



Control Number: 50796



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**PROJECT NO. 50796**

**REVIEW OF TUSF RATE**

**§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS**

**COMMENTS OF  
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.**

**TO THE PUBLIC UTILITY COMMISSION OF TEXAS:**

Texas Statewide Telephone Cooperative, Inc. (“TSTCI”) is a statewide association of 26 of the small independent and cooperative telephone companies providing telecommunications services to the vast farm and ranch rural areas of the state of Texas.<sup>1</sup> Each of TSTCI’s members receive support from the Texas Universal Service Fund (“TUSF” or the “Fund”) and have an interest in the health, stability and solvency of the TUSF. TSTCI files these comments in response to the Memo filed by Chairman Walker on May 13, 2020 and the discussion during the May 14, 2020 open meeting.

## I. Introduction

TUSF is a vital issue to TSTCI and its members which serve exclusively in the high cost rural areas of Texas. TSTCI appreciates the Public Utility Commission of Texas's (the "PUC" or the "Commission") attention to this issue and welcomes the opportunity to participate as action must now be taken to ensure the long-term stability and viability of the Fund.

For as long as there has been rural communications service provided by small investor-owned and cooperative telephone companies, there has been some mechanism to share the revenues of the network as a whole to preserve the universal service policy. The mechanisms by which this has been accomplished have evolved over time, but the underlying policy concern has remained steady, both nationally, and within Texas. In Texas, the Legislature has directed:

<sup>1</sup> A list of TSTCI's members can be found on its website at : <https://www.tstci.org/tstci-members>.

Since the creation of the PUC more than 45 years ago, the TSTCI member companies have, through legislative and policy advocacy, willingly remained subject to the full regulatory jurisdiction of the Commission. TSTCI's members serve much of the most remote, highest cost-to-serve, vast farm-and-ranch rural areas of Texas. While TSTCI has supported efforts for streamlined regulatory efficiency, its members have also always recognized the need of Commission oversight and support in order to ensure the statutory goal of universal service can be achieved for all Texans. TSTCI's membership consists solely of fully rate-regulated ILECs.

“It is the policy of this state to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at prices that are reasonably comparable to prices charged for similar services in urban areas.”<sup>2</sup>

Out of that policy, the TUSF was designed to replace prior mechanisms. While the underlying policy has remained steady, the industry has been ever evolving. As technology has advanced, many rules, including rules applicable to TUSF have not been adapted to keep up with the technological changes. The industry has evolved from Voice over Radio and Microwave, to Voice over Copper, to Voice over Fiber and now Voice over IP. It is now time for the rules to again be updated to ensure that policy concerns are met regardless of technology used to deploy the services. This must be done in order to ensure TUSF is administered in a technology neutral and competitively neutral manner. TSTCI will individually address each of the specific questions the Chairman has laid out in her memo. Additionally, TSTCI will also provide some background and discussion on the important policy questions that were raised during the open meeting discussion as well.

## **II. Legislative Direction**

First, TSTCI agrees with the Chairman’s comments during the open meeting that certain items are policy issues that must be taken up by the Legislature. However, as it relates to the truly small and rural companies in Texas, such as TSTCI’s members, TSTCI would contend that over the last decade, the Legislature has explicitly given that direction.

In 2011, the Legislature took several actions regarding TUSF. First, the Legislature recognized that there were distinct differences between the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). Each of TSTCI’s members participate in the SRILEC USP. Although these two plans had originally been created by rule, over the years, it became apparent that because of the differences in the plans, and those who receive support under the different plans, that a statutory

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<sup>2</sup> PURA § 51.001(g)

distinction be made. This was done in HB 2295 (2011), statutorily separating the THCUSP and the SRILEC USP in PURA § 56.021 (1) (A)-(B).

To follow up those actions, the Legislature also made another change in the 2011 session. HB 2603 (2011) created further separation between the support for the THCUSP and the SRILEC USP. This bill recognized that the then current system for distributing money from the Fund for the small and rural plan did not adequately address advancing technology and the changing needs of the telecommunications consumer. HB 2603 sought to provide greater flexibility to telecommunications providers by providing options for support adjustments in the SRILEC USP. This move recognized that due to changing technologies, distributing support by “access lines” for the small and rural companies no longer met the universal service policy. The Legislature created PURA § 56.032 to address TUSF adjustments for those in the SRILEC USP. At that time, certain options were made available on a temporary basis while a long-term solution could be formulated. For all incumbent local exchange companies (ILECs), the option was given to move away from per-line support amount and freeze support at then current levels. For small and rural ILECs that were not electing companies under Chapter 58 or 59, the option was given to move support for the small companies away from monthly per-line amounts, instead allowing for fixed monthly support which was CPI adjusted on an annual basis. Of the 46 ILECs eligible at the time to elect into this option, 45 chose to move to the fixed monthly support adjusted on an annual basis. The remaining eligible company and all other ILECs receiving support under the SRILEC USP chose to freeze their support at that time.

