



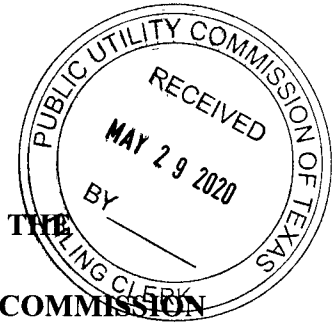
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PROJECT NO. 50796



REVIEW OF TUSF RATE

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

**AMA TECHTEL COMMUNICATIONS' COMMENTS
ON COMMISSIONER MEMORANDUM FOR MAY 14 OPEN MEETING**

TO THE HONORABLE COMMISSION:

AMA TechTel Communications (AMA) respectfully submits these comments in response to Chairman Walker's Commissioner Memorandum filed on May 13, 2020 for the open meeting on May 14, 2020. AMA is a competitive provider of voice and data services in Texas, including sixty-five rural communities for which it obtains support from the Texas High Cost Universal Service Plan (THCUSP). Many of the communities AMA serves are in remote areas and are extremely rural. AMA has actively participated in each of the projects in which the Commission considered revisions to the THCUSP. In those projects, AMA has consistently supported thoughtful reductions of support in markets that have relatively high population density or meaningful unsubsidized competition while urging the Commission to carefully consider the impact of support reductions on customers and the universal service policy objective in small, remote, and rural markets. AMA appreciates the opportunity to comment and will continue to work with the Commission and other interested industry participants to develop a solution to the important issue of adequately funding the statutory obligations of the Texas Universal Service Fund (TUSF).

The Memorandum referred to a staff projection that, by December 2020, revenue coming into the fund may be insufficient to meet the fund's obligations and referred to analysis showing the decline in assessments has accelerated rapidly. AMA's review of the Quarterly TUSF Financial Reports comes to a similar conclusion with the specific timing affected only marginally by making optimistic assumptions about future assessments and disbursements from the fund. In light of this, AMA appreciates that the

Chairman has raised the issues of the decline in revenues and solvency of the fund and has made it clear she intends to ensure the fund has sufficient resources to meet its statutory obligations.

The Memorandum suggests several possible approaches, but the only solution that can be implemented in time to avoid insolvency is to increase the assessment rate on the existing contribution base. Other considerations in the Memorandum require rulemakings that will require too much time to implement. It is unfortunate the Commission has no expeditious option to develop and implement a competitively-neutral and technology-neutral assessment mechanism to keep the TUSF on a sound footing, but the Commission must first ensure solvency of the fund. While implementation of a competitively- and technologically-neutral assessment mechanism cannot be completed in time to avert the current crisis, AMA strongly encourages the Commission to explore other options to replace the current anticompetitive and technology-centric methodology with an approach that avoids these issues and provides financial certainty for the fund and minimizes assessments on customers.

AMA agrees with the Chairman's statement there are fundamental policy issues related to the fund. However, concerns raised at the open meeting, specifically high cost support being distributed to markets that may no longer be high cost and 56.025 support being distributed to rate-of-return regulated carriers, seem to contribute only marginally to the immediate, urgent issue of fund insolvency. As this project advances AMA will work with the Commission to better understand the policy issues and to develop mechanisms to review the appropriateness of disbursements as discussed in the Memorandum.

The Memorandum specifically mentions two of the programs funded by the TUSF-the THCUSP and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILECUSP). These programs provide financial assistance to ETPs that serve the high cost rural areas of the state¹ and ETPs that provide service in the study areas of small and rural ILECs.² The Commission has reviewed the THCUSP and

¹ 16 TAC 26.403(a).

² 16 TAC 26.404(a).

SRILEC high cost programs and materially reduced disbursements in recent years.³ These reductions were enabled in part by increasing basic service rates to Commission-approved reasonable rates,⁴ one method suggested in the Chairman's Memorandum. Because of the past rate increases, revisiting this approach likely would not yield a significant reduction in support provided by the THCUSP or SRILECUSP. Conversely, AMA agrees there appear to be markets receiving such support because they were once rural, high-cost exchanges but may no longer be so. AMA disagrees with the overly-broad approach of using MSAs to qualify rural, high-cost exchanges, but it supports a more targeted approach to identifying these markets and adjusting support as appropriate.

