



Control Number: 50451



Item Number: 1

Addendum StartPage: 0

2026 JAN 14 AM 10:45
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

COMES NOW Brazos Telephone Cooperative, Inc. (“Brazos”), pursuant to 16 Texas Administrative Code § 26.407 (“TAC”), and submits this application to adjust the high cost support it receives from the Texas Universal Service Fund (“TUSF”) Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates. As a Category 1 small incumbent local exchange carrier (“ILEC”) with a 2017 intrastate rate of return of 1.68%, Brazos is eligible to submit an application to request an adjustment to its TUSF high cost support. Brazos’ residential rate for service is higher than the Federal Communications Commission’s (“FCC’s”) most recent floor of \$18.00 (including certain fees).

Brazos is an incumbent local exchange carrier (“ILEC”) that holds Certificate of Convenience and Necessity (“CCN”) No. 40007 to provide local exchange services to customers within the Wichita Falls Local Access and Transport Area (“LATA”). Brazos was originally established in 1952 to provide telecommunications services to the rural communities and ranchland in north central Texas. Today, Brazos has approximately 1,508 square-mile service area and it serves customers in five (5) counties. With an average customer density of approximately two households per square mile, Brazos’s service territory is particularly high cost due to its rural nature with farm and ranch land. The distances between its various service points require multiple central offices and additional personnel as well as increased plant investments. For the applicable reporting period, Brazos operated over 1,625 miles of aerial and buried copper and fiber cable to serve approximately 3,368 access lines in its ten (10) exchanges.

On December 14, 2018, in Docket No 48997, Brazos opted into 16 TAC § 26.407 that allows the Commission to determine the amount of TUSF high cost support Brazos receives.

Brazos then filed its 2017 annual report under 16 TAC § 26.407(e) in the same docket on February 14, 2019.

After review and evaluation, on June 28, 2019, Commission staff filed its amended final recommendation in Docket No.48997 recommending that Brazos be placed into Category 1.¹

Category 1 providers are authorized by PURA § 56.032(h) and 16 TAC § 26.407(g)(1) to file an application for an adjustment to have their annual TUSF high cost support increased to a level that would allow them to earn an amount that would be considered a reasonable rate of return,² so long as that increase does not exceed 140% of the annualized TUSF high cost support received during the prior 12 months under 16 TAC § 26.407(j)(1). 16 TAC § 26.407(d)-(i) sets forth the criteria for the Commission to review and potentially adjust an eligible small ILEC's TUSF high cost support. Specifically, the contents of a TUSF high cost support adjustment filing package are set forth in 16 TAC § 26.407(h)(1). Support adjustment proceedings are eligible for informal disposition and shall be decided in 120 days, absent an extension upon a showing of good cause.³

II. APPLICATION FOR AN INCREASE IN TUSF HIGH COST SUPPORT

A. Support Adjustment Request

The adjustment to its TUSF high cost support that Brazos is requesting is an increase of \$592,128. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months ending January 1, 2020, as required by 16 TAC § 26.407(g)(1).

¹ 16 Texas Admin. Code) § 26.407(g)(1) (TAC) defines Category 1 as “[A] small ILEC that has a reported or commission-staff adjusted rate of return in Category 1 may file an application for an adjustment to have its annual Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates increased to a level that would allow the small ILEC to earn an amount that would be considered a reasonable rate of return, except that the adjustment may not set a small ILEC’s support level at more than 140 percent of the annualized support the provider received in the 12-month period before the date of the adjustment. Any rate adjustments may not adversely affect universal service.

² 16 TAC § 26.407(c)(2), (c)(3) defines the minimum reasonable rate of return currently as 6.75%.

³ 16 TAC § 26.407(h)(5).

While the requested adjustment moves Brazos closer to the minimum reasonable rate of return, this increase still leaves Brazos with an unreasonably low intrastate rate-of- return.

Brazos seeks an adjustment to increase its TUSF high cost support without an accompanying local service rate increase because its rates are already well above the most recent FCC floor of \$18, and raising its rates further would adversely affect universal service in contravention of PURA § 56.032(h)-(i)⁴ and 16 TAC § 26.407(j)(1)(A).⁵ While the statute does not specifically define what would “adversely affect” universal service, by its plain language “adversely affect[ing]” universal service necessarily means any measure that conflicts with the state’s explicit policy goal of providing universal service to all Texans. The Commission’s universal service goal is to “enabl[e] every person in the state to access high-quality telecommunications services at reasonable rates, regardless of geographic location.”⁶ Similar to PURA § 56.032(h) and (i), PURA § 56.025(f) states that certain small providers could offset federal losses with either TUSF or through “an increase in rates, if the increase would not adversely affect universal service.” Brazos has been able to identify 35 PURA § 56.025 proceedings to date. In 31 of those § 56.025 proceedings, when rates met or exceeded the FCC floor, the Commission has not ordered or imputed additional local service rate increases. Because unreasonably high local service rates would adversely affect universal service, Brazos request for an increase to its TUSF high-cost support should be only as an increase to its current TUSF support amount and not an increase to its local service rates. This would conform to the Commission precedent addressing similar situations where statute prohibits local service rate changes “adversely affect[ing] universal service”. As a result the ILEC’s local service rate at or above the FCC’s floor was not raised by the Commission.⁷

⁴ PURA § 56.032(h), (i) says a “rate adjustment under this subsection may not adversely affect universal service.”

⁵ 16 TAC § 26.407(j)(1)(A) states “... nor may the rate adjustment adversely affect universal service”.

⁶ *Report to the 80th Texas Legislature, Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA § 56.029* at 3 (Jan. 2007).

⁷ See Docket Nos. 40755, 41079, 41191, 41332, 41423, 41487, 41526, 41529, 41550, 41617, 41654, 41846, 41925, 42143, 42254, 42276, 44901, 45016, 45944, 45971, 46082, 46714, 47026, 47387, 47525, 47573, 47677, 47683, 48904, 48906 and 48907. In the four PURA § 56.025 proceedings where the applicants’ rates were below FCC floors, the Commission imputed rates at the FCC floor before calculating the TUSF support increase offset to FUSF

B. Applicant's Supporting Documentation

To support its application to adjust TUSF high cost support, Brazos submits as required by 16 TAC § 26.407(h)(1) the following information or documents:

- Attachment A - 2017 Annual Report and Associated Confidential Attachments (filed February 14, 2019).
- Attachment B - Additional Documents Submitted by Brazos in Docket No. 48997:
 - Request to Update Service List (filed March 13, 2019)
- Attachment C - Staff's Amended Final Recommendation filed June 28, 2019.
- Attachment D – Proposed Protective Order.
- Attachment E – Proposed Form of Notice.
- Attachment F – Testimony of:
 - Lonnie Rue, who provides an overview of the application and summary of the request, addresses the need for increased support rather than increased rates, and explains the need for increased support; and
- Attachment G – Testimony of:
 - Chad Duval, who addresses the accuracy of books and records, calculation of returns, and calculation of the necessary support increase.

III. AUTHORIZED REPRESENTATIVES

The following are the authorized representatives of Brazos in this proceeding:

D. Daniel Gibson
 Richard, Elder & Gibson, PLLC
 12223 Quaker Avenue (79424)
 P.O. Box 64657
 Lubbock, Texas 79464
 Email: dgibson@regllp.com
 Phone: (806) 798-8868
 Fax: (806) 798-8878

support losses. Note the Commission imputed rates *at—not above—the* FCC floor in each of these proceedings. *See* Docket Nos. 41598, 41797, 45182, and 47678.

In other words, under a similar statutory provision where rate increases might be indicated unless they would adversely affect universal service, in 35 proceedings over more than seven years the Commission has approved rates at or above the FCC floors, and has never imputed rates above the FCC floors before calculating support increases. Although the most recent FCC floor was \$18, the FCC eliminated floors altogether in earlier in 2019, noting the federal floor “needlessly increase[d] telephone service rates for many rural Americans above those the market would otherwise produce.” WC Docket 10-90, Draft Report and Order (Mar. 22, 2019).

Mr. Lonnie Rue, CEO/General Manager
Brazos Telephone Cooperative, Inc.
109 North Avenue D
Olney, Texas 76374-1866
Email: lrue@brazostel.com
Phone: (940) 873-4303
Fax: (940) 873-4304

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14555 Dallas Parkway, Suite 300
Dallas, Texas 75254
Email: sharon.minor@mossadams.com
Phone: (214) 242-7446
Fax: (972) 960-2810

Brazos requests that Daniel Gibson be placed on the service list for this proceeding.

IV. MOTION TO ENTER PROTECTIVE ORDER

As set forth in PURA § 56.032(k), portions of the filing package are confidential and not subject to disclosure under the Public Information Act, Texas Government Code Chapter 552. Accordingly, Brazos respectfully requests that the Commission's standard Protective Order—attached hereto as Attachment D—be entered by the Commission as necessary to protect confidential material produced in this proceeding.

V. NOTICE

As required by 16 TAC § 26.407(h)(3), Brazos proposes to provide notice of this application by having the Commission submit the notice provided in Attachment E for publication in the *Texas Register*. Brazos will also provide notice to Office of Public Utility Counsel (OPUC) as required by 16 TAC § 26.407(h)(3) and it will provide notice to its customers directly in its billing regarding this proceeding as required by 16 TAC § 26.407(h)(3) and 16 Proc. R. § 22.55.