In 2013, the Legislature further addressed the SRILEC USP recognizing the differences in ILECS providing services even within the SRILEC USP. At that time, PURA § 56.032 was amended so that all ILEC companies and cooperatives with less than 31,000 lines were allowed to continue receiving monthly support amounts, adjusted annually, until a long-term solution could be formulated. Each of TSTCI’s members serve fewer than 8,000 lines and clearly fall into this category. For all ILEC companies and cooperatives serving more than 31,000 lines, and receiving support from the SRILEC USP, support was moved back to a per-line support amount, and a needs test was established to ensure that no company was eligible for support in an exchange that had unsubsidized competitors. Each of the SRILEC USP participants that served more than 31,000 access lines has undergone this “needs test” process.

In 2017, a long-term solution for those SRILEC USP participants that are not electing companies under Chapters 58 or 59 and serve less than 31,000 access lines was put into place. The Legislature adopted a long-term, regulatory-efficient, and “needs based” support program to replace the expiring CPI adjusted support plan. This plan was formulated for the truly small and rural ILECS recognizing that each of the 45 eligible companies is fully rate regulated by the Commission and authorized by statute to earn a reasonable return. SB 586 (2017) amended PURA § 56.032 and allowed for a regulatory efficient manner of adjusting the support and rates of the small and rural companies, by (1) establishing a range of return that was “reasonable” without the need for a litigated rate case, (2) allowing for discretion to be exercised based on reviews of each individual ILEC, and (3) providing the Commission with more information on each of these ILECs than they have received before in any situation short of a rate case. This statute, and TAC § 26.407, implementing it, provide a regulatory efficient, open, and accountable distribution and adjustment methodology for the under 31,000 line ILECs in the SRILEC USP. This methodology will be studied by the Commission in 2022 for continuation or refinement in the 2023 legislative session.

The Legislature has not addressed the THCUSP, specifically in some time. However, clearly, the Legislature has worked tirelessly and given clear direction with regard to the SRILEC USP, and specifically the support methodology for the companies that are not electing companies under Chapter 58 or 59 and serve fewer than 31,000 access lines.

### **III. Comments in Response to Memo**

In her memo, Chairman Walker raises several specific questions for comment. TSTCI provides the following comments in response:

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

Yes. It is TSTCI’s position that the current TUSF assessment must be raised. Due to the current methodology, the TUSF assessment must be raised in order to meet the Commission’s statutory duty to ensure that the fund is solvent.

TSTCI, through similar analysis as described by the Chairman in her memo, has also determined that despite the drop in TUSF disbursements over the last decade, based on current collections and disbursements, TUSF revenues will soon fall short of the statutory obligations set out in PURA § 56.023. While we do not have the same access to information as the TUSF

administrator or the Commission, basing our calculations off of publicly available data, TSTCI agrees with the Chairman that the assessment rate would need to be adjusted to somewhere between 6.4% and 6.9%.

While it is TSTCI's position that the current assessment must be raised, TSTCI sees that as only a short-term solution. TSTCI agrees with the comments made by Commissioner D'Andrea that both a short-term and long-term solution need to be formulated. TSTCI would support a rulemaking that would address some of the other questions raised to better formulate a long-term contribution methodology.

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

Yes. While TSTCI supports the move to a connections-based assessment, should the Commission choose to retain the current TUSF revenue-based assessment, it must be expanded to explicitly include VOIP service.

IP technologies are being deployed by all regulated providers, including TSTCI members, as capital investment decisions are made to replace older technology. Most new transport facilities deployed by all telecommunications providers are IP based. In fact, most new switching equipment (i.e. soft switches) is IP based technology and is more a server or a system of routers than traditional TDM switching equipment. IP-enabled technologies are the building blocks of all telecommunications carriers' networks of the future. While all telecommunications carriers and end-user equipment is migrating to IP based technologies, it is most often the new providers that are the early adopters of the newest technology available because they are not faced with large capital investment to replace and maintain a system that is being depreciated over numerous years under the current regulatory policies. IP based technologies have become the norm rather than the exception over the last decade as the network of telecommunications providers have evolved. Voice over IP technologies have matured considerably over the past few years such that the new "VOIP" providers now have their sights set on huge residential markets across the nation.

