

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§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) **Benchmark** -- The per-line amount above which THCUSP support will be provided.
 - (2) **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.
 - (3) **Eligible line** -- A residential line and 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.
 - (4) **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)).
 - (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.
- (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) Timing 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.

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- (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 TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection and as adjusted by the requirements of paragraph (3) of this subsection.
 - (1) **Determining base support amount available to ETPs.** The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.
 - (A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.
 - (B) Determination of the benchmark. After notice and opportunity for hearing, the commission shall establish an appropriate benchmark or benchmarks.
 - (C) Support available under the THCUSP.
 - (i) After notice and opportunity for hearing, the commission shall determine which eligible lines shall receive support.
 - (ii) Support under the THCUSP is portable with the consumer.
 - (2) **Proceedings to determine THCUSP base support.**
 - (A) Timing of determinations.
 - (i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from September 1, 1999.
 - (ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.
 - (B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.

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- (3) **Calculating amount of THCUSP support payments to individual ETPs.** After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.
- (A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.
- (B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.
- (C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.
- (i) Solely through UNEs.
- (I) $USF\ cost > (UNE\ rate + retail\ cost\ additive\ (R)) > revenue\ benchmark\ (RB)$. USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark. Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities-based competition is encouraged only if it is economic, i.e., reflective of real cost advantages in serving the customer; or
- (II) $USF\ cost > RB > (UNE\ rate + R)$. The ILEC would receive the difference between USF cost and RB. In this case, where $USF\ cost > RB > (UNE\ rate + R)$, giving (USF cost - RB) to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover (USF cost - RB) would minimize financial harm to the ILEC; or
- (III) $(UNE\ rate + R) > USF\ cost > RB$. The ETP would receive the difference between USF cost and RB. Where $(UNE\ rate + R) > USF\ cost > RB$, giving (USF cost - RB) to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover (USF cost - RB) would minimize financial harm to the ETP.

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- (ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate benchmark.
- (f) **Reporting requirements.** An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.
- (1) **Monthly reporting requirements.** An ETP shall report the following to the TUSF administrator on a monthly basis:
 - (A) information regarding the access lines on the ETP's network including:
 - (i) the total number of access lines on the ETP's network,
 - (ii) the total number of access lines sold as UNEs,
 - (iii) the total number of access lines sold for total service resale,
 - (iv) the total number of access lines serving end use customers, and
 - (v) the total number of eligible lines for which the ETP seeks TUSF support;
 - (B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and
 - (C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(3) of this section.
 - (2) **Quarterly reporting requirements.** An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.
 - (A) The initial report shall cover the period of April 1, 2008, through June 30, 2008.
 - (B) Subsequent reports shall cover each calendar quarter, beginning July 1, 2008.
 - (C) Reports for quarters which end prior to this rule's effective date shall be due within 90 days of that date. Reports for subsequent quarters shall be filed no later than 3:00 p.m. on the 30th calendar day after the end of the reporting period.
 - (D) 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 reporting period.
 - (E) 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 subsection.
 - (F) All reports filed pursuant to paragraph (2) 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 or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.
- (g) **Review of THCUSP after implementation of federal universal service support.** The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.