by that agency or any state. It was CenturyLink's contention that carriers to which subparagraph (A) would apply either lack the data points necessary to populate the model or would have to derive the data from internal and external sources which would vary in quality, thus the outputs from the model would not be considered valid for TUSF purposes. CenturyLink asserted that subparagraph (A) should be deleted from the rule.

Commission Response

The commission declines to adopt this subparagraph, having concluded that the issues surrounding the report required by this language outweigh its benefits.

Section 26.402(c)(2)(B)-(C), (d)(2)(A)-(B) Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal universal service fund (FUSF)USF high cost support.

CenturyLink interpreted subsection (c)(2)(B) as simply requiring an ETC to file its FCC-required plan with the commission. CenturyLink believed that only Windstream and CenturyLink fall into this category. It was CenturyLink's contention that if the proposed rule intended that affected ILECs in Texas file a five-year improvement plan specific to TUSF this would be inconsistent with PURA and is not supported by any federal requirement. CenturyLink stated that an ILEC ETP has no obligation to proactively upgrade its network or

improve service quality as conditions of TUSF support so long as the ILEC is satisfying its obligations with respect to basic local telephone service (BLTS) as required under TUSF. CenturyLink concluded that any requirement for a five-year improvement plan requirement under TUSF would overstep the statutory mandate of PURA §56.021(l) and the TUSF orders in P.U.C. Docket Nos. 18515 and 34723 that set conditions under which ILEC ETPs would receive TUSF support. CenturyLink maintained it was entirely possible that an ILEC would have no need to expand its network or make service improvements but that TUSF support would still be justified if that support was used only to offset the high cost of maintaining the network and providing customer service in rural areas.

TEXALTEL stated in reply comment that to the extent the proposed rule simply required that copies of reports to the FCC be filed with the commission, filing parties should be allowed to attach the same level of non-disclosure to the copies files with the commission as those filed with the FCC.

The Coalition replied that CenturyLink's comment that a carrier had no obligation to upgrade or improve the service quality of its network in order to receive TUSF support as long as it is satisfying its ILEC and BLTS obligations merely serves to underscore what the Coalition perceived as inadequacy in the current requirements for TUSF transparency and accountability. The Coalition claimed that CenturyLink must file detailed reports and plans with the FCC in order to receive \$5.5 million per year in federal USF support, but that CenturyLink objects to providing comparable reports for the Texas fund from which it receives \$34 million per year. The Coalition contended that CenturyLink's real objection is with disclosure of the information.

The Coalition argued that the commission should reject CenturyLink's interpretation that the proposed rule merely requires that an ETC file its FCC-required plan with the commission, stating that since the federal rule

already establishes that requirement, it is unreasonable to interpret the proposed rule as a simple restatement of the federal requirement. Rather, the Coalition concluded that the intent of the language in subsection (c)(2)(B) is for an ETC that is also a Texas ETP to file Texas-specific reports of the information gathered in the course of preparing its FCC report filed pursuant to 47 C.F.R. 54.313(i), as the Coalition recommended in its comment on the Strawman rule in this project. The Coalitions requests that, to the extent this is not clear, it should be clarified but not deleted.

The Coalition further argued that the proposed rule should be amended to clarify that ETCs who receive federal or state USF support must file their federal USF reports pursuant to 47 C.F.R. §54.313 (which the Coalition said makes no provision for confidential filings) with the commission and that these be available to the public in a standing project number. It was the Coalition's position that if some or all of these reports are confidential their review should be permitted pursuant to a standing protective order.

CenturyLink replied that, while 47 C.F.R. §54.313 does not explicitly address confidential filings, it does not prohibit them, and that CenturyLink had made confidential filings pursuant to §54.313 with no parties objecting. CenturyLink stated that, to the best of its knowledge and belief, no party has ever challenged an ETC for filing their 5-year plans and progress reports with the FCC as confidential and those plans and reports are not subject to a standing protective order providing access by third parties. CenturyLink urged the commission to reject the Coalition's request for a protective order that would grant third parties access to confidential data filed pursuant to the proposed rule.