If the Commission intends to review the policies and rules controlling the disbursement of funds under any of the programs supported by TUSF, AMA suggests it do so in one or more separate proceedings. The level of fund disbursements obviously affects the amount the TUSF must collect, but the issue of the mechanism for collecting funds is unrelated to funds being disbursed for legislatively-approved programs.

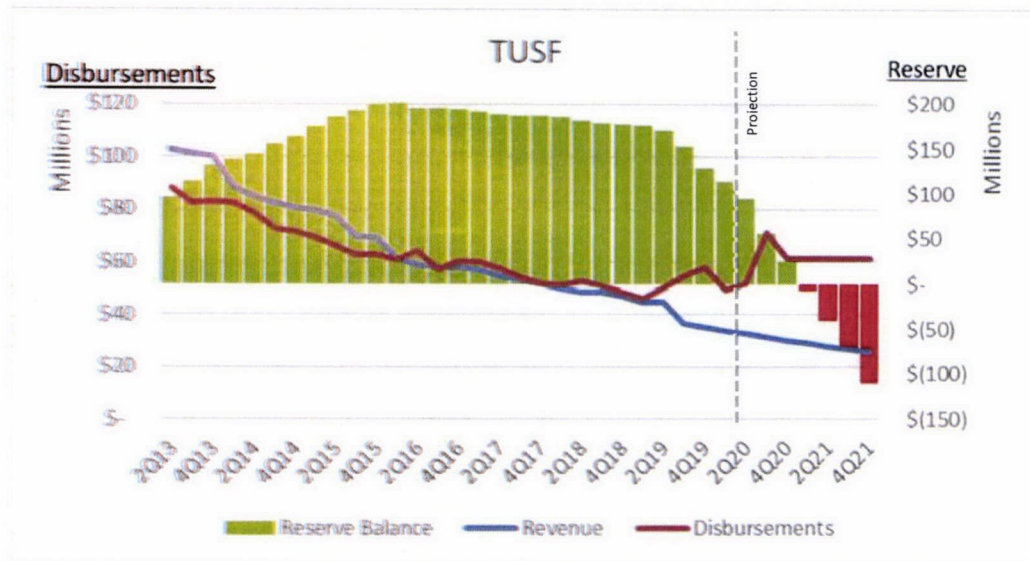
The Memorandum seeks comments on the following questions. AMA provides comments below.

³ *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to 56.031 and P.U.C. Subst. R. 26.403*, Project No. 34723 (Ap. 25, 2008); *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. Subst. R. 26.403*, Docket No. 40521 (Sept. 28, 2012); *Rulemaking to Amend Substantive Rules to Telecommunications to Conform to PURA 56.023*, Project No. 41608 (Dec. 3, 2014). The Commission also opened projects reviewing the Large Company Area High Cost Programs and other projects and dockets addressing universal service. *Rulemaking to Consider Amending Substantive Rule 26.403, Relating to the Texas High Cost Universal Service Plan*, Project No. 39937 (No order); *Rulemaking Proceeding to Amend Substantive Rule §26.403 Relating to the Texas High Cost Universal Service Plan*, Project No. 40342, (No order); *Rulemaking to Consider Amending Substantive Rule 26.404, Relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan*, Project No. 39938 (Nov. 21, 2012); *Report to the Legislature of the Commission's Findings and Orders Regarding its Review and Evaluation of the Texas Universal Service Fund*, Project No. 39936 (Nov. 1, 2012); *Rulemaking to Consider Amending Substantive Rule §26.420, Relating to the Administration of the Texas Universal Service Plan Pursuant to PURA 26.023(d)*, Project No. 39939 (Oct. 19, 2012).