VI. CONCLUSION

Because Brazos is a Category 1 small ILEC with a rate of return more than three percentage points below the FCC rate of return; and because its residential rate for service is already higher

than the most recent FCC floor, Brazos hereby requests that its annual high cost support from the Small and Rural ILEC Universal Service Plan be adjusted to \$3,067,078 without effect to its current rates, and requests any further relief to which it may be entitled.

Respectfully submitted,

Richards, Elder and Gibson, PLLC
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P.O. Box 64657
Lubbock, Texas 79464-4657
Telephone: (806) 798-8868
Facsimile: (806) 798-8878
Email: dgibson@regllp.com

By 
D. Daniel Gibson, State Bar No. 24045939

Attorney for Brazos Telephone Cooperative, Inc.

ATTACHMENT A

CONFIDENTIAL – IN PART

**2017 ANNUAL REPORT AND
ASSOCIATED CONFIDENTIAL ATTACHMENTS
(FILED FEBRUARY 14, 2019)**

DOCKET NO. 48997

2019 FEB 14 PM 4:19

NOTICE OF BRAZOS TELEPHONE § PUBLIC UTILITY COMMISSION
COOPERATIVE, INC. FOR TEXAS §
UNIVERSAL SERVICE FUND § OF TEXAS
ELECTION UNDER 16 TAC 26.407(d) §

**2017 ANNUAL REPORT OF
BRAZOS TELEPHONE COOPERATIVE, INC.**

COMES NOW Brazos Telephone Cooperative, Inc. ("Brazos") and provides this annual report for 2017 under 16 Tex. Admin. Code ("TAC") § 26.407(e), the rule that was adopted in accordance with Senate Bill ("SB") 586 from the 2017 legislative session, and respectfully shows the following:

I. BACKGROUND

A. About Brazos

Brazos is an Incumbent Local Exchange Carrier ("ILEC") that holds Certificate of Convenience and Necessity ("CCN") No. 40007 to provide local exchange services to customers within the Wichita Falls Local Access and Transport Area ("LATA"). Brazos was originally established in 1952. Brazos now serves approximately 3,368 access lines in ten exchanges, operating over 1,625 route miles of aerial and buried copper and fiber cable to serve customers in Jack, Archer, Stephens, Throckmorton and Young counties. Brazos's service territory is approximately 1,508 square miles of rural communities and ranch land in North Central Texas, with an average customer density of approximately two households per square mile.

Brazos is not an electing company under PURA, Chapter 58 or 59, and is a Small Provider as set forth in PURA § 56.032(a)(2) and a Small ILEC as defined in 16 TAC § 26.407(b)(1). In this docket, on December 14, 2018, Brazos opted into the Small and Rural Incumbent Local Exchange Carrier Universal Service Plan support mechanism as contemplated by 16 TAC § 26.407(d).

B. About 16 TAC § 26.407

16 TAC § 26.407(f)-(i) sets forth a mechanism for the Commission to review and potentially adjust an eligible small provider's TUSF support based in part upon the rate of return the small provider discloses to the Commission annually in a report filed under 16 TAC § 26.407(e).¹ During the rulemaking process,² Staff worked with the industry to develop a Commission-prescribed form for the new annual report required by 16 TAC § 26.407(e). As anticipated in PURA § 56.032(d), the annual filings created by 16 TAC § 26.407 include the annual earnings reports that would otherwise be due each year under 16 TAC § 26.73.³ Industry participants have also worked with Staff to develop supporting documentation and work papers to accompany and support the Commission's standard report form.

For report year 2017, annual reports are due within two months of the small provider submitting to the Commission a notification under 16 TAC § 26.407(d). Thus, this filing is timely made. For subsequent years, this annual report will be due September 15 for the prior calendar year.

II. ANNUAL REPORT

Brazos's report for 2017 is enclosed, utilizing the standard form approved in Project No. 47669, as well as the supporting materials developed through industry efforts coordinated with Staff. This package consists of:

- Attachment A – Description of Brazos
- Attachment B – Responses to General Questions from SB 586 EMR
- Attachment C – SB 586 EMR and Supporting Schedules, including:
 1. SB 586 EMR (Commission-prescribed forms)

¹ On December 13 and 14, 2018, all eligible small providers opted into this mechanism except Southwest Arkansas Telephone Cooperative, Inc.

² Project No. 47669, *Project to Revise 16 Tex. Admin. Code 26.407 Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Support Adjustments Pursuant to S.B. 586* (Oct. 16, 2018).

³ See Docket No. 48204, *Petition of Texas Statewide Telephone Cooperative, Inc. and Texas Telephone Association for an Exception to a Filing Date Requirement*, Finding of Fact 11 (May 2, 2018); see also Project No. 48159, *Year-End 2017 Telephone Utility Earnings Reports Pursuant to 16 TAC 26.73*, Texas Statewide Telephone Cooperative, Inc. ("TSTCI") and the Texas Telephone Association ("TTA") Letter (Dec. 14, 2018).

2. Cost Allocation Manual (Written CAM and Part 64 Study)
3. Part 36 Materials (Separations Factors, Summary, and Detail)
4. Working Trial Balance
5. Work Papers in Support of Specific Schedules I – X

At the request of Staff, electronic copies of the filing, schedules, and spreadsheets are being provided via USB drive rather than on a CD.

III. AUTHORIZED REPRESENTATIVES

The following are the authorized representatives of Brazos in this proceeding:

D. Daniel Gibson
Richard, Elder & Gibson, PLLC
12223 Quaker Avenue (79424)
P.O. Box 64657
Lubbock, Texas 79464
Email: dgibson@regllp.com
Phone: (806) 798-8868
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Mr. Lonnie Rue
Brazos Telephone Cooperative, Inc.
109 North Avenue D
Olney, Texas 76374-1866
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Brazos requests that D. Daniel Gibson be placed on the service list for this proceeding.

IV. MOTION TO ENTER PROTECTIVE ORDER

As set forth in 16 TAC § 26.407(i) and PURA § 56.032(k), portions of the attached Annual Report are confidential and not subject to disclosure under the Public Information Act, Texas Government Code Chapter 552. Accordingly, Brazos respectfully requests that the Commission's standard Protective Order be entered by the Commission as necessary to protect confidential material produced in this proceeding. Brazos has designated Attachment C as confidential Protected Material. In addition to being explicitly protected under 16 TAC § 26.407(i) and PURA § 56.032(k), Attachment C contains confidential commercially sensitive business operations and financial information, the public disclosure of which would cause an unreasonable risk of substantial financial or competitive harm to Brazos and/or other parties.

V. CONCLUSION

Brazos submits its annual report for review under 16 TAC § 26.407 and requests any relief to which it may be entitled.

Respectfully submitted,

Richard, Elder & Gibson, PLLC
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Phone: (806) 798-8868
Fax: (806) 798-8878

By



D. Daniel Gibson, State Bar No. 24045939

Attorneys for Brazos Telephone Cooperative, Inc.

Brazos Telephone Cooperative, Inc.
2017 SB 586 Filing
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** Also provided in native format*

Brazos Telephone Cooperative, Inc.

CCN: 40007

Reporting Date: December 31, 2017

Attachment A

Description of Brazos Telephone Cooperative, Inc.

About Brazos Telephone Cooperative, Inc.

Brazos Telephone Cooperative ("Brazos") is a cooperative owned Small & Rural ILEC headquartered in Olney, TX that has been in business since 1952. As of December 31, 2017, Brazos provides regulated voice telecommunications services to 3,328 access lines in North Central Texas. Brazos's service territory covers 1,508 square miles of rural communities and ranch land in Young, Jack, Archer, Stephens, and Throckmorton Counties. According to the 2010 U.S. Census, there were 3,500 households in Brazos's service territory, which equates to 2.3 households per square mile. Brazos provides service to some of the most remote and highest cost to serve areas in Texas, and absent support from the Texas Universal Service Fund, Brazos would be unable to provide basic local exchange service to its customers at rates that are affordable and comparable to those in urban areas.

The primary sources of employment in Brazos's service territory are agriculture and service based. Brazos provides telecommunications services to a small number of community based businesses, as well as a variety of anchor institutions, including: Five School Districts, Young and Archer County Government, and the area voluntary fire departments. A map of Brazos's service territory is available at <https://www.fcc.gov/maps/study-area-boundaries/> by entering the Operating Company Number ("OCN") 2041.

Brazos's network is comprised of more than 1,625 miles aerial and buried copper and fiber cable, connecting end user customers to Brazos's central office in Olney. Brazos utilizes Calix subscriber circuit equipment in the provisioning of local loops, connecting end users to the central office. The central office in Olney is served with a Metaswitch softswitch, which is connected to concentrator equipment in nine other exchanges via redundant, self-healing fiber rings. Brazos is connected to the interexchange network via redundant fiber routes that connect with AT&T in Wichita Falls, TX. All of Brazos's interexchange fiber rings are managed by a Cisco 15454.

Brazos has planned network improvement projects that will upgrade services to fiber to at least 520 more locations in the next 3-5 years, improving bandwidth to rural communities.

Brazos Telephone Cooperative, Inc.

