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Public Utility Commission of Texas

Commissioner Memorandum

2020 MAY 13 AM 9:21

TO: Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker *DTW*

DATE: May 13, 2020

RE: May 14, 2020 Open Meeting – Item No. 9
Project No. 50796 – *Review of TUSF Rate*

I have been working on issues related to the Texas Universal Service Fund (TUSF) for many months. As I have learned more about the purpose of the TUSF as well as the manner in which the current funds are allocated, I believe that there are some fundamental policy issues that must be addressed related to the fund. Many of these issues will need to be addressed by the Legislature due to the underlying policies and the manner in which the State wants to move forward. However, there are some issues that the Commission could address if it decides to do so. In order to make the most informed decision, I believe that the Commission should seek additional information from interested persons.

The enabling legislation for the TUSF states the following: “The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to: (1) assist telecommunications providers in providing basic local telecommunications service at reasonable rates *in high cost rural areas* under two plans: (A) the Texas High Cost Universal Service Plan (16 T.A.C. Section 26.403); and (B) the Small and Rural Incumbent Local Exchange Company Universal Service Plan (16 T.A.C. Section 26.404)” (emphasis added).¹ Through my research with Commission Staff, I have determined that areas in the state such as Sugar Land, Katy, Amarillo, and Denton continue to receive TUSF dollars; in my opinion, these areas do not meet the intent of the enabling statute as rural.

As you know, the TUSF is currently funded by a statewide uniform assessment that is payable by each telecommunications provider based on a percentage of the company’s intrastate telecommunications service receipts. On March 1, 2015, the Commission lowered the TUSF assessment rate from 3.7% to 3.3%. At that time, the TUSF balance was \$190 million. In the 2nd quarter of 2020, the ending balance for the fund was \$96 million. Of that \$94 million reduction in the fund balance, \$75 million, or 80%, occurred in the past year. This change occurred because the taxable receipts related to the provision of telecommunication services by the companies was reduced by \$1 billion dollars from 2018 to 2019. The reduction occurred due to a declining number of access lines and because the telecommunication companies modified the calculation of the assessment to remove costs related to data, which comprise a larger portion of wireless bills than the provision of telecommunication services.

¹ Public Utility Regulatory Act, Tex. Util. Code § 56.021(1)(A) and (B).

Based on current projections, the TUSF administrator forecasts that potentially in December 2020 there will be insufficient revenue to fund all existing programs funded by the TUSF. On April 29, 2020, Commission Staff opened Project No. 50796, *Review of TUSF Rate*, to seek input on possible solutions to address this issue.² Current revenue and expenditure projections indicate that the current assessment rate will need to be increased from 3.3% to 6.4%³ in June 2020 to keep the TUSF solvent through August 2021.⁴ Commission Staff has researched and discussed other policy options to address this impending shortfall, such as changing the current revenue-based assessment to a connection-based assessment and expanding the assessment to include Voice Over Internet Protocol service. Both options would require an assessment rate of up to \$0.80 and necessitate changes to existing rules; those rulemaking proceedings would need to begin in June 2020. Additionally, Commission Staff has discussed longer-term policy options such as redefining “rural area” for the purposes of TUSF support and conducting rate proceedings to adjust basic service rates.

I propose that the Commission seek comments on the following questions in this project. The responsive comments should include input on all relevant legal and policy implications and the specific Commission rules that would need to be amended to implement the proposal.

1. Should the Commission raise the current TUSF assessment? If so, by what amount are you assuming the TUSF assessment should be raised?
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.
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.
4. If the Commission were to adopt a connections-based assessment, should VOIP service be included? Please explain the basis for your response.
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 (SRILEC USP) received by telecommunications providers in those counties?

² I recognize that the Texas Telephone Association (TTA) filed a *Petition of Texas Telephone Association for Rulemaking to Amend 16 TAC § 26.420 for Assessments for the Texas Universal Service Fund* on May 6, 2020, which was assigned Project No. 50818. However, it is my intention to address these issues as originally planned in this project. The Commission can address the petition for rulemaking by TTA in that project when it is necessary.

³ In the recent past, I was informed that the rate would need to increase to as high as 6.9%.

⁴ I have been informed that the increase to 6.4% (or potentially 6.9%) would likely have to be increased again in 2021.

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

I look forward to discussing this important topic with you at the open meeting.