The Commission is embarking on a decision of far-reaching significance as the telecommunications industry continues its shift to IP-enabled technologies. These decisions have important implications to all telecommunications providers. TSTCI contends that these decisions should be based on the *function* and *service* that the technology provides to end users and not based

on a specific technology that will evolve and permeate all networks. Voice over IP technology is clearly the newest form of plain old local exchange service with added non-voice applications provided by some telecommunications providers. These non-voice applications are not the issue and should not be used as a diversion in any rulemaking proceeding. Regardless of how the Commission classifies a VOIP provider, if the provider is offering services that are equivalent to the local exchange services that are being regulated by this Commission today, then the services being provided by those carriers are telecommunications services which qualify them as telecommunications providers who should be subject to the assessment.

The basic service offered by providers that use IP based technologies is a means to complete a call across town (local calling) or across the country (interexchange calling). The non-voice services are added benefits to the consumer, not a determining factor in the classification of carriers. Voice over IP providers are offering basic services that are identical in character, function and service to those being provided by regulated telecommunications today, with the only difference being the technology behind the service. A new technology should not be the basis for escaping regulation or shaping regulatory policy. The Commission should focus on the functions and services provided by Voice over IP providers and not get tangled in the web of what are clearly information, or non-voice, services that are offered on top of basic local and interexchange voice services.

This position and argument is not merely cursory, but also clearly supported by statute and rule, and the ability to make a determination is clearly within the Commission's jurisdiction. In fact, in order to meet the standards set forth in statute and rule, TSTCI contends VOIP providers must be made subject to the assessment.

The Commission's basic jurisdiction and charge in this matter is clear and unambiguous. The Commission's authority is borne primarily out of Public Utility Regulatory Act ("PURA") § 56.022.

First, as to the primary issue of funding of the TUSF, "the universal service fund is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base."<sup>3</sup> The charge is on services, and at rates the commission determines. Subsections (c)(1) and (c)(3) go on to state that the Commission may not grant an unreasonable

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<sup>3</sup> PURA § 56.022(a). Emphasis added.

preference or advantage to a telecommunications provider or subject a telecommunications provider to unreasonable prejudice or disadvantage. There also is no limitation within the rule that mandates the charge be percentage based, revenue-based nor does it exclude a flat-fee charge on services. TSTCI also contends that these sections convey clear jurisdiction and place an affirmative duty on the Commission to determine who qualify as telecommunications providers. In doing so, the Commission is charged with the duty of ensuring fair application of any charge to services across all providers who access the customer base, thereby avoiding prejudice or competitive advantages simply from application, or avoidance of application, of the charge.

In making the determination as to what services, and what providers, the charge is applied to, the Legislature did not leave the Commission without guidance. In addition to specifically listed carriers, PURA § 51.002(10)(A)(xi) allows that a telecommunications provider can be any person or entity determined by the commission to provide telecommunications service. 51.002(10)(B)(i) demonstrates the breadth of this authority specifying that providers of enhanced or information services are not exempted unless they do not also provide telecommunications services. While “telecommunications service” is not specifically defined in statute, guidance is littered throughout the code and all who provide such services should be assessed.

This is key, because, as pointed out by the Chairman, TUSF receipts are rapidly declining. TSTCI contends that a key reason for this decline is that the rules have not been clarified to encompass changes in technologies and how services are packaged and marketed, rather than a decline in the use of telecommunications services. Specifically, the treatment of VOIP service is one service which is treated very inconsistently. Many VOIP providers maintain that VOIP is a data or information service that is provided via broadband and thus not a telecommunications service which subjects them to the TUSF assessment. This position is neither consistent with the guidance of statute, nor the treatment of VOIP services by other Texas state agencies, federal jurisdictions, and other States.

PURA § 51.002 (13)(C) defines VOIP service as a service that, among other things, permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network. PURA § 51.001(a) describes communications providers as including providers not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol providers. The ability to assess VOIP is clearly within the PUC’s jurisdiction. PURA § 52.002(d)(3) states that statutory limitations on



regulation do not require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on Voice over Internet Protocol service.