CCN: 40007

Reporting Date: December 31, 2017

Attachment B

Responses to General Questions from SB 586 EMR

GENERAL QUESTIONS

If additional space is required, please attach pages providing the requested information

- 1 State the exact certificated name of the utility
Brazos Telephone Cooperative Inc
- 1a Please enter the utility's CCN =====>> 40007
- 2 State the date when the utility was originally organized
April 22 1952
- 3 Report any change in name during the most recent year and state the effective date
N/A
- 4 State the name, title, phone number, email address, and office address of the officer of the utility to whom correspondence should be addressed concerning this report
Lonnie Rue, CEO/General Manager
109 North Ave D
Olney, TX 76374
Phone (940) 873-4303
lrue@brazostel.com
- 4a State the name, title, phone number, email address, and office address of any other individual designated by the utility to answer questions regarding this report (optional)
N/A
- 5 State the location of the office where the Company's accounts and records are kept
109 North Ave D
Olney, TX 76374
- 6 State the name, address, email and phone number of the individual or firm if other than a utility employee, preparing this report
Sharon Minor
Moss Adams LLP
8750 N. Central Expressway, Suite 300
Dallas, TX 75231
(214) 242-7446 sharon.minor@mossadams.com
- 7 Please indicate the filing status of the Company regarding federal income taxes (S-Corps Corporations, Partnerships, Individuals, etc)
Corporation
- Company Name Brazos Telephone Cooperative, Inc
Reporting Date December 31, 2017
- 8 Please provide
a The period-ending number of utility employees (total company) 31
b The period-ending number of access lines
Total Company 3,368
Texas Jurisdictional 3,368
- 9 For investor-owned utilities with parent companies, please provide the following information
- 9a Name and address of parent company
N/A
- 9b Is the parent company required to file financial statements with the Securities and Exchange Commission?
Yes or No ==> No
- 9c Is a controlling interest in the utility's parent company held by another company?
Yes or No ==> No
- 9d If the answer to the preceding question is "yes," please provide the name and address of the controlling company
N/A
- 10 IF THIS IS A REVISED REPORT, provide the schedule number, line number, and column designation where each change in input data appears
N/A
- 11 What is the company's reported rate of return (Schedule I Line 36 / Line 31)? 1.68%
- 12 Provide Cost Allocation Manual as an attachment to this report, or list any updates if already provided in a prior year's SB 586 Report
A copy of the Cost Allocation Manual is included in the filing package
- 13 Provide Part 36/Part 54 Separations allocation factors as an attachment to this report
A copy of the Part 36 / Part 54 Separations allocation factors is included in the filing package
- 14 Provide underlying work papers and/or any additional supporting documentation reasonably necessary for interpretation or understanding of the SB 586 Report
A copy of underlying work papers and additional supporting documentation is included in the filing package

ATTACHMENT B

**REQUEST TO UPDATE SERVICE LIST
(FILED MARCH 13, 2019)**

RICHARDS, ELDER & GIBSON, PLLC

D. DANIEL GIBSON
dgibson@regllp.com

ATTORNEYS AT LAW
12223 QUAKER AVENUE (79424)
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TELEPHONE: 806-798-8868
TELECOPY: 806-798-8878

2019 MAR 13 PM 12:44

FILING CLERK

March 12, 2019

Public Utility Commission of Texas
1701 North Congress Avenue
Austin, Texas 78711

**RE: Docket 48997; Notice of Brazos Telephone Cooperative, Inc. for Texas
Universal Service Fund Election Under 16 Tac § 26.407**

This letter is being filed to request that the service list for the above referenced docket, pursuant to Section III, Authorized Representatives as listed in the 2017 Annual Report filed on February 14, 2019 be updated to include:

**D. Daniel Gibson
Richards, Elder & Gibson, PLLC
P.O. Box 64657
Lubbock, Texas 79464-4657
Facsimile: 806-798-8878
Email: dgibson@regllp.com**

Respectfully submitted,

Richards, Elder & Gibson, PLLC

By



D. Daniel Gibson
SBN 24045939

Attorneys for Brazos Telephone Cooperative, Inc.

Enclosure

cc: Parties of Record

5

ATTACHMENT C

CONFIDENTIAL – IN PART

STAFF'S AMENDED FINAL RECOMMENDATION FILED JULY 12, 2019

DOCKET NO. 48997 RECEIVED

NOTICE OF BRAZOS TELEPHONE
COOPERATIVE, INC. FOR TEXAS
UNIVERSAL SERVICE FUND
ELECTION UNDER 16 TAC § 26.407

2019 JUN 28 PM 2:56
§ PUBLIC UTILITY COMMISSION
§ PUBLIC UTILITY COMMISSION
§ FILING CLERK OF TEXAS
§

COMMISSION STAFF'S AMENDED FINAL RECOMMENDATION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Amended Final Recommendation, and would show the following:

I. BACKGROUND

On December 14, 2018, Brazos Telephone Cooperative, Inc. (Brazos), filed its written notice of election under 16 Texas Administrative Code (TAC) § 26.407. On February 14, 2019, Brazos filed its annual report, indicating its reported rate of return as 1.68 percent.¹

Pursuant to 16 TAC § 26.407(f)(1)(B), Commission Staff must file a final recommendation on the reported or staff adjusted rate of return within 90 days after the annual report was filed. Brazos filed its annual report on February 14, 2019. Consequently, 90 days after February 13, 2019, is May 15, 2019. On May 21, 2019, the administrative law judge issued Order No. 2, extending the deadline to file a final recommendation until May 29, 2019. On May 23, 2019, Staff filed its final recommendation.

II. AMENDED FINAL RECOMMENDATION

Staff files this amended recommendation in order to correct errata in the memorandum attached to the final recommendation filed on May 23, 2019. A redlined version of the amended memorandum is filed separately with confidential status. This correction does not change Staff's ultimate recommendation that the Commission issue an order determining Brazos's earned rate of

¹ Brazos Annual Report for Small ILECs General Question #11 (Feb. 14, 2019).

return as the rate of return recommended by Staff and categorizing Brazos into Category 1.

III. CONCLUSION

Staff respectfully requests that the Commission issue an order determining Brazos's earned rate of return as the rate of return recommended by Staff and categorizing Brazos into Category 1.

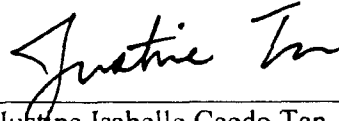
Date: June 28, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney



Justine Isabelle Caedo Tan
State Bar No. 24104914
1701 N. Congress Avenue
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(512) 936-7163
(512) 936-7268 (facsimile)
Justine.Tan@puc.texas.gov

DOCKET NO. 48997

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 28, 2019 in accordance with 16 TAC § 22.74.



Justine Isabelle Caedo Tan

ATTACHMENT D

PROPOSED PROTECTIVE ORDER

DOCKET NO. _____

BRAZOS TELEPHONE	§	BEFORE THE
COOPERATIVE, INC.'S APPLICATION	§	
TO ADJUST SUPPORT RECEIVED FROM	§	
THE TEXAS UNIVERSAL SERVICE FUND	§	PUBLIC UTILITY COMMISSION
UNDER 16 TAC 26.407(h)	§	
	§	OF TEXAS

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____" (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹ Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public

¹ TEX. GOV'T CODE ANN. §§ 552.001- .353 (West 2012 & Supp. 2014).

knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited

to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;² (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; or (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____” (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN., §§ 11.001-66.016 (West 2007 & Supp. 2016) (PURA).

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, The Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to

responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.
13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be

treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection; agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party shall provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.
17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.
18. **Procedures Regarding Voluminous Protected Materials.** 16 Tex. Admin. Code §22.144(h) (TAC) will govern production of voluminous Protected Materials. Voluminous

Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.

19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes,

memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.
24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection

afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential Treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. _____ at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.
26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such

confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.

27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.
28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in

this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.

29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.**

Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.

31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the “conclusion of these proceedings” is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided

by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,³ the Texas Securities Act⁴ and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by

³ TEX. GOV'T CODE ANN. § 551.001-551.146 (West 2012 & Supp. 2014).

⁴ TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (West 2010 & Supp. 2013).

governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of nondisclosure.

The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 TAC §22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

Signature

Party Represented

Printed Name

Date

ATTACHMENT E

PROPOSED FORM OF NOTICE

**NOTICE OF APPLICATION FILED WITH THE
PUBLIC UTILITY COMMISSION OF TEXAS**

Notice is given to the public of an application filed on _____, 2020 with the Public Utility Commission of Texas for an adjustment to universal service support under 16 Texas Administrative Code (TAC) § 26.407.

Docket Style and Number: *Brazos Telephone Cooperative, Inc's. Application to Adjust Support Received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Under 16 TAC § 26.407(h)*, Docket No. _____

The Application: Brazos Telephone Cooperative, Inc. (Brazos) filed an application to increase its Small and Rural Incumbent Local Exchange Company Universal Service Plan support (High-Cost Support) under 16 TAC § 26.407. Brazos requests to increase its annual High-Cost Support by \$592,128. Brazos' application does not propose any changes to its local service rates, but Brazos may be required to increase its rates as part of the adjustment to have its High-Cost Support increased.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas by the intervention deadline of January XX, 2020. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number _____.

BRAZOS TELEPHONE COOPERATIVE, INC.

