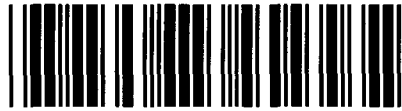


Control Number: 50796



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PROJECT NO. 50796



REVIEW OF TEXAS	§	BEFORE THE
	§	
UNIVERSAL SERVICE FUND	§	PUBLIC UTILITY COMMISSION
	§	
RATE	§	OF TEXAS

**WINDSTREAM'S COMMENTS IN RESPONSE TO THE
COMMISSION'S REQUEST FOR COMMENTS**

Valor Telecommunications of Texas, LLC (d/b/a Windstream Communications Southwest); Windstream Communications Kerrville, LLC, and Texas Windstream, LLC (d/b/a Windstream Communications); and Windstream Sugar Land, Inc. (all entities collectively referred to hereinafter as "Windstream") respectfully submit these comments in response to the request of the Public Utility Commission of Texas ("Commission" or "PUCT") at its May 14, 2020, open meeting for responses to the questions related to the funding of the Texas High Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (together, the "TUSF"). These comments are timely filed.

I. INTRODUCTION

Windstream appreciates the opportunity to provide comments on the questions raised by the Commission regarding the administration of the TUSF and the importance of ongoing universal service funding in Texas under Subchapter B of Chapter 56 of the Public Utility Regulatory Act ("PURA").¹

Windstream currently serves 216 high cost exchanges in Texas that are supported by the TUSF. A map of the Windstream exchanges which are currently supported by the TUSF is attached as Attachment 1. It is evident from Attachment 1 that the vast majority of the exchanges

¹ Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & 2016 & Supp. 2019).

for which Windstream receives TUSF support are located in non-urban geographic areas. Because of the low access line density per square mile found in almost all of these exchanges and the lack of available alternative wireline voice competitors within these exchanges, the ongoing solvency of the TUSF is critical to Windstream's ability to provide reliable, basic local telephone service to residences and businesses in those exchanges at a reasonable rate.

Windstream supports the comments filed in this project by the Texas Telephone Association ("TTA"), of which Windstream is a member. Windstream supports an increase in the current TUSF assessment rate to at least 6.4%, and encourages the Commission's consideration of changes to a per-connection assessment approach and expanding the assessment to all voice services without regard to technology.

Through this submission, Windstream is also providing additional specific comments in response to questions 5 and 6 set out by the Commission. As discussed in detail below, Windstream does not support adoption of a rule amendment that would define "rural area" to exclude TUSF support for exchanges located in counties in Metropolitan Statistical Areas ("MSAs"). Such an approach would have unintended consequences and inappropriately eliminate TUSF support in low density, high-cost exchanges that are clearly "rural" in every common understanding of the word.

II. BACKGROUND

During its 2013 regular session, the Texas Legislature enacted significant changes to Subchapter B of PURA that provided for a gradual reduction in TUSF support for eligible entities, except to the extent that those entities filed a petition with the Commission to demonstrate that it has a financial need for continued TUSF support.² Throughout 2014, Windstream worked with

² PURA § 56.023.

the Commission Staff, other carriers, and other interested stakeholders to develop detailed rules for the financial “needs test.” Under the needs test rules adopted by the Commission, an eligible provider has a financial need for continued TUSF support if the exchange does not contain an unsubsidized wireline voice provider competitor.³ That determination is based on a very granular analysis (by census block) within an exchange to determine whether an unsubsidized wireline voice provider competitor exists.

Pursuant to the rules established by the Commission, Windstream Communications Southwest filed a petition in late 2015 to demonstrate its financial need for ongoing TUSF support.⁴ In late 2016, the two Windstream Communications entities also filed petitions demonstrate their financial need for ongoing TUSF support.⁵ The Commission found through the three petitions, based on the absence of an unsubsidized wireline voice provider competitor, that Windstream has a financial need for continued TUSF support in 207 of the exchanges that it served.⁶ No material facts have changed since 2017 regarding the lack of an unsubsidized wireline voice provider competitor in these supported exchanges. Ongoing TUSF support is critical to Windstream’s ability to serve each and every customer within the supported exchanges at a reasonable basic rate.

III. WINDSTREAM’S RESPONSE TO QUESTIONS 5 AND 6

5. Should the Commission adopt a rule that defines “rural area” to exclude counties in Metropolitan Statistical Areas (MSAs) as defined by the United States

³ 16 Tex. Admin. Code § 26.405(d)(1) (“TAC”).