For some time, it has been ambiguous as to whether VOIP providers and services were subject to the current TUSF assessment. The current rule on TUSF assessments is really the only place “Telecommunications services” is defined, and it refers to the Texas Tax Code § 151.0103. That section is extremely broad with its definition as follows: “the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or that may be devised, including but not limited to long-distance telephone service.” While “internet access” service is exempted from that definition, VOIP is not, and clearly when looked at concurrently with PURA’s definition of VOIP, it is a telecommunications service.

If the PUC looks beyond the state and its own definitions and analysis, the FCC has also provided guidance that VOIP is a telecommunications service. In the April 2004 IP in the Middle Order<sup>4</sup>, the FCC concluded that service provided by AT&T, and later defined as interconnected VOIP service, was a telecommunications service under the Act rather than an information service<sup>5</sup> and as such was subject to interstate access charges.<sup>6</sup> In the May 2005 VOIP 911 Order<sup>7</sup>, the FCC required interconnected VOIP providers to supply enhanced 911 emergency calling capabilities to their customers and to provide E911 service as a condition of providing that service to a consumer. In that Order, the FCC defines “interconnected VOIP Services” as services that (1) enable real-time, two-way voice communication; (2) require a broadband connection from the end user’s location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN.<sup>8</sup> Later that year, the FCC also found providers of interconnected VOIP services to satisfy the Communications Assistance for Law Enforcement Act (“CALEA”) definition of “telecommunications carrier” and that CALEA’s Information Services

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<sup>4</sup> *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, April 14, 2004 (IP in the Middle Order).

<sup>5</sup> *Id.*, ¶12.

<sup>6</sup> *Id.*, ¶15.

<sup>7</sup> *In the Matters of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WS Docket No. 04-36, WC Docket No. 05-196 (VOIP E911 Order), May 19, 2005.

<sup>8</sup> *Id.*, ¶ 24.

Exclusion does not apply to interconnected VOIP services.<sup>9</sup> In the June 2006 Interim Contribution Methodology Order,<sup>10</sup> the FCC established universal service contribution obligations for interconnected VOIP providers stating, “that to the extent interconnected VOIP services are telecommunications services, they are of course subject to the mandatory contribution requirement.”<sup>11</sup> In that Order, the FCC determined that interconnected VOIP providers provide “telecommunications” and that by definition interconnected VOIP services permit users to receive calls from and terminate calls to the PSTN.<sup>12</sup> Not only did the FCC determine that VOIP providers are providing telecommunications service, but are providers of interstate telecommunications service.<sup>13</sup> In the March 2007 Customer Proprietary Network Information (“CPNI”) Order, the FCC extended section 222 CPNI obligations to interconnected VOIP providers.<sup>14</sup> In the June 2007 Telecommunications Relay Services (“TRS”) Order, the FCC extended disability access requirements and the TRS requirements to providers of interconnected VOIP services.<sup>15</sup> In the 2007 Local Number Portability Order, the FCC extended porting obligations to interconnected VOIP providers, and also extended the obligation to contribute to shared numbering administration costs.<sup>16</sup> The FCC required interconnected VOIP providers to pay Fiscal Year 2007 regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as other interstate telecommunications service providers.<sup>17</sup> In May 2009, the FCC issued an order requiring interconnected VOIP providers to notify their customers before they discontinue, reduce or impair

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<sup>9</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, August 5, 2005, para. 8.

<sup>10</sup> *In the Matter of Universal Service Contribution Methodology and Universal Service Support Mechanisms*, WC Docket No. 06-122, NSD File No. L-00-72, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, WC Docket No. 04-36, Report and Order and Notice of Further Rulemaking, June 21, 2006 (Contribution Methodology Order), ¶ 46.

<sup>11</sup> *Id.*, ¶ 35.

<sup>12</sup> *Id.* ¶ 41.

<sup>13</sup> *Id.*, ¶ 42.

<sup>14</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, March 13, 2007 (2007 CPNI Order).

<sup>15</sup> *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, ¶ 17-31 (2007) (TRS Order).

<sup>16</sup> *2007 Number Portability Order*, ¶ 1.

