

PROJECT NO. 32136

PUC REVIEW OF CHAPTER 26 § PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES TO §
CONFORM TO SB5 § OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.417 AND §26.420
AS APPROVED AT THE AUGUST 10, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), and to §26.420, relating to Administration of Texas Universal Service Fund (TUSF). These proposed amendments will make minor non-policy affecting changes to Chapter 26 Substantive Rules to bring them into conformity with associated minor changes in the Public Utility Regulatory Act (PURA) brought about by Senate Bill 5, 79th Legislature, Second Called Session. These two sections were originally to have been included, under this same Project No. 32136, with the amendments to §§26.223, 26.224, 26.225, 26.401, 26.404, 26.406, 26.408 and 26.423 that were approved for publication at the May 10, 2006 Open Meeting. However, as of the May 10, 2006 Open Meeting, §26.417 and §26.420 already had pending proposed rule changes (Project Nos. 32161 and 28708). Therefore, additional rulemaking could not proceed on §26.417 and §26.420 until the prior proposed rule changes went into effect. Those prior rule changes have now gone into effect, so the rule changes for §26.417 and §26.420 can now proceed.

Rick Talbot, Policy Analyst, Communications Industry Oversight, and James Tourtelott, Staff Attorney, Telecommunications Legal Section, have determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Talbot and Mr. Tourtelott have determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be the administrative efficiency of conforming the Chapter 26 Substantive Rules to PURA. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Mr. Talbot and Mr. Tourtelott have also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, October 10, 2006, at 10:00 am. The request for a public hearing must be received within 31 days after publication of these proposed amendments in the *Texas Register*.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the

organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 32136.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§54.251, 56.021, and 56.026(e), which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 54.251, 56.021 and 56.026(e).

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) – (b) (No change.)

(c) Criteria for designation of ETPs.

(1) (No change.)

(2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) – (B) (No change.)

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.

(d) – (i) (No change.)

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

- (a) (No change.)
- (b) Programs included in the TUSF.
 - (1) – (12) (No change.)
 - (13) Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas); ~~and~~
 - (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service); ~~and~~
(15) Section 26.424 of this title (relating to Audio Newspaper Program).
- (c) – (d) (No change.)
- (e) **Determination of the amount needed to fund the TUSF.**
 - (1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.
 - (A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:
 - (i) – (vi) (No change.)
 - (vii) Telecommunications Relay Service, §26.414 of this title; ~~and~~
 - (viii) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title; ~~and~~
(ix) Audio Newspaper Program, §26.424 of this title.
 - (B) – (C) (No change.)
 - (2) (No change.)
- (f) (No change.)

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

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

(A) – (B) (No change.)

(C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:

(i) Telecommunications Relay Service; ~~and/or~~

(ii) Specialized Telecommunications Assistance Program; and/or

(iii) Audio Newspaper Program.

(D) (No change.)

(2) (No change.)

(3) **Disbursements.**

(A) (No change.)

(B) Prior to August 31, 2007, iff an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:

(i) – (ii) (No change.)

(C) The commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations.

(h) – (j) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 10th DAY OF AUGUST 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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