⁴ *Application of Valor Telecommunications of Texas, LLC dba Windstream Communications Southwest Pursuant to Section 56.023 of the Public Utility Regulatory Act*, Docket No. 45472 (May 6, 2016).

⁵ *Application of Texas Windstream, LLC dba Windstream Communications Pursuant to Section 56.023 of the Public Utility Regulatory Act*, Docket No. 46697 (June 7, 2017); *Application of Windstream Communications Kerrville, LLC dba Windstream Communications Pursuant to Section 56.023 of the Public Utility Regulatory Act*, Docket No. 46698 (June 7, 2017).

⁶ Docket No. 45472, Order (May 6, 2016); Docket No. 46697, Order (June 7, 2017); Docket No. 46698, Order (June 7, 2017). Windstream Sugar Land Inc., which serves 9 exchanges in Southeast Texas, did not file a petition but allowed its TUSF support to phase down to 25 percent of the level of support it was entitled to receive prior to the start of the phase down.

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?

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, the Commission should not adopt a rule that defines "rural area" to exclude counties in MSAs as defined by the U.S. Office of Management and Budget that limits support available from either the SRILEC USP or the THCUSP in those counties. Doing so would exclude many obviously and indisputably rural and high-cost areas from necessary TUSF support.

Classifying exchanges as "rural" simply because there are areas within the exchange that are located in counties in an MSA will lead to inaccurate, inconsistent, and unreasonable results. Many MSAs consist of multiple counties, some of which are urban in nature and others which are undeniably rural. Many of Windstream's exchanges cover hundreds of square miles and cross multiple county boundaries. Simply because a Windstream supported exchange falls partially within a county that is included within an MSA does not mean it is a non-rural area.

A map showing the Windstream exchanges whose TUSF support would be eliminated under the standard expressed in Questions 5 and 6 is attached as Attachment 2. Even a cursory review of the map demonstrates that imposition of the suggested standard would result in the improper elimination of TUSF support for Windstream in many clearly high-cost, rural areas.

For example, Windstream currently receives TUSF support within the Van Horn exchange. The Van Horn exchange is extremely large, encompassing 904.1 square miles. The access line density of the exchange is an extremely low 0.6 access lines per square mile. However, as shown in Attachment 3, because the Van Horn exchange crosses into Hudspeth County, which is within

the boundaries of the El Paso MSA, even though Van Horn is over 100 miles away from El Paso and none of the 549 access lines currently served by Windstream are located in Hudspeth County. Windstream would lose its TUSF support for the Van Horn exchange. Anyone who has ever driven Interstate Highway 10 to El Paso would acknowledge that Van Horn is “rural” in every sense of the word. Similarly, the Adrian exchange, which has an access line density of 0.3 access lines per square mile, would lose its TUSF support under this proposal. Windstream serves 74 access lines in the Adrian exchange. As shown in Attachment 4, even though Adrian is located 50 miles from Amarillo, because it is located partially in Oldham County, and Oldham County is included within the Amarillo MSA, Windstream would wrongly lose TUSF support for the Adrian exchange. No one could reasonably argue that Adrian should be classified as urban or non-rural.

A final example is the Walnut Springs exchange. Windstream serves 245 access lines in the Walnut Springs exchange, which has a density of 1.7 access lines per square mile. A mere 1% of the access lines served by Windstream are located in the Dallas-Fort Worth MSA. As shown on Attachment 5, even though Walnut Springs is 50 miles from Fort Worth, because a tiny part of the exchange falls within Somervell County (which is included within the Dallas-Fort Worth MSA), Windstream would lose its TUSF support in the Walnut Springs exchange.

There are other similar examples too numerous to mention, as one can easily discern from the depiction of the *81 Windstream currently TUSF-supported exchanges that would be in jeopardy under the proposal*, as shown in Attachment 2. The proposal would improperly eliminate essential TUSF support in sparsely populated, high-cost service areas.