<sup>17</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140, ¶ 11-13 (rel. Aug. 6, 2007).

service.<sup>18</sup> The FCC determined that because interconnected VOIP service is increasingly used as a replacement for traditional voice service, consumers expect the same type of regulatory protections they would receive with traditional telephone service. Accordingly, the FCC extended the same streamlined discontinuance obligations to interconnected VOIP providers that apply to domestic non-dominant telecommunications carriers. Finally, in the *USF/ICC Transformation Order*, the FCC recognized that VOIP providers have both interstate and intrastate traffic and VOIP providers were ordered to pay access.<sup>19</sup> These are but a few of the examples of FCC guidance on this issue.

The analysis of this issue is key, as whether the current methodology is kept, or whether the per connection methodology proposed by questions 3 and 4 are considered, all telecommunications providers, including VOIP providers, must be subject to the assessment.

TSTCI would argue that a rulemaking is not necessary to assess VOIP providers as their provision of a telecommunications service clearly falls under the Commission's current rules and definitions, but if such a proceeding is necessary for clarification, TSTCI would welcome it.

In fact, in 2012, the Commission explored clarification of the application of TUSF fees to VOIP service providers and proposed a rule for adoption which would have done just that. In Project No. 39717, following workshops and comments, staff proposed a rule clarification to specifically include VOIP providers as telecommunications providers. In the memo proposing adoption of the rule, staff laid out their reasoning as follows:

"PURA §51.002(13) defines VOIP service to include three elements, including the element that the service "permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network." This describes the core telecommunications service. VOIP providers therefore provide telecommunications service. VOIP providers also provide telecommunications service "to customers of this state" under PURA §51.002(10)(A)(xi) and have "access to the customer base"

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<sup>18</sup> *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Report and Order, Adopted May 13, 2009, FCC 09-40.

<sup>19</sup> See *In the Matter of Connect America Fund; A national Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011 (*USF/ICC Transformation Order*).

under PURA §56.022(a), because they make sales to telecommunications service customers in Texas. A VOIP provider is therefore a "telecommunications provider that has access to the customer base. The commission therefore adopts the proposed amendments without changes."<sup>20</sup>

The proposed rule in 2012 was allowed to lapse as no action was taken as the Commissioners evaluated the issue. TSTCI is unaware of the specific reasoning for this, as none was given, but based on the fact that distributions were in decline, further TUSF reductions were imminent, the receipts were not in a state of rapid decline, and many VOIP providers actually already paid the assessment, TSTCI can understand why this was allowed to happen. Based on the current state of the TUSF, similar inaction at this time would not be prudent.

Based on the assumption that VOIP providers are determined by the Commission to be telecommunications providers and yet are not subject to the uniform charge, then they are granted unreasonable preference or advantage.<sup>21</sup> Alternatively, if the Commission does not make a determination regarding VOIP providers when it could be determined that they are providing telecommunications services, other telecommunications providers, who would benefit from a larger contribution base for the uniform charge, are being made subject to unreasonable prejudice or disadvantage.<sup>22</sup> This falls short of the Commissions statutorily charged duties.

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

Yes. While TSTCI believes that assessing all providers under the current methodology would provide some relief for the fund and provide a better solution than merely raising the assessment rate, it is our strong contention that such action would still only be a temporary solution. The current methodology does not mesh well with the technological advancements and current regulatory practices. In many ways, the current shortfall is attributable to a declining intrastate revenue base rather than a decline in use of telecommunications services. Due to changes in regulatory and billing practices, this trend will continue. Over the past decade most of the large telecommunications providers in the state have become deregulated. With technological advances,

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<sup>20</sup> See *PUC Rulemaking Proceeding Related to Voice over Internet Protocol (VOIP) Services and Texas Universal Service Fund (TUSF)*, Staff Recommendation at p.9 (Aug. 9, 2012).

<sup>21</sup> PURA § 56.022(c)(1).

<sup>22</sup> *Id.* at (c)(3).

telecommunications services (wireline, wireless, and VOIP) have all been paired with data or information services of some kind. As these services, and pricing, are deregulated, much of the revenue that traditionally would be considered intrastate telecommunications revenue, has been transitioned to internet access or data, and “voice” service just becomes another app on the circuit.

Again, while broadening the base can provide temporary relief for the fund, ultimately, if the contribution method remains an assessment on intrastate taxable telecommunications receipts, certain payors may not contribute at all as the intrastate rates charged to their customers could be zero. This creates an unreasonable advantage for deregulated telecommunications providers, as they are given the competitive advantage of avoiding the TUSF assessment, or passing through a very minor assessment, while traditional rate-regulated providers and their customers will be additionally burdened as the assessment rate continues to be forced up on their higher intrastate regulated rates.

TSTCI urges the initiation of a rulemaking to change the methodology for funding the TUSF. TSTCI contends a connections-based contribution methodology is a long-term solution that is both technology and competitively neutral. Further, by ensuring that all providers with voice service customers contribute to the TUSF, it lessens the burden on the consumers by spreading the contribution over a larger base.

TSTCI fully supports a move away from the revenue-based assessment methodology for many reasons. Such a move to a connections-based approach provides a long-term solution that provides stability for the TUSF, along with clarity and consistency to both providers and consumers.

To ensure a contribution method that is non-discriminatory and competitively neutral, a truly uniform charge must be uniform. This is no longer possible with a revenue-based assessment. With a charge on services that is allowed to be passed through to customers, this charge, or fee, should be immune to technology or regulatory issues. A per-connection methodology would eliminate the impact that (1) revenue shifting between voice and data, and (2) the effect downward pressure on wireless rates has on the current methodology. Without some sort of shift, the current rate will continue to see upward pressure on a limited section of the industry, creating a competitive imbalance and burden on a select group of providers and customers.

As discussed above, what is contributed to the TUSF now, and passed through to customers, can vary widely. This is very dependent on what rate is paid for intrastate telecommunications service. Based on which technology the customer or provider uses, and whether the provider is regulated or not, you could see an almost identical service being provided in some areas for zero that is provided in another area, or in the same area, for a rate in excess of \$30.00. This lends itself to a contribution methodology that no longer creates equal footing, but an environment fraught with disadvantaged or preferential treatment based on technology or rate regulation.

In addition to creating a competitively neutral uniform charge, a move to a connections-based assessment should also ease administrative burdens on the Commission and the companies. While the initial determination of how to determine access lines, or connections, will garner some effort, once that determination is made, logistically, a connections-based approach is easier to apply, monitor and regulate. It would create consistency and clarity for consumers, and due to a consistent fee across all connections regardless of revenues, and there would no longer be fluctuations or shifts in revenue that would create the need for regular increases or decreases in the charge as we are experiencing now.

These are the exact issues some other states have considered as they have moved from a revenue-based assessment to a connections-based assessment. New Mexico and Oklahoma are two examples of other states that have, or are considering moving all, or some, of its state USF funding to connections-based assessments. Of particular interest, Utah is another state that has gone down that road. While a law allowed them to place a surcharge on intrastate revenue, on access lines or connections, or a combination of the two, Utah made the determination that a per-connection surcharge provided greater financial stability to their fund. Because of the increase in contributors by including all providers of telecommunications services, including VOIP providers, it allowed them to maintain a fund that meets their statutory obligations with a consistent charge across the industry setting a sustainable course.<sup>23</sup> TSTCI contends that a similar course of action, by the Commission in Texas would have a similar stabilizing and sustaining effect of the TUSF.

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<sup>23</sup> See *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Notice of Rulemaking and Response to Comments (May 16, 2017). <https://pscdocs.utah.gov/Rules/17R36001/29400317R36001nofartc5-16-2017.pdf>

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

Yes. For the reasons described in 2 above, VOIP services should be included in any assessment. Particularly, based on the assumption that VOIP providers are determined by the Commission to be telecommunications providers and yet are not subject to the uniform charge, then they are granted unreasonable preference or advantage. Alternatively, if the Commission does not make a determination regarding VOIP providers when it could be determined that they are providing telecommunications services, other telecommunications providers, who would benefit from a larger contribution base for the uniform charge, are being made subject to unreasonable prejudice or disadvantage. This falls short of the Commissions statutorily charged duties.

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

No. TSTCI does not believe such a rule would be appropriate for a majority of the areas and providers covered by the SRILEC USP.

In reviewing the map of Metropolitan Statistical Areas (MSAs), many include counties that stretch far into actual rural areas. In most cases, one ILEC often serves within the actual metropolitan area, and then small and rural ILECs provide service to the surrounding rural areas within the county where the original larger ILEC could not make a business case to serve. In fact, in an initial review, TSTCI believes that 19 of its members and 32 of the 43 small and rural ILECs that are fully rate regulated and reviewed under PURA § 56.032 and TAC § 26.407 have at least a portion of their service territory that overlaps with an MSA. There can be no argument that the territories covered by these small providers are rural and high cost. In most cases, to eliminate entire counties from being eligible for support is overly broad and not representative of the makeup of large percentages of the landmass of the counties at issue. This is clearly seen when overlaying the ILEC boundary map with the MSA map.<sup>24</sup>

It is TSTCI’s position that any such rulemaking must, by law, clearly exempt all small and rural ILECS that are not electing companies under Chapter 58 or 59 and serve less than 31,000

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<sup>24</sup> TSTCI has a 24” x 24” map it has created. A hard or digital copy will be provided to the commission upon request, but a smaller version does not provide functional detail.

access lines. Each of those companies receive support in accordance with the rate of return methodology recently adopted and set forth by statute. The Commission cannot, by rule, override that statutory mandate. Additionally, each of those ILECs receive support by study area, not by exchange. Even if such a rule only excluded certain exchanges, it would not be allowable as it would circumvent the provisions of PURA § 56.032. TSTCI has not reviewed the other ILECs who are electing providers under Chapter 58 or 59, or serve more than 31,000 lines, and still receive support from the SRILEC USP. Although their support methodology is not statutorily set, one would have to assume that many of their exchanges that overlap MSAs were already reviewed in some capacity during the “needs test” proceedings.

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

While TSTCI sees some similar concerns for eliminating entire counties from eligibility to receive TUSF under the THCUSP as it has for areas in the SRILEC USP, TSTCI does not take a position on this question.

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

Again, TSTCI contends that all ILECs that are not electing companies under Chapter 58 or 59 and serve less than 31,000 access lines should be exempted from any reductions as contemplated under 5 and 6 above as their support and adjustment methodology are statutorily set. However, TSTCI remains consistent in its position that each of its members are under the full jurisdiction of the Commission, including its ability to adjust rates.

With that said, the rates of most of the small and rural ILECs are reviewed on at least a yearly basis. As part of the annual review process, and adjustment proceedings under TAC § 26.407, the PUC has the opportunity to review and adjust a company’s rates if appropriate. Under PURA § 56.032 (b) “except as provided by Subsections (c) through (j), the commission may revise the monthly support amounts to be made available from the Small and Rural Incumbent Local



Exchange Company Universal Service Plan by any mechanism, including support reductions resulting from rate rebalancing approved by the commission, after notice and opportunity for hearing.” Most of the ILECs in the SRILEC USP fall under sections (c) through (j) which sets adjustments based on the range of a reasonable return. In section (i) the commission is instructed that “...a rate adjustment under this subsection may not adversely affect universal service.”

As adjustments have been reviewed under TAC § 26.407 (h) no rate adjustments have been made for precisely that reason. For many rural customers served by these ILECs, they have seen their rates increased by as much as 300% over the past decade. In many cases rates have surged from close to \$6.00 for local rates to in excess of \$18.00 in an attempt to meet the FCCs local rate floor. In 2017 the FCC recognized that rural customers are those least able to afford such increases when it froze its residential rate floor. After an extensive study, the FCC reversed the regulation and entirely eliminated the residential rate floor stating that it was going to avoid “needlessly increas[ing] telephone service rates.”<sup>25</sup> The FCC went on to explain that it believed it was appropriate to avoid a nearly 50% increase in many rural Americans’ telephone rates. The FCC also stated that its action would allow rural customers to receive quality services at “just, reasonable, and affordable rates,” while also ensuring that rural carriers continue to receive the predictable and sufficient universal service support needed to serve high-cost areas.<sup>26</sup> As a result of the FCC eliminating the residential rate floor this means that rates can reasonably be set below \$18 (the last effective rate floor) without any loss of universal service fund distributions, and without necessarily creating a problem in terms of comparable rates.

TSTCI would argue that imposing greater rate increases on the small regulated ILECs would adversely impact universal service. 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,

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<sup>25</sup> 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>.

<sup>26</sup> *Id.*

regardless of geographic location.”<sup>27</sup> 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.” TSTCI can identify no less than 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.<sup>28</sup>

As companies made their filings requesting support under PURA § 56.025 and adjustments under TAC § 26.407(h), they have repeatedly provided that their customers are rural subscribers, many of whom are older and on fixed incomes. The less affordable small and rural ILEC rates become, the likelihood of their customers cancelling their local service increases. Moreover, further increases in local service rates could actually result in a loss of intrastate revenues caused by a loss of access lines. Such a loss of intrastate revenue actually places more burden on the TUSF than relieving it under current methodologies. The policy of universal service is to make the service available to more rural customers, not cause those rural customers to cancel the available service due to unreasonably high rates.

### III. Comments on Additional Issues

In the Chairman’s comments during the open meeting, she raised the issue of supplementation of revenue following adverse action by the FCC. The small and rural ILECs are quite familiar with this process set out in PURA § 56.025 and TAC § 26.406. Over the years, the FCC has made decisions or changes in federal support mechanisms that have had a severe impact on the revenues of Texas companies. These decisions are often made in an attempt at a one size

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<sup>27</sup> *Report to the 80th Texas Legislature, Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA § 56.029* at 3 (Jan. 2007).

<sup>28</sup> 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 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).

fits all methodology without consideration of the individual impact that it may have on specific companies and the truly high cost nature of the service territory of certain small ILECs. The Legislature wanted to insulate Texas ILECs from sudden reductions in revenues that could adversely impact the rates of Texas customers and the health of these Texas ILECs. In SB 583 (2013) the scope of § 56.025 was limited to ensure only those small companies, specifically the small ILECs with under 31,000 lines who cannot absorb such impacts, were protected. In most cases, rate increases offset a large portion of the revenue impacts, but as additional increases would have been harmful to universal service, the remainder of the recovery has come through the TUSF. Over the two most recent fiscal years, the impact to the TUSF from this process has been less than \$6,000,000 annually but has been of critical importance for the small Texas ILECs that are affected. TSTCI does not see this amount as a tremendous burden on the fund but understands that every category of distribution is of concern when a \$75 million dollar fund balance reduction occurs within a single fiscal year. This only highlights more the critical nature of contribution methodology reform as this fund balance decline has happened in an environment where overall distributions have reduced dramatically.

#### **IV. Summary**

TSTCI appreciates the attention the Commission is giving to this very critical issue. Without an adequate, reliable and stable TUSF system, a large portion of Texas would not have access to reliable high quality communications services. Many efforts have been made over the last decade plus to “right size” the TUSF. This included rate rebalancing proceedings for the large and mid-sized ILECs at the PUC. Large ILECs that have sought the benefits of deregulation have given up TUSF support as they were able to operate and sustain their services and business model without it. The Legislature has acted to ensure that certain ILECs within the SRILEC USP showed a need for support on an exchange by exchange basis. Likewise, they have ensured that fully regulated ILECs, such as TSTCI’s members, are subject to a thorough annual review with adjustments being made to support in a regulatory efficient manner. Supplementation for revenue impacts from FCC action has been limited to only those small companies who cannot absorb such an impact, with a portion having been recovered through systematic rate increases. With all of those efforts from both the PUC and leadership from the Legislature, based on the 2011 scope of competition report and the PUCs quarterly TUSF reports, the fund has seen a reduction in distributions from a high of \$586,250,930 in 2004 to the \$208,790,868 distributed in the fiscal

year ending August 2019. Although distributions can always be refined, this reduction in distributions has been truly significant. Yet, the TUSF is still facing a funding crisis. This clearly is not a crisis of distribution, but rather the need to modernize a contribution methodology that has been ignored for way too long. As technology, regulation and billing practices have changed, it is time for contribution methodology to be modernized as well. A connection-based contribution methodology is a competitively and technology neutral long-term solution that is insulated from the fluctuations and competitive disadvantages that an assessment on shifting, and downward trending, intrastate telecommunications revenues in deregulated markets creates.

TSTCI understands that an increase in the assessment rate, or an inclusion of all telecommunications providers, specifically VOIP providers, could provide some short term stability to the fund. However, it is our position that, with the tools and authority the PUC currently possesses, now is the time to create a long-term solution to maintain the solvency and consistency of the fund and the assessment. TSTCI appreciates the actions of the Chairman to initiate this proceeding and looks forward to working with the PUC and other industry participants on this very important issue.

Respectfully submitted,

**Richards, Elder & Gibson, PLLC**

12223 Quaker Ave. (79424)

P.O. Box 64657

Lubbock, Texas 79464-4657

Telephone: (806) 798-8868

Facsimile: (806) 798-8878

Email: dgibson@regllp.com

By /s/ D. Daniel Gibson

D. Daniel Gibson, SBN 24045939

*Attorneys for Texas Statewide Telephone Cooperative, Inc.*