Commission Response

Consistent with CenturyLink’s comments, the commission confirms that these subparagraphs are applicable only to those carriers which are required by the FCC to file identical information with the FCC and rejects the Coalition’s recommendation that language be added to require a Texas ETP to also file a TUSF-specific five-year plan or update. The commission declines to burden carriers who would not otherwise be doing so with preparation of five-year plans and annual updates.

The filing of, and access to, information designated as confidential by a filing party is addressed above with respect to subsection (b).

Section 26.402(d)(1) Requirements for ETPs and ETCs that receive state or federal high cost support and are designated as rate of return carriers, competitive local exchange carriers, or wireless carriers by the FCC.

The Coalition and TEXALTEL expressed skepticism of the square mile allocation factor, stating that while some costs are related to density it is not clear that square miles are an appropriate indicator of density when compared to factors such as line miles or road miles. The Coalition expressed concern that Project No. 40342 had been undertaken to develop a needs-based reform system for provision of TUSF support and that the allocation method now being proposed might be characterized as conferring commission support for a methodology that has no evidentiary basis. The Coalition was unclear as to what the allocation would accomplish, how it would inform the commission and public of a carrier’s need for support. It was the Coalition’s position that the proposed allocation cost factor fails to prove a need for TUSF support in any area, nor does it prove that the support being provided is used to provide service in an area.

In initial comments, TEXALTEL noted that the proposed subsection (d) would impose the same reporting requirements on CLEC recipients and rate of return ILECS. TEXALTEL stated that CLECs have not been

required to keep the same charts of accounts that ILECS have historically kept. Regarding the proposed use of an allocation factor based on THCUSF subsidized square miles divided by total study area square miles, TEXALTEL said that CLECs do not have study areas, rather they operate in portions of study areas, and that many CLEC service areas have no correlation with ILEC exchange/wire center boundaries. TEXALTEL contended that since CLECS provide ubiquitous service in any wire center receiving THCUSF support, the service area square miles could not be calculated, and that CLECs lack the data necessary to make such a calculation. And for facilities based CLECs in areas which do not receive THCUSF, TEXALTEL contended that such providers do not have a service area per se, rather they serve customers within the range of their facilities, resulting in a “service area” that would look like Swiss cheese. In a supplemental comment, TEXALTEL offered an optional, additional allocation factor derived by dividing a carrier’s total customers in supported areas by that carriers total telephone customers in Texas. TEXALTEL conceded in reply comments that this method might be reasonably questioned as an allocation of costs between densely- and sparsely-populated areas, but maintained that a factor based on square miles would have an even smaller likelihood of accuracy. TEXALTEL offered an alternative, suggesting that all Rate of Return ILECs simply report under subsection (d)(1)(B) and not attempt to allocate between subsidized and non-subsidized exchanges, but rather list subsidized and non-subsidized line counts and let any reviewing party draft its own allocation factor for whatever purposes it is analyzing the data.

CenturyLink replied that no allocation method would be as perfect as an intensive determination of direct costs. In their supplemental reply, CenturyLink noted that there is nothing in the record to indicate that TEXALTEL’s proposed allocation factor based on customer counts is superior to a square mile allocation factor. While they did not oppose its inclusion, CenturyLink pointed out that the square mile allocation method uses well established exchange boundaries which have been approved by the commission, while the method proposed by

TEXALTEL would rely on customer counts which vary and are subject to a carrier's marketing practices, making such a methodology subject to concerns about reliability and accuracy. CenturyLink contended that if the commission allowed one set of carriers to use TEXALTEL's proposed methodology, then all carriers should be given that option, both in subsection (d)(1) and in subsection (c)(1), as well.