_____, 2020

ATTACHMENT F

TESTIMONY OF LONNIE RUE

January 13, 2020

DOCKET NO. _____

BRAZOS TELEPHONE	§	BEFORE THE
COOPERATIVE, INC. APPLICATION	§	
TO ADJUST SUPPORT RECEIVED	§	
FROM THE SMALL AND RURAL	§	PUBLIC UTILITY COMMISSION
INCUMBENT LOCAL EXCHANGE	§	
COMPANY UNIVERSAL SERVICE	§	
PLAN UNDER 16 TAC § 26.407(h)	§	OF TEXAS

DIRECT TESTIMONY OF LONNIE RUE

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DOCKET NO. _____

BRAZOS TELEPHONE	§	BEFORE THE
COOPERATIVE, INC. APPLICATION	§	
TO ADJUST SUPPORT RECEIVED	§	
FROM THE SMALL AND RURAL	§	PUBLIC UTILITY COMMISSION
INCUMBENT LOCAL EXCHANGE	§	
COMPANY UNIVERSAL SERVICE	§	
PLAN UNDER 16 TAC § 26.407(h)	§	OF TEXAS

DIRECT TESTIMONY OF LONNIE RUE

January 13, 2020

1 **I. Introduction.**

2 My testimony describes Brazos Telephone Cooperative, Inc. (“Brazos” or “the
3 Cooperative”) and its history as a Texas telephone cooperative serving ten (10) exchanges
4 in the high cost, rural communities and ranch land in north central Texas. I also generally
5 describe Brazos’ 2017 annual report and its history of under-earning (further supported by
6 the testimony of Brazos’ witness Chad Duval). Next, my testimony explains that Brazos’
7 local service rates should not be raised above their current levels in this proceeding, as
8 doing so would adversely affect universal service. Finally, my testimony states that the
9 increase in Texas Universal Service Fund (“TUSF”) support that Brazos is requesting here
10 based on the 140% statutory cap will only partially correct Brazos’ under-earning, resulting
11 in the continuation of unreasonably low earnings (as described in Mr. Duval’s testimony).

12 **Q. Please state your name, title, and business address.**

13 A. My name is Lonnie Rue and I am employed by Brazos as the General Manager/CEO. My
14 office address is 109 North Avenue D, Olney, Texas 76374.

15 **Q. Please summarize your educational background and business experience.**

16 A. I obtained my Bachelor of Business Administration in Accounting from Midwestern State
17 University in 1982. In 1984, I was licensed as a Certified Public Accountant by the Texas
18 State Board of Public Accountancy. From my graduation in 1982 to 1998, I worked several
19 years in public accounting practice for local CPA firms as well as several years in private
20 industry in the financial sector. In 1998, I was employed by Brazos as the controller.
21 Subsequently, I advanced to Chief Financial Officer as well as Assistant Manager of
22 deregulated operations. In 2013, I became General Manager/CEO of Brazos. I am a past
23 board member of Texas Statewide Telephone Cooperative, Inc. as well as a current member
24 of the local hospital board and local industrial development corporation board.

25 **Q. Have you previously testified before state Public Utility Commissions?**

26 A. No.

27 **Q. On whose behalf have you prepared this testimony?**

28 A. I have prepared this testimony on behalf of my employer, Brazos.

29 **Q. Was this testimony prepared by you or under your direct supervision?**

30 A. Yes, it was.

1 **II. Purpose and Summary of Direct Testimony.**

2 **Q. What is the purpose of your direct testimony in this proceeding?**

3 A. I will explain the contents of Brazos' filing package in this proceeding and how it complies
4 with 16 Tex. Admin. Code ("TAC") § 26.407; introduce Brazos' other witness and describe
5 what our testimonies cover; provide background information about the Cooperative;
6 explain Brazos' need for increased TUSF high cost support it receives from the Small and
7 Rural Incumbent Local Exchange Company Universal Service Plan rather than increased
8 local service rates; and describe Brazos' request for adjustment in TUSF support.

9 **Q. Please summarize your testimony and the testimony of the other witness in this**
10 **proceeding.**

11 A. My testimony will describe the following:

- 12 1. Brazos' history as a Texas telephone cooperative serving ten (10) exchanges in the high
13 cost, rural communities and ranch land in north central Texas;
- 14 2. Brazos' 2017 annual report filed pursuant to 16 TAC § 26.407(e) and its history of
15 under-earning;
- 16 3. The TUSF support increase Brazos is requesting to partially correct some of its under-
17 earning - although because of the 140% statutory cap on increases, Brazos' earnings
18 will remain unreasonably low even with the requested adjustment;
- 19 4. Brazos' need for additional support instead of increased rates, since increased rates
20 are expected to adversely affect universal service; and

21 I will also introduce Brazos' other witness, Chad Duval. Mr. Duval's testimony will
22 describe the accounting and cost separations process, as well as the annual report data, and
23 how these items support Brazos' intrastate rate of return and its TUSF high cost support
24 increase request.

25
26 **III. Background.**

27 **Q. Would you please describe Brazos Telephone Cooperative, Inc.**

28 A. Yes. Brazos is an Incumbent Local Exchange Carrier ("ILEC") that holds Certificate of
29 Convenience and Necessity ("CCN") No. 40007 to provide local exchange services to
30 customers within the Wichita Falls Local Access and Transport Areas ("LATA").

1 Brazos was originally established in 1952. Today, Brazos' service territory is
2 approximately 1,508 square miles of rural communities and ranch land in north central
3 Texas, and it serves customers in five (5) counties. With an average customer density of
4 approximately two households per square mile, Brazos' service territory is particularly
5 high cost due to its rural nature with farm and ranch land. The distances between its various
6 service points require multiple central offices and additional personnel as well as increased
7 plant investments. For the applicable reporting period, Brazos operated over 1,625 miles
8 of aerial and buried copper and fiber cable to serve approximately 3,368 access lines in its
9 ten (10) exchanges.

10 **Q. Please describe the history of Senate Bill 586 that enabled the filing of Brazos' 2017**
11 **annual report.**

12 A. In 2017, the 85th Texas Legislature passed Senate Bill 586, creating a mechanism to
13 determine the TUSF high cost support for certain small ILECs, including Brazos, that
14 allows these small ILECs to earn a reasonable rate of return. The statute established the
15 range of reasonable rates of return, required earnings reporting, and directed the
16 Commission to create a proceeding to allow small ILECs to adjust their TUSF high cost
17 support or a combination of their TUSF high cost support and their basic rates to alter
18 revenues if a provider's annual report shows a provider to be over- or under-earning.

19 The Commission initiated a rulemaking proceeding, Project No. 47669, to add 16 TAC
20 § 26.407 that established the criteria by which a small ILEC could request that the
21 Commission determine the amount of TUSF high cost support it receives so Brazos could
22 have the opportunity to earn a reasonable intrastate rate-of-return.

23 Following these newly established procedures, on December 14, 2018, in Docket No.
24 49022, Brazos opted into the TUSF high cost support mechanism as contemplated by 16
25 TAC § 26.407. On February 14, 2019, Brazos filed its 2017 Annual Report under 16 TAC
26 § 26.407(e) in the same docket.

27 After review and evaluation, on June 28, 2019, Commission staff filed its Amended Final
28 Recommendation in Docket No. 48997 recommending that Brazos be placed into Category
29 1 (Attachment C to the application). Based upon the Public Utility Regulatory Act
30 ("PURA") § 56.032(f) and 16 TAC § 26.407(f)(3)(A), under-earning Category 1 providers

are currently those whose intrastate rate of return is less than 6.75%. Brazos' reported intrastate rate of return for 2017 was 1.68%.

IV. Proposed Adjustment to TUSF Support.

Q. What adjustment to its TUSF high cost support is Brazos requesting?

A. As explained in the testimony of Mr. Duval, Brazos is requesting an additional \$592,128 in TUSF high cost support. Due to the 140% statutory cap, Brazos is limited to requesting an increase of \$592,128 rather than requesting the total amount of \$676,242 that would allow it to earn a rate of return of 6.75%, the minimum amount considered to be a reasonable intrastate rate of return. As required by 16 TAC § 26.407(j)(1)(A), the increase in TUSF high cost support requested by Brazos is 140% of the high cost support it received during the last 12 months.

Q. Does Brazos request higher local rates in this proceeding?

A. No. Increasing Brazos' local rates any further would adversely affect universal service.

Q. Why did Brazos not request an increase in local service rates as part of its request for an adjustment in TUSF high cost support?

A. Raising Brazos customers' local service rates would adversely affect universal service in contravention of PURA § 56.032(h)-(i)¹ and 16 TAC § 26.407(j)(1)(A).² In 2016, Brazos raised its residential local service rates to ensure its residential local service rates were in compliance with the FCC's residential rate floor of \$18 per month (including certain fees).³ Brazos' customers are rural subscribers, many of whom are older and on fixed incomes. The less affordable Brazos' rates become, the likelihood of its customers cancelling their local service increases. Moreover, further increases in local service rates could actually

¹ PURA § 56.032(h) and (i) says a "rate adjustment under this subsection may not adversely affect universal service."

² 16 TAC § 26.407(j)(1): Revised revenue requirements. (A) In a proceeding conducted in accordance with subsection (h) of this section, the commission will determine the small ILEC's new revenue requirement necessary to allow the company to earn a reasonable rate of return; however, the commission may not set a small ILEC's support level at more than 140 percent of the annualized support the small ILEC received in the 12-month period before the date of the adjustment, nor may the rate adjustment adversely affect universal service.

³ Notice of Brazos Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to PUC Subst. R. §26.171, Tariff Control No. 45807, April 5, 2016

1 result in a loss of intrastate revenues caused by a loss of access lines. Such a loss in
 2 intrastate revenues could reduce Brazos' intrastate earnings, triggering the need for
 3 additional TUSF high cost support in the future. I think this is the type of adverse effect on
 4 universal service that PURA § 56.032(h)-(i) and 16 TAC § 26.407(j)(1)(A) prohibits.