Imposition of the standard proposed in Questions 5 and 6 also ignores the “donut” and the “hole” issue inherent in many of the Windstream TUSF-supported exchanges. Many of the exchanges served by Windstream may have a small-town area (the “hole”) served by an alternative

provider, but Windstream has a duty to serve every customer throughout the rest of the exchange (the “donut”). The financial needs test found in PUC Substantive Rule 26.405(d) appropriately accounts for that possibility; the standard in Questions 5 and 6 wholly ignores that reality and dictates an inaccurate result that flies in the face of the policy inherent in Subchapter B of PURA, which establishes the TUSF “to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas.”⁷

The term “rural” is given to numerous different, and often conflicting, definitions depending on the context, as noted in the TTA’s comments. The Commission should work with the interested parties to analyze and understand the impact of implementation of any specific “rural” definition before amending the result dictated by the existing Commission rules. The standard proposed in Question 5 and 6 is not the correct answer. However, Windstream stands ready to work with the Commission Staff, carriers and other interested parties to develop a standard that appropriately preserves critical TUSF support in high-cost, rural areas.

IV. CONCLUSION

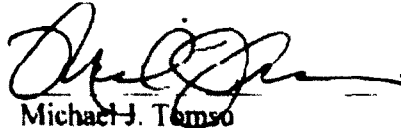
Windstream respectfully urges the Commission to increase the TUSF assessment to at least 6.4%; to reject a rule which defines “rural area” to exclude counties in Metropolitan Statistical Areas as defined by the United States Office of Management and Budget and which limits the support from the TUSF received by telecommunications providers in those counties; and to take other actions consistent with these comments and those submitted by the TTA to strengthen the TUSF and ensure that rural telecommunications services continue to receive necessary support.

⁷ PURA § 56.021.

Dated: May 29, 2020

Respectfully submitted,

VINSON & ELKINS L.L.P.

A handwritten signature in black ink, appearing to read "Michael J. Tomso", written over a horizontal line.

Michael J. Tomso

State Bar No. 20125875

2801 Via Fortuna, Suite 100

Austin, Texas 78746

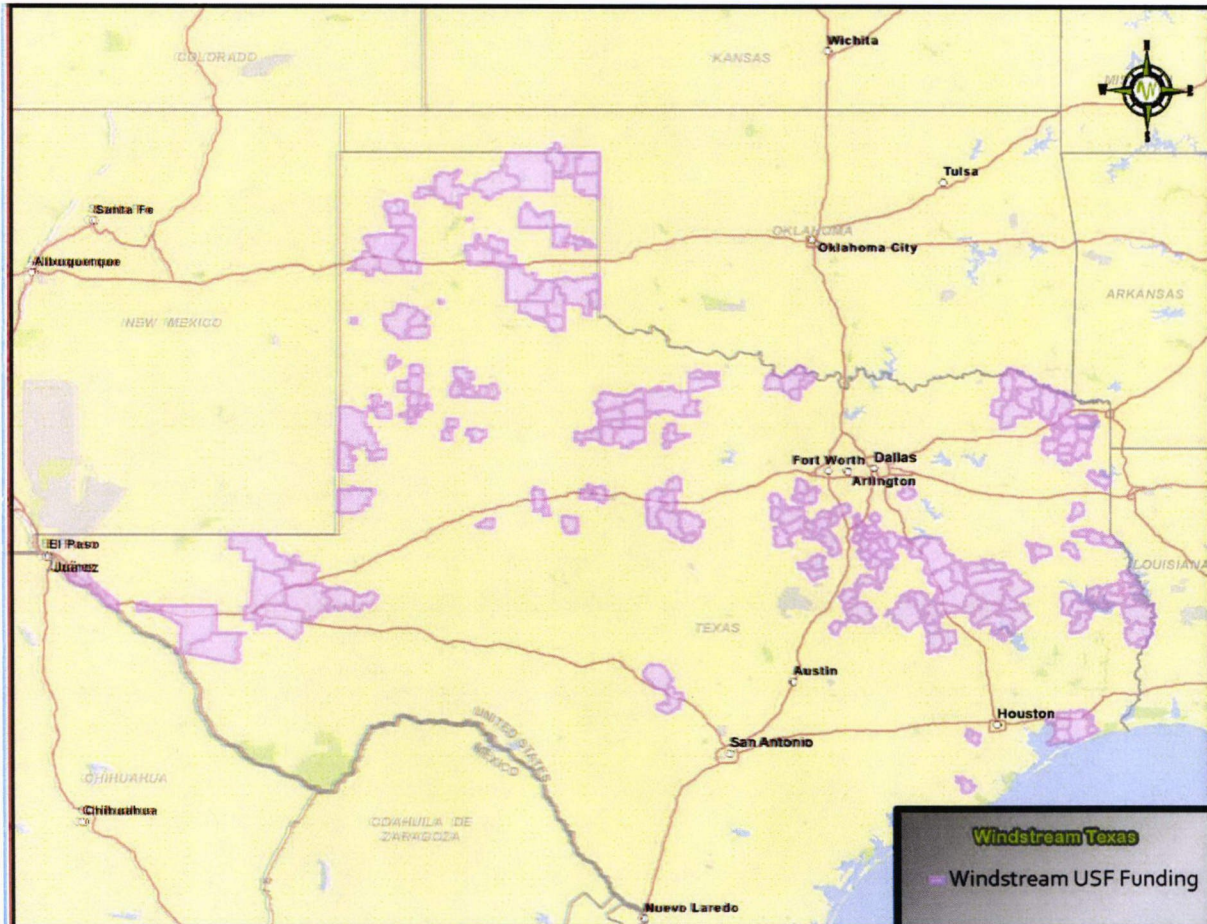
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ATTORNEYS FOR WINDSTREAM