In its response to TEXALTEL's supplemental comment, the Coalition said it believed that neither the square mile nor the customer count methodology will produce a reasonable estimate of cost as claimed by the rule, and that absent considerable investigation, no one knows how best to determine an ETP's costs in supported exchanges because ETPs have not been required to track their costs by exchange. The Coalition contended that imposition of an arbitrary allocation factor does nothing to produce an "estimate of costs for the total of all supported wire centers," as the rule intends; rather such methodology only serves to create the illusion of having done so.

The Coalition opined that the proposed rule should include the number of supported lines as well as the support received per line (for carriers other than those who have elected to eliminate their high cost support through the Total Support Reduction Plan). The Coalition stated that this information is critical to understanding how much support is being provided to an ETP in each exchange and whether the support is warranted or should be examined in a separate need inquiry.

The Coalition stated that its greater concern is that P.U.C. Project No. 40342 was opened to investigate how best to establish needs-based reforms to the system, and that use of a cost allocation factor in the proposed rule might confer commission support to the use of such a methodology despite a lack of proof of its efficacy to provide a reasonable estimate of costs in a given area.

The Coalition went on to say that cost allocation factors neither prove need for support in a given area, nor do they prove that support monies were *actually used* (their emphasis) to provide service in a given area.

TEXALTEL also found the instructions for the allocation factor in subsection (d)(1)(A)(ii) to be confusing, saying that if the intent of the clause is to produce a calculation from the ILEC study area and wire center areas, this would be information to which CLECs likely do not have access. Alternatively, if the intent is to calculate the portion of a CLEC's total expenses allocable to lines supported by TUSF based on square miles served, TEXALTEL has commented on its concerns for this methodology above.

AMA expressed concern for the absence of specific provisions for confidentiality regarding the five-year plan described in subsection (d)(2), saying that the rule should make clear that the reports will be treated confidentially.

TEXALTEL urged that this subsection be applicable only to rate of return ILECs, saying that requiring this information of CLECs would put an undue burden in expense and disruption while failing to generate data that is meaningful to the commission or others. TEXALTEL also requested that the reports described in subsection (d)(2) be required of CLECs only to the extent they are required by the FCC, and that they be accorded the same level of confidentiality as the FCC's reports.

Commission Response

The commission declines to adopt this subparagraph, having concluded that the issues surrounding the report proposed in this subsection outweigh its benefits.

Section 26.402(e)(1) Reports made public by the commission.

AMA said it was reasonable to make public a cash flow statement for the overall TUSF.

Commission Response

The commission adopts the proposed language without modification.

Section 26.402(e)(2) Reports made public by the commission.

TEXALTEL, AMA, TSTCI, CenturyLink, the Coalition, Verizon, AT&T, and TTA opposed publication of carrier contributions to TUSF on the basis that doing so would reveal confidential information to competitors, owing to the fact that contributions to the fund are based on a company's intrastate revenues, which could easily be deduced if the payment amount were known.

AMA noted that it was unaware of any other state requiring public disclosure of company contributions to the fund and joined TTA in urging the commission to use this data for internal analysis only. AT&T contended that it would be unlawful to adopt a rule requiring publication of information that is exempted from disclosure under Texas Government Code §552.001 of the Open Records Act.

TSTCI, TTA, AT&T, Verizon and CenturyLink recommended that only aggregated payment data be made public. CenturyLink suggested that the published data be aggregated by industry segment (*e.g.*, ILEC, CLEC, wireless, VoIP).

The Coalition argued that, while there is a compelling argument for publication of company receipts from TUSF given that these are disbursements of public funds, there is no correlating need to make publicly available each company's contributions to the fund. The Coalition stated that the subsection should be deleted altogether, contending that it serves no legitimate purpose. The Coalition noted that many CLECs are privately held, and

do not make their financial information public. As an alternative, the Coalition offered that only the identities of companies who contribute to the TUSF be made public.

AMA observed that no segment of the regulated industry expressed support for this subsection, and no watchdog group had even filed comments.

Commission Response

The commission finds commenters' concerns regarding publication of data from which confidential information could be deduced to be reasonable and modifies the rule language to reflect that only aggregated contributions to the TUSF will be made publicly available.