5 Typically, the median household income in rural areas is significantly less than that of the
 6 urban areas. The average median household income in 2010 of was \$30,690, 42% less than
 7 the national average median household income. Similarly, the poverty level in Brazos'
 8 service area is approximately 33% higher than the national average. An increase in the
 9 local service rate for rural customers with this type of household income is often an
 10 additional expense that they cannot afford, whereas urban customers with generally higher
 11 household incomes are better able to pay higher rates for their local service . Increasing
 12 rates for Brazos' customers would most likely cause many to cancel service.

13 **Q. Has the FCC continued to raise the rural rate floor to the same level as the urban**
 14 **rate?**

15 A. No. In 2017 the FCC recognized that rural customers are those least able to afford such
 16 increases when it froze its residential rate floor. After an extensive study, the FCC reversed
 17 the regulation and entirely eliminated the residential rate floor stating that it was going to
 18 avoid "needlessly increas[ing] telephone service rates."⁴ The FCC went on to explain that
 19 it believed it was appropriate to avoid a nearly 50% increase in many rural Americans'
 20 telephone rates. The FCC also stated that its action would allow rural customers to receive
 21 quality services at "just, reasonable, and affordable rates," while also ensuring that rural
 22 carriers continue to receive the predictable and sufficient universal service support needed
 23 to serve high-cost areas.⁵ As a result of the FCC eliminating the residential rate floor this
 24 means that rates can reasonably be set below \$18 (the last effective rate floor) without any
 25 loss of universal service fund distributions, and without necessarily creating a problem in
 26 terms of comparable rates.

⁴ See "FCC Repeals Unnecessary Policy that Raises Rural Phone Rates; 'Rate Floor' Outlived Usefulness, Hurts Vulnerable Consumers." April 12, 2019, available at <https://docs.fcc.gov/public/attachments/DOC-356990A1.pdf>.

⁵ *Id.*

1 **V. Need for Additional Support.**

2 **Q. You provided Brazos' intrastate rate of return for 2017. What was its intrastate rate**
3 **of return the two prior years?**

4 **A. Brazos' 2016 intrastate rate-of-return was -1.45% and its 2015 intrastate rate-of-return was**
5 **2.27%. The continuance of under-earning exemplifies why Brazos needs increased high**
6 **cost support to work towards a more reasonable intrastate rate of return as envisioned under**
7 **SB 586.**

8 **Q. Will Brazos' proposed adjustment in TUSF high cost support resolve its under-**
9 **earning?**

10 **A. No. Pursuant to 16 TAC § 26.407(j)(1)(A), Brazos' request is statutorily capped at 140%**
11 **of its past 12 months of TUSF high cost support. This means that the maximum TUSF high**
12 **cost support request Brazos can make in this proceeding is \$592,128. This amount will**
13 **certainly help Brazos mitigate its under-earnings, but it will not resolve it. As explained by**
14 **Mr. Duval, Brazos will still fall short by \$84,114 of the support it would need to achieve**
15 **the minimum reasonable intrastate rate of return of 6.75%.**

16
17 **VI. Conclusion.**

18 **Q. What are the conclusions of your testimony?**

19 **A. Brazos is a Category 1 provider qualified to file for this support adjustment. Brazos' 2017**
20 **annual report and this request for an adjustment to its TUSF high cost support comply with**
21 **applicable substantive rules.**

22 Brazos is not seeking a local service rate increase as part of its request for an
23 adjustment to TUSF high cost support because raising rates would adversely affect
24 universal service. Furthermore, I believe that such an increase that would adversely impact
25 universal service is prohibited by both PURA and the Public Utility Commission
26 substantive rules.

27 Finally, as calculated by Mr. Duval, Brazos requests that its proposed TUSF high
28 cost support increase of \$592,128 be approved. This request complies with the 140% cap
29 and moves Brazos closer to the minimum reasonable rate of return, although this increase
30 still leaves Brazos with an unreasonably low return.

1 **Q. Does this conclude your direct testimony?**

2 A. Yes.

3

AFFIDAVIT

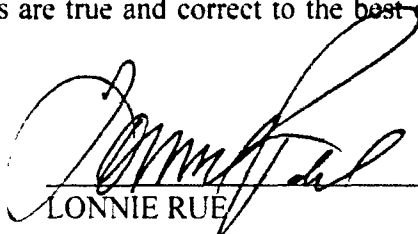
STATE OF TEXAS §

§

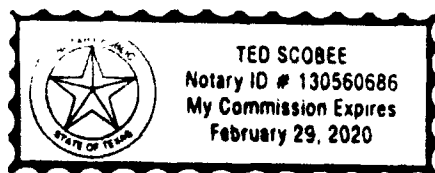
COUNTY OF YOUNG §

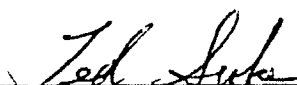
BEFORE ME, the undersigned notary public, this day personally appeared LONNIE RUE, to me known, who being duly sworn according to law, deposes and says:

"My name is LONNIE RUE. I am of legal age and a resident of the State of Texas. I certify that the foregoing testimony and exhibits are true and correct to the best of my knowledge and belief."


LONNIE RUE

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 13th day of January, 2020.




Notary Public in and for the State of Texas

My Commission expires: 2-29-2020

ATTACHMENT G

CONFIDENTIAL – IN PART

TESTIMONY OF CHAD DUVAL

December 6, 2019

DOCKET NO. _____

APPLICATION OF BRAZOS
TELEPHONE COOPERATIVE, INC.
TO ADJUST HIGH COST SUPPORT
UNDER 16 T.A.C. §26.407(h)

§
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§
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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

DIRECT TESTIMONY OF CHAD A. DUVAL

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EXHIBIT LIST

Confidential Exhibit CD-1

 Work Paper Calculating the Additional Support Needed to Reach a 6.75% Rate of Return

Confidential Exhibit CD-2

 Work Paper Calculating Projected Returns

DOCKET NO. _____

APPLICATION OF BRAZOS
TELEPHONE COOPERATIVE, INC.
TO ADJUST HIGH COST SUPPORT
UNDER 16 T.A.C. §26.407(h)

§
§
§
§

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

DIRECT TESTIMONY OF CHAD A. DUVAL

DECEMBER 6, 2019

1 **EXECUTIVE SUMMARY**

2 My testimony describes how the Annual Report of Brazos Telephone Cooperative, Inc.
3 (“Brazos” or the “Cooperative”) covering calendar year 2017 was prepared in compliance with the
4 Commission’s rules, the requirements of the Public Utility Regulatory Act, and federal cost
5 separations and accounting rules. I sponsor related financial schedules and work papers which are
6 based on the Cooperative’s financial books and records, which I believe have been prepared in
7 compliance with relevant FCC rules. My testimony then explains that, as identified in Brazos’
8 2017 Annual Report, Brazos is under-earning and would require \$676,242 in additional revenues
9 to raise its intrastate rate of return to reasonable levels. Finally, my testimony shows that the effect
10 of the 140% statutory cap on increases codified in 16 Texas Administrative Code (“TAC”) §26.407(g) is that Brazos may only seek an increase of \$592,128 in Small and Rural Incumbent
11 Local Exchange Carrier Universal Service Plan support in this proceeding, despite needing
12 \$84,114 more in total per year to achieve a reasonable rate of return. Because of the statutory cap,
13 Brazos’ earnings will remain below the lowest range of the reasonable rate of return even with the
14 adjustment in state universal service support that is requested herein.
15

16
17 **I. POSITION AND QUALIFICATIONS**

18 **Q. Please state your name, title, and business address.**

19 A. My name is Chad A. Duval. I am a Partner at Moss Adams LLP (Moss Adams), an
20 accounting and business consulting firm. My office address is 3121 W. March Lane, Suite
21 200, Stockton CA, 95219.

22 **Q. Please state your educational background and experience in the telecommunications**
23 **industry.**

1 A. My educational background includes a Bachelor of Science degree in Business
2 Administration, with an emphasis in Statistics, from the University of Denver, in Denver,
3 Colorado. In 1995, I was hired by GVNW Inc./Management to serve as a Consulting
4 Analyst in the Company's Colorado Springs office. In 1998, I was promoted to
5 Management Consultant. In 1999, I accepted the position of Manager of Strategic Pricing
6 with US WEST Communications in Denver, Colorado. In January of 2000, I was promoted
7 to Group Manager of Strategic Pricing. In October of 2000, I accepted the position of
8 Director of Product Management with Vanion, Inc., a competitive local exchange carrier
9 headquartered in Colorado Springs, Colorado. In September of 2001, I accepted the
10 position of Senior Consultant with GVNW in Colorado Springs, Colorado. In October of
11 2004, I accepted the position of Senior Manager with Moss Adams in Stockton, California.
12 In October of 2007, I became a Partner at Moss Adams in that office. In August of 2015, I
13 was named the National Practice Leader of Moss Adams' Communications and Media
14 practice, responsible for audit, tax and consulting services, and remained in that role until
15 October of 2018. At this time, I remain a Partner and the firm-wide leader of the
16 Communications and Media consulting practice at Moss Adams.