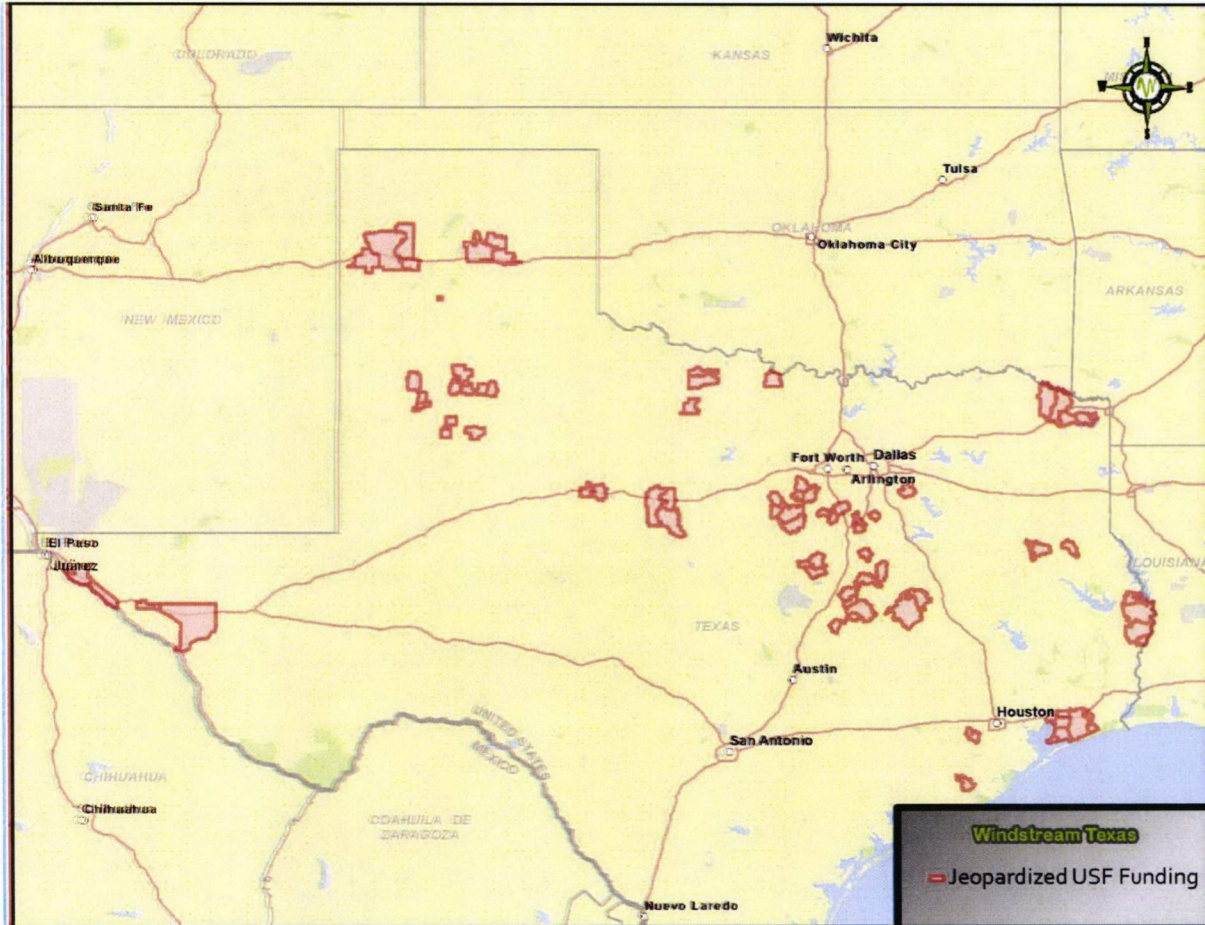
ATTACHMENT 1

Map of Windstream Exchanges Currently Supported by TUSF



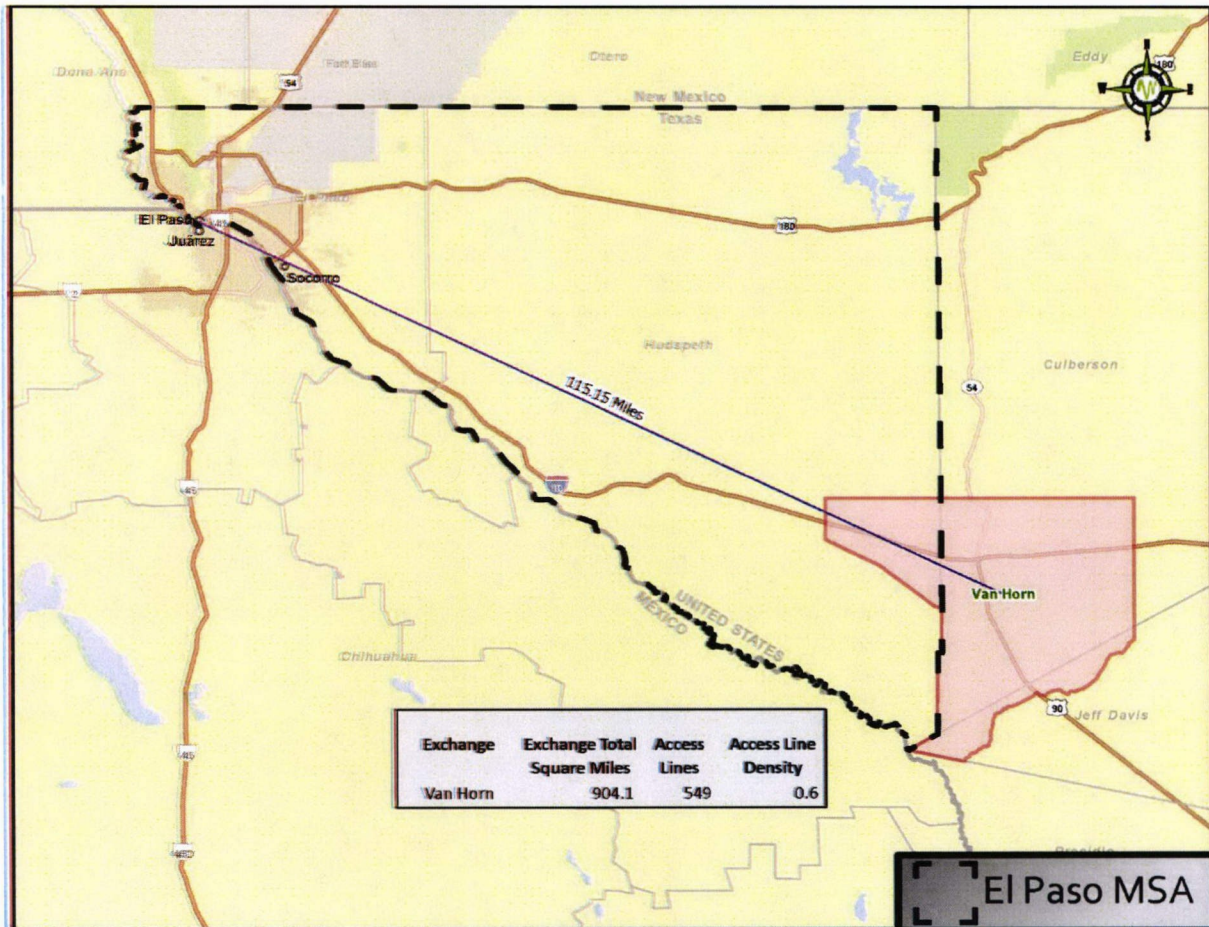
ATTACHMENT 2

**Map Showing Windstream Exchanges Whose TUSF Support
Would Be Eliminated under the Standard Set Forth in Questions 5 and 6**