Section 26.402 (e)(3) Reports made public by the commission.

AMA stated that identification of total disbursements from the TUSF to each recipient company or organization is consistent with current policy, saying that this information is already available on a quarterly basis and contributes to current transparency for the TUSF.

Commission Response

The commission adopts the proposed language without modification.

Section 26.402(f)

The Coalition proposed language for a new subsection to the effect that any information filed confidentially pursuant to the proposed rule should be made available to third parties, or at a minimum, their experts or counsel, who are willing to sign a protective order. The Coalition went on to argue that non-cost information, such as the five-year plan and subsequent progress reports should not be permitted to be filed confidentially. It was the Coalition's position that these plans and reports are the sole means by which the public can know whether subsidies paid from the TUSF are being applied appropriately, and that filing "accountability" reports on a confidential basis would run counter to the Legislature's intent to *increase* (Coalition's emphasis) transparency.

Commission Response

As discussed above with respect to subsection (b), the commission adopts language in subsection (b) to make clear that all filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed pursuant to the commission's procedural rules relating to pleadings and other documents. These procedural rules include processes addressing the filing and handling of materials designated by the filing party as confidential information. The commission notes that if a person submits a request for information filed pursuant to this rule and for which the filing party designated as confidential, such request shall be processed in compliance with the Public Information Act, Texas Government Code Chapter 552. For information filed with the commission and designated by the filing party as confidential, the Public Information Act does not allow the commission to provide access to the information to other entities, via a protective order or otherwise. The commission rejects the Coalition's proposed language and adopts language in support of this finding.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other changes for the purpose of clarifying its intent.

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.023(d), which requires the commission to adopt rules that include procedures to ensure reasonable transparency and accountability in the administration of the TUSF.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.023(d).

§26.402. Transparency and Accountability in the Administration of the Texas Universal Service Fund.

- (a) **Purpose.** This section, in conjunction with the audit, eligibility, public reporting, and affidavits of compliance requirements set forth throughout this subchapter, establishes procedures to ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF).

- (b) **Application.**
 - (1) This section applies to a telecommunications provider that has been designated as an eligible telecommunications provider (ETP) by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds). Subsections (c) and (d) of this section apply to a telecommunications provider that has been designated, or has applied after June 30, 2013 to be designated by the commission as an eligible telecommunications carrier (ETC) pursuant to §26.418 of this title (relating to Designation of Common Carrier as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).
 - (2) All filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

- (c) **Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal USF high cost support.** This subsection applies to an ETP that has been designated as an ETC that receives federal high cost support and has been designated as a price cap carrier by the Federal Communications Commission (FCC).

- (1) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for a carrier receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.
 - (2) By July 1st of each subsequent year after filing its five-year plan pursuant to paragraph (1) of this subsection, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.
- (d) **Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP and as an ETC that receives federal USF high cost support.** This subsection applies to an ETP that has been designated as an ETC that receives federal high cost support and that has been designated as a rate of return carrier, competitive local exchange carrier, or wireless carrier by the FCC.

- (1) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for carriers receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.
 - (2) By July 1st of each subsequent year after filing its five-year plan pursuant to paragraph (1) of this subsection, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.
- (e) **Reports made public by the commission.** For each State fiscal quarter, no later than the 45th day after the end of the preceding quarter, the commission shall make the following information publicly available on the commission's website:
- (1) A cash flow statement for the overall TUSF indicating starting balance, total revenues, disbursements for each program described in §26.401(b) of this title (relating to Texas Universal Service Plan (TUSF)), and ending balance; and

- (2) Total disbursements from the TUSF to each recipient company or organization for each program described in §26.401(b) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §26.402, relating to Transparency and Accountability in the Administration of the Texas Universal Service Fund, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 17th day of October 2012.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER

Appendix F. Final Order in P.U.C. Project 40521

DOCKET NO. 40521

COMMISSION STAFF'S PETITION §
TO ESTABLISH A REASONABLE §
RATE FOR BASIC LOCAL §
TELECOMMUNICATIONS SERVICE §
PURSUANT TO P.U.C. SUBST. R. 26.403 §