17 Moss Adams is a regional accounting and consulting firm with offices in major
18 cities in the states of Arizona, California, Colorado, Kansas, New Mexico, Oregon, Texas
19 and Washington. Moss Adams' Communications and Media practice provides audit, tax,
20 and financial and regulatory consulting services to the telecommunications industry,
21 particularly to rural telecommunications carriers. At Moss Adams, I am the firm-wide
22 leader of the Communications and Media consulting practice, which provides consulting
23 services to approximately 200 clients nationwide. In this role I provide technical and
24 strategic guidance to a team of approximately 30 professional consultants with a wide

1 variety of technical expertise. In addition, I work directly with client companies in several
2 states on: cost separations studies, business plans, financial forecasting and budgeting,
3 depreciation studies, and strategic analysis of various regulatory and business issues. I
4 have also worked with a variety of independent local exchange carriers and state
5 telecommunications associations on state universal service funding issues. I have
6 conducted training on cost separations and federal universal service funding for the Federal
7 Communications Commission, the Universal Service Administrative Company, employees
8 of the National Exchange Carrier Association, multiple state public regulatory
9 commissions, numerous national and state telecommunications associations, as well as
10 employees of hundreds of independent local exchange carriers around the country.

11 **Q. Have you previously testified before state Public Utility Commissions?**

12 A. Yes. I have previously testified before the Public Utility Commission of Texas, as well as
13 the California Public Utilities Commission, the Colorado Public Utilities Commission, the
14 Georgia Public Service Commission, the Indiana Utility Regulatory Commission, the
15 Public Utilities Commission of Nevada, the Indiana Utility Regulatory Commission, the
16 North Dakota Public Service Commission, the Oklahoma Corporation Commission, the
17 Oregon Public Utilities Commission, the Public Service Commission of Utah, and the
18 Wyoming Public Service Commission. Further, I regularly consult with carriers around the
19 country on issues related to universal service funding, both at the state and federal levels.

20 **Q. On whose behalf have you prepared this testimony?**

21 A. I have prepared this testimony on behalf of Brazos Telephone Cooperative, Inc.

22 **Q. Do you sponsor any exhibits to this testimony?**

23 A. Yes, Exhibit CD-1 is my confidential work paper that calculates how much support Brazos
24 would require to reach a 6.75% rate of return. Exhibit CD-2 is my confidential work paper

1 that projects Brazos' returns going forward based upon the support adjustment requested
2 here. Further, I sponsor Attachment A to the Application in this matter, and I can verify
3 that the calculations therein are true and correct to the best of my knowledge.

4 **Q. Was this testimony and were these exhibits prepared by you or under your direct**
5 **supervision?**

6 A. Yes, they were.

7
8 **II. PURPOSE AND SUMMARY OF TESTIMONY**

9 **Q. What is the purpose of your direct testimony in this proceeding?**

10 A. I will explain the process by which Brazos identified regulated intrastate costs and revenues
11 in order to calculate the Cooperative's intrastate rate of return in compliance with 16 TAC
12 § 26.407 and the Commission-prescribed forms. The result of that calculation shows
13 Brazos' 2017 rate of return to be 1.68%. I will also explain the calculation of the amount
14 of additional revenue that is required to raise Brazos' 2017 intrastate rate of return to
15 6.75%, which is the floor of what is considered a reasonable rate of return under Senate
16 Bill 586 ("SB 586") and 16 TAC § 26.407.

17 **Q. Please summarize your testimony in this proceeding.**

18 A. My testimony will illustrate the following:

- 19 1. Brazos prepared the Annual Report covering calendar year 2017 in compliance with
20 the Commission's rules, the requirements of the Public Utility Regulatory Act, and
21 federal cost separations and accounting rules;
- 22 2. As identified in Brazos' 2017 Annual Report, the Cooperative is earning a rate of return
23 that is less than reasonable, and would require \$676,242 in additional revenues to raise
24 its intrastate rate of return to a reasonable level;

1 3. Because of the 140% statutory cap on increases under 16 TAC §26.407(g), Brazos may
2 only seek an increase of \$592,128 in Small and Rural Incumbent Local Exchange
3 Carrier Universal Service Plan support (“High-Cost Support”) in this proceeding.
4 Because of this statutory cap, Brazos’ earnings will remain below the bottom range of
5 the reasonable rate of return even with the requested adjustment in state universal
6 service support.
7

8 **III. DESCRIPTION OF BRAZOS’ 2017 ANNUAL REPORT**

9 **Q. Can you describe Brazos’ 2017 Annual Report and its various schedules?**

10 A. Yes. Brazos’ Annual Report uses the standardized filing package that was developed by
11 Commission Staff and the telecommunications industry and designed to provide the
12 Commission Staff relevant supporting documentation associated with each company’s
13 intrastate earnings in a uniform manner. The standardized filing package contains the
14 SB 586 Annual Report on the Commission-prescribed form, the Cost Allocation Manual,
15 the Part 36 Separations Factors allocating costs between interstate and intrastate
16 jurisdictions, the Working Trial Balance, and specific work papers supporting the various
17 schedules from the SB 586 Annual Report. Brazos’ 2017 Annual Report is fully consistent
18 with the format of this agreed upon package, which is contained in confidential (in part)
19 Attachment A to the Application filed in this proceeding. Brazos’ 2017 Annual Report
20 accurately reflects its books and records.

21 **Q. Would you please describe the various components of the industry-standard filing**
22 **package?**

23 A. Yes. The filing package consists of both publicly-available information and confidential
24 information. Confidential information is being submitted under confidential seal separate

1 from the public filing, but will be available to parties under the Commission's Protective
2 Order in this proceeding. In my testimony, I will focus on Section C of Attachment A to
3 this Application, which was included as "Attachment C" to Brazos' Application that was
4 filed confidentially in Project No. 48997.¹

5 Section C.1 consists of the SB 586 Annual Report on the Commission-prescribed
6 forms including:

- 7 • Schedule I – Summary of Revenues and Expenses;
- 8 • Schedule II – Invested Capital;
- 9 • Schedule III – Federal Income Taxes;
- 10 • Schedule IV – Network Access Service Revenues;
- 11 • Schedule V – Weighted Average Cost of Capital;
- 12 • Schedule VI – Historical Financial Statistics;
- 13 • Schedule VII – Proposed Company Adjustments;
- 14 • Schedule VIII – Executive Compensation;
- 15 • Schedule IX – Affiliate Transactions; and
- 16 • Schedule X – Supplemental Schedule I Supporting Work Papers.

17
18 The Commission-prescribed forms provide all of the information required under 16 TAC
19 § 26.407(e)(2)(A)-(J) and (L).

20 **Q. What is in Section C.2 of Attachment A to the Application?**

21 A. Section C.2 of Attachment A to the Application contains Brazos' Cost Allocation Manual.

22 Section C.2.1 contains Brazos' written Cost Allocation Manual ("CAM"), as
23 required under 16 TAC § 26.407(e)(3). The CAM is prepared and maintained by Brazos
24 in accordance with Part 64 of the rules and regulations of the Federal Communications
25 Commission ("FCC") and it describes the methodology of allocating costs between
26 regulated and nonregulated activities.

¹ Notice of Brazos Telephone Cooperative, Inc. for Texas Universal Service Election Under 16 TAC § 26.407(d), Project No. 48997.

1 Section C.2.2 contains Brazos' Part 64 Study, or cost apportionment table, that is
2 used to allocate costs between regulated and nonregulated operations for the various Part
3 32 accounts. After applying the CAM and removing nonregulated costs and revenues,
4 regulated costs and revenues remain and are reported in column "e" titled "Total Texas
5 Subject to Separations" on Schedules I and II of the Annual Report.

6 **Q. What is in Sections C.3 and C.4 of Attachment A to the Application?**

7 A. Section C.3 contains Brazos' Part 36 Separations Factors, which identify how Brazos
8 separates the remaining regulated costs and revenues between interstate and intrastate costs
9 and revenues.

10 Section C.3.1 consists of a summary of Brazos' Part 36 separations factors. These
11 factors appear in column "f" titled "Intrastate Separations Factors" of Schedules I and II of
12 the Annual Report. After applying the applicable Part 36 intrastate separations factor,
13 "Intrastate Amounts" are identified in column "g" of Schedules I and II of the Annual
14 Report.

15 Section C.3.2 contains the details related to Brazos' development of the Part 36
16 separations factors and is commonly referred to within the industry as the Part 36 Track,
17 which is an integral component of Brazos' interstate cost study that is relied on by the FCC
18 for interstate ratemaking. Intrastate percentages are calculated simply by subtracting the
19 interstate percentage from 100 percent.

20 Section C.4 contains Brazos' Working Trial Balance ("WTB"). This attachment
21 identifies ending balances for each of Brazos' Part 32 accounts and subaccounts for the
22 calendar year 2017. These Part 32 accounts are summarized into the applicable categories
23 and reported on column "a" of Schedules I and II of the Annual Report titled "Total
24 Company per books, adjusted to include nonregulated activities."

1 **Q. What is included in Section C.5 of Attachment A to the Application?**

2 A. Section C.5 contains work papers that support Schedules I – X of the Annual Report.
3 Section C.5.1 contains the revenue and expense supporting work papers that feed into the
4 applicable operating revenues and expense categories on Schedule I of the Annual Report.
5 This revenue and expense model was developed by the industry and Commission Staff to
6 report revenues and expenses in a uniform manner for all companies that have opted into
7 the SB 586 TUSF process in an effort to streamline reporting for the affected companies
8 and assist Commission Staff's review of company reports.