⁴ Project No. 34723 and Docket No. 40521. See generally *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to PUC Subst. R. §26.404*; Docket No. 41097 (Aug. 30, 2013); *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. Subst. R. 26.604 for CenturyTel of San Marcos, Inc. d/b/a CenturyLink, CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink, and CenturyTel of Port Aransas, Inc. d/b/a CenturyLink (Severed from Docket No. 41097)*, Docket No. 41682 (Aug. 8, 2014).

1. *Should the Commission raise the current TUSF assessment? If so, by what amount are you assuming the TUSF assessment should be raised?*

Yes.⁵ Based on AMA's analysis of publicly-available data, the fund will be unable to meet its statutory obligations without timely adjustment of the funding mechanism. See the following chart.⁶



The Commission has modified the TUSF assessment rate seven times;⁷ it clearly has the authority to do so.⁸ While this solution is immediately necessary,

⁵ The Commission's rules require the TUSF administrator to determine, on a periodic basis, the amount needed to fund the TUSF. 16 TAC 26.420(e)(2). The amount needed to fund the TUSF is composed of the cost of TUSF programs, costs of implementation and administration of the TUSF, and a reserve for contingencies. 16 TAC 26.420(e)(1).

⁶ Projections assume (i) assessable revenues will decline at a rate of 4% per quarter consistent with the past 3 quarters, (ii) disbursements from most programs will be flat except (iii) Lifeline disbursements will be \$15MM in 3Q20 to account for delayed carrier filings and \$5MM per quarter thereafter, (iv) 56.025 support will be \$1.47MM per quarter, the average amount of the past four quarters, and (v) SRILECUSP disbursements will increase by \$11.7MM per year based on orders already issued and cases currently pending before the Commission.

⁷ *Texas Universal Service Fund (TUSF) Administration*; Docket No. 21208, Order Changing the TUSF Assessment (Jul. 28, 2004); Order Changing the TUSF Assessment (Jul. 24, 2006); Order Changing the TUSF Assessment (Ap. 13, 2007); Order Changing the TUSF Assessment (Aug. 8, 2008); Order Changing the TUSF Assessment (Nov. 10, 2011); Order Changing the TUSF Assessment (Jul. 19, 2013); Order Changing the TUSF Assessment (Dec. 18, 2014).

⁸ PURA 56.022. "UNIFORM CHARGE. (a) The universal service fund is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base. (b) A telecommunications provider shall pay the charge in accordance with procedures approved by the commission. (c) The uniform charge is on services and at rates the commission determines. In establishing the charge and the services to which the charge will apply, the commission may not: (1) grant an unreasonable preference or advantage to a telecommunications provider; (2) assess the charge on pay telephone service; or

increasing the TUSF assessment rate also increases the burden on a shrinking subset of contributing carriers and customers and is no longer competitively neutral as the Commission's rules require.⁹ A long-term solution to bring all carriers into the contribution base would be more equitable, satisfy the statutory requirements, and be more consistent with the objectives of the Commission.

AMA does not have the data to more precisely project disbursements or to forecast TUSF collections. Based on its analysis of publicly-available data, AMA does not question the Memorandum's estimate the assessment must be nearly doubled for the fund to remain solvent while the Commission considers other solutions. Part of the uncertainty of the required assessment rests on the timing of the increase and the effect of the increase on carriers' contributions to the fund. While any increase is objectionable, larger increases will be necessary if there are delays in increasing the assessment or if more carriers discontinue their contributions to the fund. The Commission should act promptly to approve an increase in the assessment.

In addition to raising the assessment rate, the Chairman contemplates in her Memorandum solutions that would effectively increase the size of the assessment base.¹⁰ AMA supports consideration of those options and will comment on them in its responses to the questions below. Each alternative would require a rulemaking followed by changes to systems by the fund administrator and changes to carrier billing systems. In a COVID-19 world, it is inconceivable the required work for new solutions can be completed and implemented and funds collected in time to avoid insolvency of the fund at the end of this year as staff projects.