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ORDER

This Order addresses Commission Staff's petition to establish a reasonable rate for basic local telecommunications service pursuant to P.U.C. SUBST. R. 26.403, relating to the High Cost Universal Service Plan (THCUSP). An unopposed stipulation and agreement (Agreement) resolving all issues in this docket were filed. The Agreement is approved.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Background

1. Senate Bill 980 (S.B. 980), as enacted in the 82nd Legislative Session, requires the Commission to review and evaluate whether the Texas Universal Service Fund (TUSF) accomplishes the fund's purposes, or whether changes are necessary to accomplish those purposes.
2. Pursuant to S.B 980, the Commission opened a rulemaking, Project No. 39937, in order to review and evaluate the THCUSP.¹ After receiving comments, holding a workshop, meeting with a number of stakeholders, and conducting its own review of the THCUSP, the Commission ultimately adopted a new version of P.U.C. SUBST. R. 26.403 on June 18, 2012. The new rule became effective on July 9, 2012.

¹ 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, Project No. 39937 (June 21, 2012).

3. The new rule provides for the reduction in support for eligible telecommunications providers (ETPs) from the THCUSP. This reduction in support is to be based on the difference between the current rate for residential basic local telecommunications service (BLTS) in regulated exchanges² of an ETP that is an incumbent local exchange carrier (ILEC ETP) and a reasonable rate that is to be determined by the Commission in a subsequent contested case.³ The rule further contemplates that each ILEC ETP will calculate the amount of additional revenue it would receive under this reasonable rate based on residential line counts in regulated exchanges as of the end of the month preceding the effective date of the rule (in this case, June 30, 2012) for BLTS provided to residential customers in such exchanges.⁴ This amount would then be used to calculate each ILEC ETP's annual reductions in THCUSP base support. The rule finally provided an option whereby an ILEC ETP can elect to reduce its support to zero by January 1, 2017 by filing notice of such election with the Commission within ten days of the effective date of the new P.U.C. SUBST. R. 26.403.⁵

Procedural History

4. On July 2, 2012, Commission Staff filed a Notice of Intent to File a Petition in order to provide notice to all interested parties regarding the initiation of this proceeding on July 9, 2012, as well as the proposed July 23, 2012 intervention deadline.
5. On July 9, 2012, Commission Staff filed a Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. SUBST. R. 26.403 (Petition). As part of its Petition, Staff proposed that the following issues be addressed in this proceeding:
 1. What is/are the reasonable rate(s) for BLTS pursuant to P.U.C. SUBST. R. 26.403(e)(2)?

² The term "regulated exchanges" does not include any exchanges for which an application for deregulation is pending as of June 1, 2012.

³ P.U.C. SUBST. R. 26.403(e)(2).

⁴ P.U.C. SUBST. R. 26.403(e)(3).

⁵ P.U.C. SUBST. R. 26.403(e)(6).