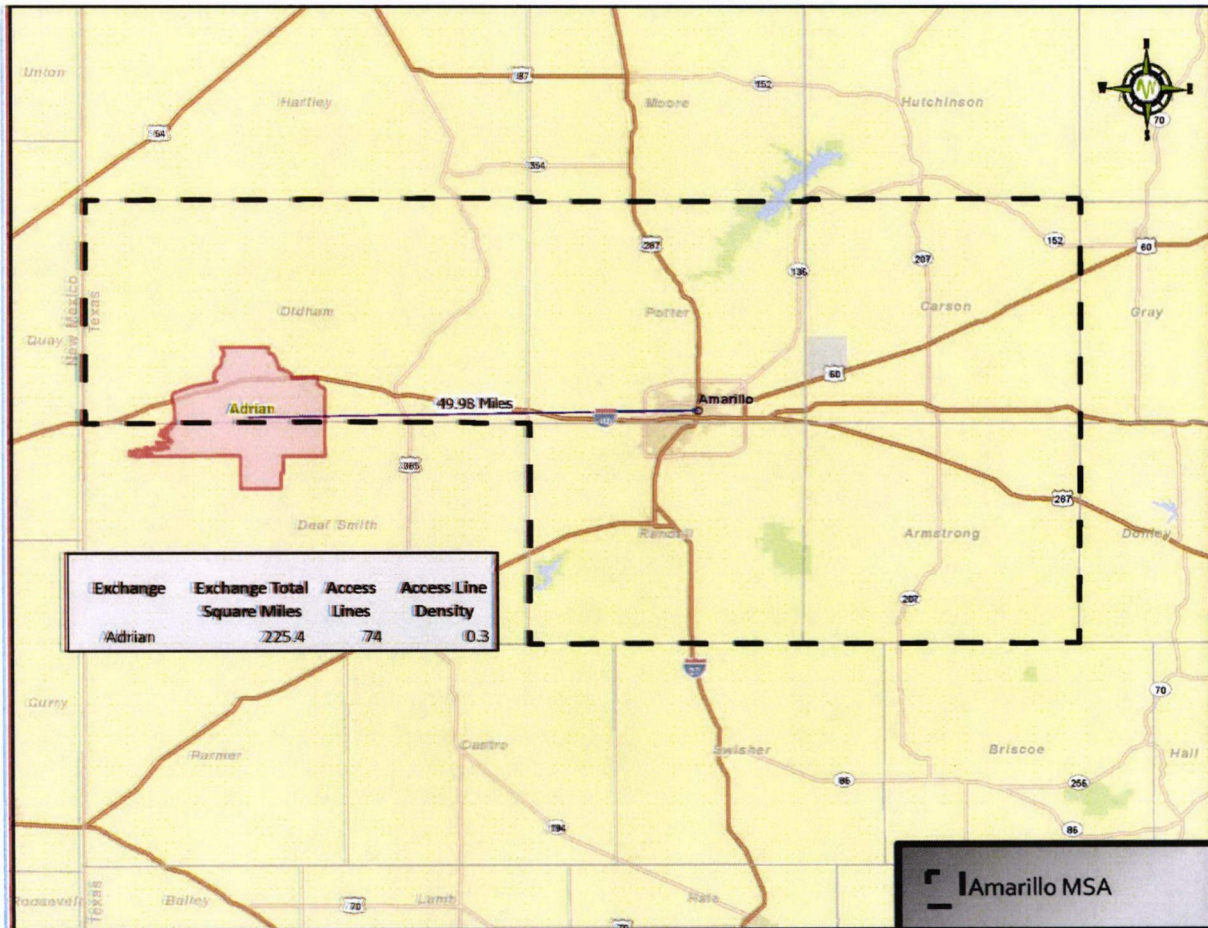
ATTACHMENT 3

Map Showing the Van Horn Exchange in the El Paso MSA



ATTACHMENT 4

Map Showing the Adrian Exchange in the Amarillo MSA



ATTACHMENT 5

Map Showing the Walnut Springs Exchange in the Dallas-Fort Worth MSA