9 **Q. What is in Section C.5.1.1 to Attachment A?**

10 A. Pages 1-2 of Section C.5.1.1 identify revenues by account from the WTB and sort them
11 into seven different categories: Intrastate; Interstate; Local; Non-Regulated (Non-Reg);
12 High Cost Loop Support (High Cost Loop); Alternative Connect America Model support
13 (ACAM); and Texas Universal Service Funding (TUSF). These revenues are then further
14 classified into groups (listed on Page 3 of Section 5.1.1), which feed into Lines 2 – 11 of
15 Schedule I of the Annual Report:

- 16 • Local Network Service Revenue;
- 17 • Network Access Revenue²;
- 18 • Long Distance Revenue;
- 19 • Texas Universal Fund Revenue;
- 20 • Wholesale Revenues, which includes both Sale of Unbundled Elements and
- 21 Pure Resale;
- 22 • Miscellaneous Revenue;
- 23 • Less: 56.025 FUSF Loss Recovery Adjustment; and
- 24 • Less: Uncollectibles.

² Network Access Revenues are further classified into the various tariffed rate elements on Page 4 of Section C.5.1.1 and are reported on Schedule IV of the Annual Report.

1 These revenues are then summarized into Brazos' Total Operating Revenues on Line 13
2 of Schedule I of the Annual Report.

3 Page 3 of Section C.5.1.1 contains a summary of the revenues classified into
4 groups, provides detail for the Texas Universal Service Support booked, and identifies the
5 total HCLS used to reduce expenses on Line 22 of Schedule I of the Annual Report. The
6 HCLS used to reduce expenses on Line 22 of Schedule I of the Annual Report includes
7 amounts booked and a portion of A-CAM revenues determined to be attributable to HCLS
8 based on the FCC's HCLS Algorithm.

9 Page 4 of Section C.5.1.1 contains Other Operating Income and Expense amounts.
10 These revenue and expense amounts feed into line 20 of Schedule I of the Annual Report.

11 Pages 5-14 of Section C.5.1.1 contain additional supporting documentation for the
12 classification of revenues reported on Lines 2-11 of Schedule I of the Annual Report.
13 Page 5 is the revenue summary from the cost separations study identifying booked
14 amounts, Part 64 adjustments, and cost separations study adjustments. Page 6 contains
15 the detail for the cost separations study adjustments, with adjustments impacting revenues
16 highlighted in yellow. Pages 7-11 contain documentation supporting cost separations
17 study adjustments numbers (SSA #) 4 and 5, including the amount of HCLS that Brazos
18 recorded on its books in 2017 and the intrastate allocated A-CAM support for 2017,
19 following its election of A-CAM support. Pages 12-14 contain the HCLS algorithm used
20 to determine the portion of Brazos' A-CAM revenue that is attributable to HCLS.

21 **Q. What is in Section C.5.1.2 to Attachment A?**

22 A. Page 1 of Section C.5.1.2 contains Brazos' Summary of Expenses by Part 32 account and
23 identified within the applicable expense category reported on Schedule I of the Annual
24 Report as:

- Plant Specific Expense;
- Depreciation & Amortization;
- Other Plant Non-Specific Expense;
- Customer Operations Expense;
- Corporate Operations Expense;
- Other Operating Income and Expense; and
- Operating Tax Expense.

Within Brazos' Summary of Expenses by Part 32 account, the amounts in the column titled "Total Company Per Books" are derived from the WTB. The nonregulated amounts identified within the column titled "Part 64 Nonregulated" were identified and removed as outlined in the CAM. This column also contains cost separations study adjustments. The amounts in the final column titled "Total TX Subject to Separations" are summarized into the aforementioned expense categories and are reported on the identified line of Schedule I of the Annual Report in column "e." Operating Expenses are then segregated using the Part 36 factors discussed above to identify the intrastate amounts reported in column "g" on Schedule I of the Annual Report.

Pages 2-5 of Section C.5.1.2 contain the breakdown of expenses by Part 32 account (sub accounts are rolled up into primary Part 32 accounts) from the WTB. The non-regulated amounts identified within the columns titled "Part 64 Adjustments" were identified and removed as outlined in the CAM. The column titled "Regulated Balance Per Books" is simply the "Balance Per Books" plus or minus the "Part 64 Adjustments." The columns labeled "Separations Study Adjustments" contain adjustments made in the Part 36 cost separations process to ensure that amounts are recorded in the correct accounts or removed for cost recovery purposes. The column titled "Current Study Balance" is simply the "Regulated Balance Per Books" plus or minus the "Separations Study Adjustments." The column titled "Expense Excluded for USF" includes amounts that the FCC has deemed as ineligible for cost recovery through federal universal service funding.

1 The column titled “USF Study Balance” is simply the “Current Study Balance” less the
2 “Expense Excluded for USF.” All Part 32 accounts applicable to the Annual Report then
3 flow into the “Summary of Expenses” on page 1 of Section C.5.1.2.

4 Page 6 of Section C.5.1.2 illustrates the Part 64 adjustments being applied to the
5 expenses from the WTB. These adjustments tie to the amounts shown in the “Part 64
6 Adjustments” columns on pages 2-5 of Section C.5.1.2.

7 Page 7 of Section C.5.1.2 contains a mapping of the cost separations study
8 adjustments, showing the account each adjustment was applied to, the reason for the
9 adjustment, and the cost study adjustment number. These highlighted adjustments tie to
10 the amounts shown in the “Separations Study Adjustments” columns on pages 2-5 of
11 Section C.5.1.2.

12 **Q. What is in Section C.5.2 to Attachment A?**

13 A. Section C.5.2 contains the supporting work papers for Schedule II of the Annual Report
14 related to investments.

15 With regards to Section C.5.2.1:

- 16 • Page 1 is a summary of invested capital by report categories for Schedule II.
17 Amounts on this “Summary of Invested Capital” are derived from the support
18 provided on pages 2-5 of Section C.5.2.1. The amounts in the column titled “Total
19 Company Per Books” on page 1 of Section C.5.2.1 are derived from the WTB. The
20 amounts in the column titled “Part 64 Nonregulated” reflect the total of Part 64 and
21 Separations Study Adjustments found on pages 2-4 of Section C.5.2.1. The column
22 titled “Total TX Subject to Separations” is simply the “Total Company Per Books”
23 plus or minus the “Part 64 Nonregulated” adjustments. These amounts are
24 summarized into the appropriate capital investment categories and are reported in

column “e” of the designated line on Schedule II of the Annual Report. Operating Capital Investment amounts are then separated using the relevant Part 36 separations factors to identify the intrastate amounts reported in column “g” on Schedule II of the Annual Report.

- Pages 2-4 of Section C.5.2.1 show the WTB amount for the Part 32 investment accounts. The “Part 64 Adjustments” and “Separations Study Adjustments” columns reflect the removal of nonregulated activity and the cost separations study adjustments associated with each account. All Part 32 accounts applicable to the Annual Report then flow into the “Summary of Invested Capital” on page 1 of Section C.5.2.1.

- Page 5 of Section C.5.2.1 illustrates the Part 64 adjustments being applied to the invested capital accounts from the WTB. These adjustments tie to the amounts shown in the “Part 64 Adjustments” columns on pages 2-4 of Section C.5.2.1.

Section C.5.2.2 provides details of Brazos’ Short Term and Long Term Plant Under Construction, Prepayments, Other Invested Capital, and Contributions in Aid to Construction, which feed into Lines 4-5, 12, 13, and 20, respectively of Schedule II of the Annual Report.

Q. What is in Section C.5.3 to Attachment A?

A. Section C.5.3 contains the supporting work paper for Brazos’ Federal Income Taxes, which are reported on Schedule III of the Annual Report. Brazos was a non-taxable cooperative in 2017. Therefore, no federal income tax expense was included in the Annual Report.

Q. What is in Attachments C.5.4, C.5.5, and C.5.6 to Attachment A?

A. Section C.5.4 is the supporting work paper for Schedule IV of the Annual Report related to Intrastate Network Switched Access Revenues. As identified on page 3 of Section

1 C.5.1.1, above, this schedule identifies Network Access Revenues on Line 3 of Schedule I
2 of the Annual Report by tariffed rate element for intrastate access services reported.

3 Section C.5.5 contains the supporting work paper to Schedule V of the Annual
4 Report related to the cost of capital including equity, preferred stock, long-term debt, and
5 short-term debt.

6 Section C.5.6 is a narrative discussion of how Brazos reported its historical
7 financial statistics that are reported on Schedule VI of the Annual Report.

8 **Q. Did Brazos propose any known and measurable adjustments on Schedule VII of the**
9 **Annual Report for 2017?**

10 A. No. Brazos did not propose any known and measurable adjustments on Schedule VII of
11 the Annual Report for 2017.

12 **Q. Do the plant investments listed in Schedule II include investments in fiber?**

13 A. Yes. I understand Brazos has investments in fiber optic cable. This, as with all of the
14 Cooperative's plant investment, is subject to separations and allocations as outlined herein
15 so that only intrastate, regulated plant is included in the intrastate cost of service.

16 **Q. Did Brazos properly report and provide supporting work papers to explain**
17 **compensation for Schedule VIII of the Annual Report?**

18 A. Yes. Brazos properly calculated and reported compensation allocated to intrastate
19 regulated operations on Schedule VIII of the Annual Report for 9 individuals that are
20 considered officers and directors in accordance with 16 TAC § 26.407(e)(2)(I) and the
21 Commission's instructions for completing the Annual Report. Section C.5.8 contains a
22 description of the methodology that Brazos utilized to calculate regulated intrastate
23 compensation for each individual. The regulated intrastate amounts reported on Schedule
24 VIII represent the total amount of compensation for each applicable employee that impacts

1 Brazos' intrastate rate of return. Any compensation associated with either interstate or
2 nonregulated activities do not impact Brazos' intrastate rate of return and therefore have
3 no impact on the Cooperative's request to receive additional Texas Universal Service
4 funding in this proceeding.

5 **Q. Did Brazos properly report affiliate transactions on Schedule IX of the Annual**
6 **Report?**

7 A. Yes. As contained on Schedule IX of the Annual Report, Brazos reported various affiliate
8 transactions with entities that are considered affiliates under 16 TAC § 26.5(5).

9 **Q. Please describe the supporting work papers included in Schedule C.5.9 related to**
10 **affiliate transactions.**

11 A. Section C.5.9 includes the supporting work papers for Schedule IX of the Annual Report.
12 This section contains a narrative discussion of the transactions reported on Schedule IX of
13 the 2017 Annual Report to assist the Commission in understanding: (1) how the
14 Cooperative categorized the various transactions; (2) the nature of the transactions; and (3)
15 the methodology used to determine the amount of each of the transactions. Affiliate
16 relationships are further described in Brazos' CAM, as contained in Section C.2.

17 **Q. Did Brazos properly price all of the affiliate transactions?**

18 A. Yes. As a regulated entity, Brazos is subject to the FCC's regulations related to affiliate
19 transactions and fully complies with the federal regulations applicable to affiliate
20 transactions (reported on Schedule IX of the Annual Report). The federal cost
21 apportionment standards are outlined in 47 C.F.R. § 64.901. Transactions with affiliates
22 are also governed by 47 C.F.R. § 32.27, which specifies pricing methodology for
23 transactions with affiliates.

1 There are two main types of affiliate transactions: assets sold or transferred, and
2 services provided.

3 47 C.F.R. § 32.27(b) governs the sale or transfer of assets between affiliates and
4 generally requires that the transaction occur at the tariffed rate (where applicable), then
5 prevailing price (where applicable); and if neither option is applicable, such transactions
6 must be recorded at no less than the higher of fair market value or net book cost when sold
7 by the carrier to the affiliate; and no more than the lower of fair market value or net book
8 cost when sold by the affiliate to the carrier. When the composite annual amount of the
9 sale or transfer of a particular asset is less than \$500,000, net booked cost can be used in
10 lieu of the higher or lower of fair market value or net book cost.

11 47 C.F.R. § 32.27(c) governs the sale of services between affiliates and generally
12 requires that the transaction occur at the tariffed rate (where applicable) or prevailing price
13 (where applicable); where neither are applicable, such transactions shall be recorded at no
14 less than the higher of fair market value and fully distributed cost when sold by the carrier
15 to the affiliate; and no more than the lower of fair market value and fully distributed cost
16 when sold by the affiliate to the carrier. When the composite annual amount of a particular
17 service is less than \$500,000, fully distributed cost can be used in lieu of the higher or
18 lower of fair market value or fully distributed cost.

19 **Q. Did Brazos provide any additional information supporting its affiliate transactions?**

20 A. No. Due to the limited nature of the Cooperative's affiliate transactions, additional
21 information was not necessary.

22 **Q. Did Brazos supply any work papers in support of Supplement Schedule 1 of the**
23 **Annual Report?**

1 A. No. Supplemental Schedule 1 of the Annual Report is an optional supplemental schedule
2 to enable reporting entities to supply comments or footnotes to the prior Annual Report
3 schedules. Brazos provided detailed explanations and supporting documentation for the
4 various Annual Report schedules within the supporting work papers. Further, throughout
5 the review process, the Cooperative's staff and representatives made themselves available
6 to Commission Staff to answer any questions on an informal basis.

7
8 **IV. CALCULATION OF PROPOSED SUPPORT ADJUSTMENT**

9 **Q. How much additional intrastate revenue would be required to raise Brazos' 2017**
10 **intrastate rate of return to 6.75%?**

11 A. In order to raise Brazos' 2017 intrastate rate of return to 6.75%, Brazos needs an additional
12 \$676,242 in intrastate revenue. This is shown in Exhibit CD-1.

13 **Q. How much Small and Rural Incumbent Local Exchange Company Universal Service**
14 **Plan support does Brazos receive each month?**

15 A. Under the current High-Cost Support mechanism, the Cooperative receives \$60,646 per
16 month in High-Cost Support for Brazos Telephone Cooperative, Inc. and \$62,714 per
17 month for Brazos Telecommunications, Inc. (BTI).³ On December 31, 2013, BTI was
18 merged into Brazos Telephone Cooperative, Inc., with the Cooperative as the remaining
19 entity.⁴ The merger, however, was not implemented in the TUSF administrator's system.
20 As a result, Brazos has been required to submit separate reports for TUSF support in the

³ See *Annual Adjustment to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA § 56.032(d)*, Docket No. 45809, Order, (Aug. 25, 2016).

⁴ See *Joint Application of Brazos Telephone Cooperative, Inc. and Brazos Telecommunications, Inc. for Approval of Sale, Transfer or Merger and for Amendment to Certificate of Convenience and Necessity*, Docket No. 42210, Order (July 11, 2014).

1 administrator's system for Brazos and for BTI. The combined support is \$123,360 per
2 month. For the twelve-month period prior to this proceeding, Brazos received a total
3 \$1,480,320 in High-Cost Support.

4 **Q. Under the Commission's rules and SB 586, how much additional High-Cost Support**
5 **can Brazos request in this proceeding?**

6 A. In accordance with SB 586 and 16 T.A.C. §26.407(g)(1), an adjustment "may not set a
7 small ILEC's support level at more than 140 percent of the annualized support the provider
8 received in the 12-month period before the date of the adjustment." Due to this statutory
9 limitation, Brazos may only seek \$592,128 in additional High-Cost Support in this
10 proceeding.

11 **Q. Assuming that Brazos received an additional \$592,128 in High-Cost Support in 2017,**
12 **what would Brazos' 2017 intrastate rate of return have been?**

13 A. Had Brazos received an additional \$592,128 in High-Cost Support in 2017, Brazos' 2017
14 intrastate rate of return would have been 6.12%. In other words, Brazos would still have
15 under-earned.

16 **Q. Have you done any projected earnings for Brazos?**

17 A. Yes.

18 **Q. Were those projections calculated in accordance with the Commission's prescribed**
19 **methodology for calculating intrastate earnings?**

20 A. Yes. For purposes of projecting intrastate earnings, I utilized the same methodology to
21 calculate intrastate earnings as contained in the Commission's prescribed Annual Report
22 form. In projecting Brazos' intrastate earnings, I included projected revenues, expenses,
23 and investments associated with these calendar years. Supporting calculations for these
24 projected earnings are included in Exhibit CD-2.

1 **Q. Do you have similar data for Brazos' historical earnings?**

2 A. Yes. Although I present Brazos' 2017 data and its associated Annual Report filed under
3 16 TAC § 26.407 here, I can attest that Brazos' prior annual returns were calculated
4 similarly and previously reported to the Commission. Specifically, Brazos' 2016 return
5 was -1.45% and its 2015 return was 2.27%.

6
7 **V. CONCLUSION**

8 **Q. What are the conclusions of your testimony?**

9 A. First, Brazos prepared its 2017 Annual Report in compliance with all applicable federal
10 and state rules and regulations. Second, including the Cooperative's proposed known and
11 measurable adjustments, Brazos needed an additional \$676,242 in order to earn a
12 reasonable intrastate rate of return for calendar year 2017. However, because of the
13 statutory cap limiting increases to 140% of Brazos' prior year of High-Cost Support,
14 Brazos may only request an increase of \$592,128 in this proceeding, which would have
15 resulted in a 2017 intrastate rate of return of 6.12%. Finally, because of this statutory cap
16 limiting Brazos' request for an increase in High-Cost Support, Brazos' intrastate earnings
17 will remain below the bottom range of the reasonable rate of return.

18 **Q. Does this conclude your direct testimony?**

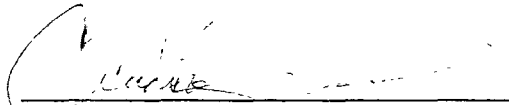
19 A. Yes, but I reserve the right to make modifications as appropriate at the time the testimony
20 is offered into the record.

AFFIDAVIT

STATE OF CALIFORNIA §
 §
COUNTY OF SAN JOAQUIN §


BEFORE ME, the undersigned notary public, this day personally appeared Chad A. Duval,
to me known, who being duly sworn according to law, deposes and says:

“My name is Chad A. Duval. I am of legal age and a resident of the State of
California. I certify that the foregoing testimony and exhibits are true and correct to the
best of my knowledge and belief.”


Chad A. Duval

Subscribed and sworn to before me, notary public, on this the 5 day of December, 2019.




Notary Public in and for the State of California

My Commission expires: 06/16/2022

CONFIDENTIAL

EXHIBIT CD-1

**WORK PAPER CALCULATING THE ADDITIONAL SUPPORT
NEEDED TO REACH A 6.75% RATE OF RETURN**

CONFIDENTIAL

EXHIBIT CD-2

WORK PAPER CALCULATING PROJECTED EARNINGS