- a. What is the appropriate geographic scope of the reasonable rate(s) to be determined in this proceeding (i.e., statewide, company-specific, exchange-specific)?
 - b. What is the appropriate methodology for calculating the reasonable rate(s) for BLTS?
 - c. Should the Commission consider the impact of the reasonable rate on the level of rate increases that residential customers may potentially experience if ETPs subsequently elect to increase their rates for BLTS up to the reasonable rate?
 - d. Should the Commission consider the impact of the reasonable rate adopted in this proceeding on P.U.C. SUBST. R. 26.412, relating to the Lifeline program?
2. What is the amount of revenue each ILEC ETP would receive if it were to charge, based on line counts as of the end of the month preceding the effective date of the new P.U.C. SUBST. R. 26.403, the reasonable rate for BLTS to all residential customers for those services where the price, or imputed price, are below the reasonable rate? What is the annual and cumulative amount of the reduction in THCUSP support for the ILEC ETP that results from this calculation?
6. Notice of the creation of the docket and of the Petition was served on all commenters in Project No. 39937 (which adopted a new version of P.U.C. SUBST. R. 26.403 relating to the THCUSP), all parties to Docket No. 34723⁶ (relating to the revision of monthly per-line support amounts from the THCUSP), all ETPs receiving THCUSP support under P.U.C. SUBST. R. 26.403, the Texas Statewide Telephone Cooperative, Inc. (TSTCI), the Texas Telephone Association (TTA), TEXALTEL, and the Texas Cable Association (TCA).
7. The following parties were granted intervenor status in this docket: Office of Public Utility Counsel (OPUC); Sprint Communications Company, L.P., the Texas Cable Association and tw telecom of Texas, LLC (collectively, the USF Reform Coalition); United Telephone Company of Texas, Inc. d/b/a CenturyLink and Central Telephone Company of Texas, Inc. d/b/a CenturyLink (collectively, CenturyLink); GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon); Valor Telecommunications of Texas, L.P. d/b/a Windstream Communications Southwest (Windstream); TEXALTEL; West Central Wireless (CT Cube, LLC) CGKC&H RCLP, Mid-Tex Cellular Limited, and

Texas RSA 15 B2 Limited Partnership, (collectively, West Central Wireless); Cumby Telephone Cooperative, Inc., Panhandle Telecommunications Systems, Inc. d/b/a PTCL, Santa Rosa Telephone Cooperative, Inc., WT Services, Inc., and XIT Telecommunications & Telephone Ltd. d/b/a XT&T (collectively, the Rural CLECs); AMA TechTel Communications; and Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas).

8. All parties to the proceeding engaged in settlement discussions. On August 15, 2012, the Signatories reached an agreement in principle regarding the principal issues in this proceeding.
9. On August 29, 2012, the Agreement was filed. The Agreement was signed by Commission Staff, OPUC, the USF Reform Coalition, CenturyLink, Verizon, Windstream, AMA TechTel Communications, AT&T Texas, West Central Wireless, and TEXALTEL (Signatories). The Rural CLECs do not oppose the Agreement.
10. On September 5, 2012, the presiding officer issued Order No. 5, which granted the Signatories' Unopposed Motion and admitted into evidence the Testimony of Dr. Mark Bryant, notice affidavits, and the Agreement.

Total Support Reduction Plan Elections

11. On July 19, 2012, AT&T Texas and Verizon elected to participate in the Total Support Reduction Plan (TSRP) as set forth in P.U.C. SUBST. R. 26.403(e)(6).
12. As a result of this election, AT&T Texas and Verizon are entitled to credit THCUSP reductions due to exchange deregulation against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.
13. As a further result of this election, AT&T Texas and Verizon will neither seek nor receive THCUSP funding after January 1, 2017.

Description of the Agreement

14. The Signatories agreed that the Agreement's terms result in rates for residential BLTS for purposes of this proceeding and subsequent tariff filings pursuant to Public Utility

Regulatory Act⁷ (PURA) §58.060 that are reasonable within the meaning of that term in P.U.C. SUBST. R. 26.403(e) for each of the ILEC ETPs in their respective service areas and are consistent with the public interest.

15. For purposes of P.U.C. SUBST. R. 26.403(e), the Agreement provides for a reasonable rate for residential BLTS of \$24.00 per month for CenturyLink, Verizon, and AT&T Texas, including any mandatory Extended Area Service (EAS) and Expanded Local Calling Service (ELCS) charges (except as to AT&T Texas where the reasonable rate does not include EAS and ELCS charges).
16. For purposes of P.U.C. SUBST. R. 26.403(e), the Agreement provides for a reasonable rate for residential BLTS of \$23.50 per month for Windstream, including any mandatory EAS and ELCS charges.
17. The Agreement provides for a total reduction in annual THCUSP support amounts for AT&T Texas, Windstream, Verizon, and CenturyLink that take effect on January 1, 2013 of approximately \$16 million.
18. The Agreement provides for total THCUSP support reductions for AT&T Texas, Windstream, Verizon, and CenturyLink of approximately \$96 million per year by January 1, 2017, which includes the effect of the elections of Verizon and AT&T Texas to the TSRP.
19. The Agreement provides that each ILEC ETP will be provided the opportunity to request to raise its monthly residential BLTS rates by up to \$2.00 per year for the four-year period up to the applicable reasonable rates so long as the four-year revenue increase does not exceed the ILEC ETP's overall support reduction in the same four-year period.
20. The Agreement provides for the allocation of reductions to THCUSP support to each exchange served by an ETP in proportion to the relative density of each ILEC ETP's residential lines as of June 30, 2012 in each supported exchange.