While AMA believes modifying the TUSF assessment rate is the only viable option at this time, the Commission must address the policy issues related

(3) subject a telecommunications provider to unreasonable prejudice or disadvantage." *See also* 16 TAC 26.420(e)(2). "The determined amount shall be approved by the commission."

⁹ 16 TAC 26.401(a). "The purpose of the Texas Universal Service Fund (TUSF) is to implement a *competitively neutral mechanism* that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities." (Emphasis added.)

¹⁰ Memorandum, Questions 2, 3, and 4.

to the funding base, and increasing the assessment rate on a declining revenue base does not resolve those issues and further exacerbates the anticompetitive effect of the current assessment methodology.

2. *Should the Commission expand the current TUSF revenue-based assessment to include Voice Over Internet Protocol (VoIP) service? Please explain the basis for your response.*

No. VoIP-based service should be assessed because it provides PSTN connectivity, not because it is VoIP-based. “VoIP service” does not exist; there is voice service provided using VoIP technology. There is no need for an explicit discussion of assessing TUSF on voice service provided using VoIP technology. Such an approach fails to address the underlying issues--that network technology and carriers’ identification and reporting of revenues subject to the TUSF assessment have changed. In most regards, the Commission has worked diligently to maintain a level playing field for competitors by making rules as technology neutral as practical. The Commission has not yet done this for the TUSF assessment.¹¹

Certain communications providers have an inappropriate competitive advantage in the market based solely on an irrelevant network difference. VoIP networks and VoIP traffic are not generally distinguished from other network technologies to connect customer traffic to the PSTN. For example, carriers do not report VoIP traffic differently for intercarrier compensation and customers served on VoIP networks are not exempt from 911 charges.¹² Solutions the Commission implements should be neutrally applicable to emerging technologies, otherwise as new technologies arise under different names, perhaps VoLTE or Vo5G, the Commission will need to repeatedly revisit this issue.

¹¹ *PUC Rulemaking Proceeding Related to Voice Over Internet Protocol (VOIP) Services and Texas Universal Service Fund (TUSF)*, Docket No. 39717.

¹² Funding of 9-1-1 service in Texas is authorized by Health and Safety Code (H&SC) Chapters 771 and 772 and City/County Ordinances. 12 TAC 255.4(a) (Commission on State Emergency Communications) “The terms ‘local exchange access line’ or ‘equivalent local exchange access line’ mean the physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, owned, controlled, or relied upon by a service provider, between an end user customer’s premises and a service provider’s network that, when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network.”

The Commission must implement a long-term assessment methodology that is technology neutral. It will be administratively inefficient if the application of the TUSF assessments requires the Commission to review new technologies regularly. It is competitively unfair, and contrary to the intent of the statute to address only the question of assessing service provided using VoIP technology. The assessment methodology should require contributions from all carriers with access to the PSTN.

3. *Should the Commission change the TUSF assessment from a revenue-based assessment to a connections-based assessment? Please explain the basis for your response.*

Yes. AMA believes moving from a revenue-based assessment to a connections-based assessment is the better long-term solution to funding the TUSF and best complies with the legislature's statutory directives. "The universal service fund is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base."¹³ While an increase to the current revenue-based assessment rate is needed to address the immediate funding issue by December 2020, this increase is an imperfect solution that is anticompetitive and technology biased; it should only be tolerated to address the immediate funding crisis until the Commission can implement a technology-neutral, long-term solution.

A connections-based solution would bring all providers back into the contribution base, resulting in a relatively low assessment. AMA believes the \$0.80 per-connection assessment referred to by the Chairman's Memorandum is likely a high estimate and is not materially more than the assessment customers currently pay. If local service is \$24.00 per month and the assessment rate is 3.3%, then the customer is assessed \$0.79. The same customer will be assessed \$1.54 if the assessment rate is increased to 6.4%. A per-connection fee of \$0.80 does not represent an increase to contributing carriers or their customers, but it would uniformly charge all carriers that provide access to the customer base. A connections-based assessment applied to every service that provides

¹³ PURA 56.022(a).

connectivity to the PSTN would be competitively- and technologically-neutral and provide a solid financial foundation for the fund.

4. *If the Commission were to adopt a connections-based assessment, should VoIP service be included? Please explain the basis for your response.*

Yes. All carriers that provide an intrastate connection, or a connection terminating to the Public Switched Telephone Network for local or intrastate connectivity, should be assessed TUSF. A connection to the PSTN should not be excluded from the assessment simply because of otherwise irrelevant network design decisions made by a carrier. To do so is contrary to the Commission's long-standing efforts to maintain fair competition and technical neutrality.¹⁴ Carriers assess intercarrier compensation, and 911 charges on VoIP traffic. In addition, the Comptroller's rules include voice service using VoIP technology as a telecommunications service.¹⁵ If a connection exists in Texas and provides access to the PSTN in Texas, it should be assessed TUSF regardless of the underlying technology.

5. *Should the Commission adopt a rule that defines "rural area" to exclude counties in Metropolitan Statistical Areas as defined by the United States Office of Management and Budget and that limits the support from the Small and Rural ILEC Universal Service Plan (SRILECUSP) received by telecommunications providers in those counties?*

No. AMA does not participate in the SRILEC program, but as a matter of policy AMA opposes such a broad and unsupported definition of "rural area." AMA believes the Commission could define "rural area" using a sound approach that recognizes the changes in the marketplace.

MSA boundaries were created as a tool for statistical analysis of economic activity, not to distinguish between areas either inside or outside an MSA. OMB

¹⁴ 16 TAC 26.401(a). "The purpose of the Texas Universal Service Fund (TUSF) is to implement a *competitively neutral mechanism* that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities." (Emphasis added.)

¹⁵ 34 TAC 3.344(a)(13) "Telecommunications services--The electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, Voice over Internet Protocol (VoIP), or any other method now in existence or that may be devised, including but not limited to long-distance telephone service."

delineates metropolitan and micropolitan statistical areas for statistical purposes only.¹⁶

On review of several rural carriers' high cost study areas, AMA finds there are numerous examples where the majority-or in some instances all-of the study area falls within a designated MSA. Moreover, by ordering increased support to many SRILEC eligible carriers under PURA 56.032 Adjustments: Small and Rural Incumbent Local Exchange Company Universal Service Plan within the past year, the Commission has convincingly demonstrated MSA boundaries are a poor basis for determining the need for high cost support. That the Commission approved additional support for these carriers-even though they serve many locations within MSAs-is clear and compelling evidence that serving locations within an MSA is by itself not a predictor of the need for high cost support.

6. *Should the Commission adopt a rule that defines "rural area" to exclude counties in Metropolitan Statistical Areas as defined by the United States Office of Management and Budget and that limits the support from the Texas High Cost Universal Service Plan (THCUSP) received by telecommunications providers in those counties?*

No. Serving locations within an MSA is by itself not a predictor of the need for high cost support. AMA understands and supports the goal of providing THCUSP support only to rural areas, but as described in response to Question 5, the Commission has never found MSAs are a basis to determine the need for high cost support.

Within each MSA, there is at least one community any reasonable person would identify as being urban. Similarly, within each MSA there are many areas reasonable people would agree are rural. Using the El Paso MSA as an example, the city of El Paso is certainly urban. The towns of Dell City, TX (population 350) 90 miles from El Paso and Allamore, TX (population 25) 75 miles from El Paso are certainly rural, but would incorrectly be considered urban and not eligible for high-cost support because they are within the El Paso MSA. This simple layman's approach to reviewing the proposed definition supports the Commission finding there is no correlation between a market being high cost and it being inside or outside an MSA. With no correlation between exchanges being within MSAs and exchanges needing high-cost support, there is no basis for or benefit to categorizing exchanges based on MSA boundaries.

¹⁶ "About." United States Census Bureau, last revised Ap. 1, 2020.

While AMA believes MSA's are inappropriate for purposes of defining an area as rural, it recognizes the Chairman's observation seems rooted in the growth that has occurred in specific markets. It is worth exploring a definition that incorporates population density and population growth rates to define an area as "rural." AMA would be supportive of opening a rulemaking to refine the definition of rural for purposes of determining the need for high cost support under the THCUSP and SRILECUSP and in that context Commission staff and industry could consider any number of alternatives to ensure high cost support is only being provided where appropriate.

- 7. Given the Commission's obligation under PURA § 56.021(1) to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas under the THCUSP and the SRILEC universal service fund programs, what options are available to the Commission to adjust the basic service rates of rate-regulated eligible telecommunications providers participating in these programs to offset possible reductions in TUSF support amounts contemplated in questions 5 and 6 above?***

In past Projects the Commission reduced high-cost support to the extent carriers were permitted to increase rates to a Commission-ordered reasonable retail rate.¹⁷ The Commission has already worked with carriers to establish reasonable rates and reduce high-cost support by the amount of the increases to achieve those rates. Further increasing customer rates in rural markets beyond what the Commission found to be reasonable likely would not yield a significant reduction in support provided by the THCUSP or SRILECUSP and likely will be contrary to the Commission's universal service objectives.

¹⁷ *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA Section 56.031 and Subst. R. §26.403*, Project No. 34723 (Ap. 25, 2008) and *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. SUBST .R. 26.403*, Project No. 40521 (Sept. 28, 2012). See also *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to PUC Subst. R. §26.404*; Project No. 41097 (Aug. 30, 2013); *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. Subst. R. 26.604 for CenturyTel of San Marcos, Inc. d/b/a CenturyLink, CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink, and CenturyTel of Port Aransas, Inc. d/b/a CenturyLink (severed from Docket No. 41097)*, Project No. 41682 (Aug. 8, 2014).

8. *What other options are available to the Commission to address the projected shortfall in TUSF revenues?*

The Chairman's list of possible solutions is thorough and AMA does not suggest additional options. AMA appreciates the Commission's consideration of the important and time-sensitive issues of the decline in revenues and solvency of the fund.

Regrettably, the only option the Commission can implement in time, i.e. without a rulemaking and with time to implement changes to the TUSF administrator's and carriers' billing systems and start collecting increased contributions before the forecast fund insolvency in December 2020, is an increase in the assessment rate.

The Commission should proceed with an increase in the TUSF rate to avoid insolvency of the fund. However, this is merely a short-term solution to the issue. AMA also urges the Commission to open a rulemaking to move to a competitively-neutral, technology-neutral, connections-based assessment to ensure all carriers and consumers are treated fairly and as required by statute.

Conclusion

AMA believes increasing the TUSF assessment rate is the only viable option to ensure solvency of the fund at this time. To meet the TUSF's obligations, the Commission must increase the assessment rate to maintain the financial stability of the fund. After the Commission resolves the urgent and important issue of TUSF solvency, the Commission should implement a connections-based assessment applied to every service that provides connectivity to the PSTN. This approach would be competitively- and technologically-neutral and is a better long-term solution to funding the TUSF, complies with the legislature's statutory directives, and would bring all providers into the contribution base.

AMA also agrees with and supports the concept that high-cost support should be directed to high-cost rural areas. AMA will work with staff and industry to develop an appropriate definition of "rural" for this purpose, but unequivocally opposes a definition that includes the boundaries of Metropolitan Statistical Areas as defined by the United States Office of Management and Budget as it clearly casts too broad a net.

AMA will continue to participate in this project as it has the Commission's other TUSF projects. AMA appreciates the Commission's and the Staff's consideration of its positions. Should the Commission request more comments in this project, open a rulemaking to consider implementing any of the concepts discussed, or review the appropriateness of disbursements, AMA will actively participate and provide more thorough comments. As in previous proceedings, AMA urges the Commission to carefully consider the impact of this rulemaking on customers served by competitive carriers in small, remote and rural markets.

Respectfully submitted,

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A handwritten signature in black ink, reading "Bradford W. Bayliff", is written over a horizontal line.

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