

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.405. Financial Need for Continued Support.

- (a) **Purpose.** This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.
- (b) **Application.** This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (c) **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. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.
 - (2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.
 - (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) **Physical 911 address** -- For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.
 - (5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.
 - (6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:
 - (A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.
 - (i) If no unique physical street address is available, a physical 911 address shall be used.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

- (ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.
 - (B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.
- (d) **Determination of financial need.**
 - (1) **Criteria to determine financial need.** For each exchange that is served by an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section, the commission shall determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.
 - (2) **Establishing the existence of an unsubsidized wireline voice provider competitor.** For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission shall determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.
 - (A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:
 - (i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support, or FCC Legacy High Cost support for service provided within that exchange; and
 - (ii) offers basic local service or broadband service of 3 megabits per second down and 768 kilobits per second up using wireline-based technology using either its own facilities or a combination of its own facilities and purchased unbundled network elements (UNEs).
 - (B) Using Version 7 of the National Broadband Map, the commission shall determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.
 - (i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange shall be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.
 - (ii) The commission shall determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.
 - (C) The data provided by the National Broadband Map creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

National Broadband Map with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.

- (e) **Criteria for determining amount of continued support.** In a proceeding conducted pursuant to subsection (f) of this section, the commission shall set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts shall be effective beginning with the first disbursement following a commission order entered pursuant to subsection (f)(2) of this section, except that they shall not be effective earlier than January 1, 2017 for an exchange with service supported by the THCUSP or earlier than January 1, 2018 for an exchange with service supported by the SRILEC USP.
- (1) **Exchanges in which the ILEC ETP does not have a financial need for continued support.** For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission shall reduce the monthly per-line support amount to zero. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and which is not included in the petition, the commission shall reduce the monthly per-line support amount to zero.
- (2) **Exchanges in which the ILEC ETP has a financial need for continued support.** For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission shall set a monthly per-line support amount according to the following criteria.
- (A) The initial monthly per-line support amounts for each exchange shall be equal to:
- (i) the amount that the ILEC ETP was eligible to receive on December 31, 2016 for an ILEC ETP that receives support from the THCUSP;
 - (ii) the amount that the ILEC ETP was eligible to receive on December 31, 2017 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request pursuant to subsection (g) of this section; or
 - (iii) the new monthly per-line support amounts calculated pursuant to subsection (g) of this section for an ILEC ETP that has filed a request pursuant to subsection (g) of this section.
- (B) Initial monthly per-line support amounts for each exchange shall be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition pursuant to subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed pursuant to subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may consider any appropriate factor, including the residential line density per square mile of any affected exchanges.
- (C) For each exchange with service supported by the THCUSP, monthly per-line support shall not exceed:
- (i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;
 - (ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;
 - (iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

- (iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.
 - (D) For each exchange with service supported by the SRILEC USP, monthly per-line support shall not exceed:
 - (i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;
 - (ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;
 - (iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2018, and before January 1, 2019; or
 - (iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.
 - (E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition pursuant to subsection (f)(1) of this section.
 - (F) **Portability of support.** The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.
- (f) **Proceeding to Determine Financial Need and Amount of Support.**
- (1) **Petition to determine financial need.** An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.
 - (A) An ILEC ETP may only file one petition pursuant to this subsection. A petition filed pursuant to this subsection shall include the information necessary to reach the determinations specified in this subsection.
 - (B) An ILEC ETP filing a petition pursuant to this subsection shall provide notice as required by the presiding officer pursuant to §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice shall be published in the *Texas Register*.
 - (C) A petition filed pursuant to this subsection shall include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:
 - (i) Plant-specific operations expense;
 - (ii) Plant non-specific operations expense;
 - (iii) Customer operations expense;
 - (iv) Corporate operations expense;
 - (v) Depreciation and amortization expenses;
 - (vi) Other operating expenses;
 - (vii) Total telecom plant in service;
 - (viii) Total property held for future use; and
 - (ix) Total telecom plant under construction.
 - (D) A summary filed pursuant to this subsection shall be filed publicly. Workpapers filed pursuant to this subsection may be filed publicly or under seal.
 - (E) Upon receipt of a petition pursuant to this section, the commission shall initiate a contested case proceeding to determine whether the ILEC ETP has a financial need

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission shall set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

- (2) The commission shall issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP shall continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.
- (3) An ILEC ETP shall not be subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.
- (4) The ILEC ETP filing a petition pursuant to this subsection shall bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) **De-averaging of the support received by ILEC ETPs from the SRILEC USP.** On or before January 1, 2017, an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

- (1) The commission shall use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

| Residential Line Density Per Square Mile | Proxy Per-Line Support Amount |
|---|----------------------------------|
| 0 to 2.49 | \$120.53 |
| 2.49 to 4.99 | \$69.82 |
| 5 to 9.99 | \$46.46 |
| 10 to 14.99 | \$31.45 |
| 15 to 19.99 | \$18.81 |
| 20 to 24.99 | \$14.78 |
| 25 to 29.99 | \$10.51 |
| 30 to 49.99 | \$4.33 |
| 50 or greater | \$1.83 |

- (2) Using the per-line proxy support amount levels set forth in this subsection, the commission shall create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.
- (3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange shall be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.
- (4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed pursuant to subsection (f)(1)

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

- (h) **Reporting requirements.** An ILEC ETP that receives support pursuant to this section shall remain subject to the reporting requirements of §26.403(g) or §26.404(h) of this title.
- (i) **Additional Financial Assistance.** Nothing in this section shall be interpreted to prohibit an ILEC or cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance pursuant to §26.408 of this title (relating to Additional Financial Assistance (AFA)).
- (j) **Service to be supported.** The services to be supported pursuant to the section are subject to the same definitions and limitations as those set out in §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.