⁷ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Version 2007 & Supp. 2011) (PURA).

Consistency of the Agreement with PURA and Commission Requirements

21. The Agreement is the result of good faith negotiations between the parties, and these efforts, as well as the overall result of the Agreement viewed in light of the record as a whole, support the reasonableness and benefits of the terms of the Agreement.
22. The potential rate changes described in the Agreement, together with the monthly per-line support amounts funded by the THCUSP resulting from the Agreement, are consistent with achieving universal affordable service in areas served by ETPs receiving support from the THCUSP pursuant to PURA § 58.060.
23. The reasonable rates stipulated in the Agreement are consistent with P.U.C. SUBST. R. 26.403 and the applicable provisions of PURA.
24. It is reasonable for each ILEC ETP to be permitted to raise monthly residential BLTS rates by up to \$2.00 per year for the four-year period up to the applicable reasonable rate provided that the ILEC ETP's four-year revenue increase does not exceed its overall support reduction in the same four-year period.
25. It is consistent with the requirements set forth in P.U.C. SUBST. R. 26.403(e)(3) and reasonable for purposes of this proceeding to allocate reductions to THCUSP support to each exchange served by an ETP in proportion to the relative density of each ILEC ETP's residential lines as of June 30, 2012 in each supported exchange.
26. The terms of the Agreement are consistent with the requirements set forth in P.U.C. SUBST. R. 26.412, relating to increases in the Lifeline discount equal to 25% of any increase to residential BLTS rates.

II. Conclusions of Law

1. The Commission has jurisdiction over the subject matter of this proceeding pursuant to PURA §§ 14.002, 56.021, 56.023, 56.031, 58.060, and S.B. 980.
2. This docket was processed in accordance with the requirements of PURA, the Texas Administrative Procedure Act,⁵ and Commission rules.
3. Notice of the Petition was provided in compliance with P.U.C. PROC. R. 22.55.

⁵ Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (Vernon 2008 & Supp. 2010).

4. The Agreement, taken as a whole, is a just and reasonable resolution of all the issues it addresses, is consistent with the relevant provisions of PURA and the Commission's rules, and is consistent with the public interest.
5. In determining the monthly per line support amounts, the Commission has considered the adequacy of basic rates to support universal service, pursuant to PURA § 56.031.
6. The reasonable rate established in this proceeding for each of the ILEC ETPs is consistent with achieving universal affordable service pursuant to PURA § 58.060 in areas served by ETPs receiving support from the THCUSP.
7. The Agreement resolves all issues pending in this docket.
8. The Commission's adoption of a final order consistent with the Agreement satisfies the requirements of TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.056 without the necessity of a decision on contested case issues resulting from a hearing on the merits.
9. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The attached Agreement (Exhibit A) is approved.
2. Consistent with Article VI of the attached Agreement, each ILEC ETP shall file its annual base support reduction amounts no later than November 30 of each year.
3. Consistent with Article VI of the attached Agreement, each ILEC ETP shall file per-line support amounts no later than November 30 of each year.
4. Consistent with Article VI of the attached Agreement, each ILEC ETP shall file relative density weighting factors no later than November 30 of each year. Each ILEC ETP's relative density weighting factor may be filed confidentially.
5. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not

be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.

6. All other motions, request for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the 20th day of September 2012.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER