



Filing Receipt

Received - 2022-04-18 01:23:43 PM
Control Number - 53140
ItemNumber - 15

PROJECT NO. 53140**REVIEW OF THE TEXAS
UNIVERSAL SERVICE FUND****§
§
§****PUBLIC UTILITY COMMISSION

OF TEXAS****REPLY COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.****TO THE PUBLIC UTILITY COMMISSION OF TEXAS:**

COMES NOW Texas Statewide Telephone Cooperative, Inc. (“TSTCI”) and files these reply comments in response to comments filed in this project by other stakeholders. According to Commission Staff’s Questions for Comment filed March 11, 2022, these reply comments are timely filed on or before April 18, 2022.

I. GENERAL REPLY COMMENTS

TSTCI appreciates the ongoing efforts of the Public Utility Commission of Texas (“PUC” or the “Commission”) as it reviews the effectiveness of SB 586, its provisions as codified in PURA § 56.032, and the rules as adopted in 16 TAC § 26.407. TSTCI has reviewed the comments filed by multiple stakeholders in this project. Many of those filing comments in this project also participated in Project No. 47669 where the SB 586 rules were adopted for implementation. Following review, TSTCI supports the comments and information provided by TTA in this project as TSTCI’s positions align with those taken by TTA. While some other parties had no comments relevant to this project, simply reserving the right to participate, TSTCI will respond to specific stakeholder comments raised below.

II. RESPONSE TO COMMENTS OF DIALTONE SERVICES, L.P.

Dialtone Services, L.P. (“DTS”) filed comments in this proceeding primarily focused on the lack of PUC implementation of TAC § 26.407(j)(3). TSCIT can agree with DTS that this portion of the rule has not been properly implemented by the PUC. As DTS points out, Project 50064 was opened in October of 2019, but implementation was never carried out.

While DTS is correct in pointing this lack of implementation out, it is wholly irrelevant to the particular questions to be addressed by this project. The Legislature was very specific as to the scope of this review, as was Staff with their request for comment. TSTCI would strongly disagree

with DTS's contention that lack of implementation of § 26.407(j)(3) should somehow stop considerations or actions rightfully taken under the properly functioning sections of the rule.

PURA § 56.032 and TAC § 26.407 were primarily designed to provide a regulatory efficient mechanism for evaluating the revenue and support needs of the qualifying small and rural ILECs which fall under its provisions. It gives the PUC the data necessary to make determinations as to the reasonableness of regulated costs and expenses. When appropriate, it was meant to provide the avenue for small ILECs to request proper adjustments without the need for litigated rate cases. While TSTCI can sympathize with other ETPs which may not have received all support for which they may be entitled under the rule, the intention and purpose of the rule cannot be further frustrated by stopping the entirety of the functioning of the rule. The complaint of DTS is one which the PUC could address directly, without affecting other portions of the rule which have been fully implemented and are working as intended.

III. RESPONSE TO COMMENTS OF THE TEXAS CABLE ASSOCIATION

In its comments, the Texas Cable Association ("TCA") chooses to focus on two primary issues, the confidential nature of the reports, and the appropriateness of continuing to use the FCC's rate of return.

First, the TCA misrepresents that the small ILECs request "adjustments" by filing an "annual report." The "annual reports," established under PURA § 56.032(d) are not a request for an adjustment but serve as a tool for Commission staff to evaluate small and rural ILECs. The annual reports allow Commission staff to review costs and expenses and determine if support levels, when combined with regulated revenues, allow the provider the opportunity to earn a reasonable return. Commission staff is given the tools to review expenses, cost allocations, affiliate transactions, and make adjustments as they deem appropriate based on their determination on their evaluations of whether costs are reasonable and necessary.¹ Based on this review, and after any adjustments Commission staff may make, the PUC then categorizes the small providers, thus determining their eligibility to "request" an adjustment, if appropriate.

In the event a small provider is eligible for an adjustment, and chooses to make an application, they make such a request by initiating a contested case proceeding. Notice of such proceeding is published in the Texas Register and provided directly to the Office of Public Utility

¹ See 16 TAC § 26.407 (e)-(g).

Counsel. Notice is also provided to its customers that rate increases may be required as a part of any adjustment.²

While these applications for adjustment are eligible for administrative review or informal disposition,³ third parties may intervene, and may access confidential information filed as a part of the contested case, if the party is subject to an appropriate protective order.⁴ While the TCA may be correct in its statement that non-parties may not be able to provide fully informed responses to the questions being posed by the Commission in this project, it does not mean that they have not had the opportunity to be a party. Rather, they have trusted the process, and Commission staff, to properly evaluate the small providers as they have chosen not to intervene when more than 20 adjustment proceedings have taken place to date.

Second, the TCA claims the use of the FCC's rate of return is a central flaw in the statute. It quotes the FCC and NARUC comments as conclusions that the rate of return rules "no longer make sense." These quotes are again taken out of context as somehow representing a flaw in PURA § 56.032. If one looks at the quotes which are relied upon, the focus of the comments are on the separations process and the allocations between interstate and intrastate rather than the prescribed rate of return. The separations and allocations process is not controlled by the PUC, nor the providers under the jurisdiction of the PUC, but are the rules by which these providers have to allocate their costs and expenses, regardless of how the TCA, the carriers or the PUC may feel about them. The appropriate place for the TCA to attack separations or allocations factors is at the FCC where those determinations are made. If the FCC allocates more costs and revenues of the network to the interstate jurisdiction, it will have an impact on the providers under PURA § 56.032 without any changes having to be made to the SB 586 mechanism.

In fact, it is the very separations and allocations processes complained about by the TCA which make TUSF and the SB 586 so vital. As much of the small providers costs and expenses are required to be assigned and allocated to the intrastate jurisdiction, in order to be able to recover those costs and expenses and earn a reasonable return, then a process which evaluates the intrastate

² See 16 TAC § 26.407 (h).

³ See PURA § 56.032(h).

⁴ See 16 TAC § 26.407 (i).

costs and expenses, after separation and allocation, to determine a reasonable rate of return must exist.

IV, RESPONSE TO COMMENTS OF OPUC

The Office of Public Utility Counsel (“OPUC”) limited its comments primarily to the use of the FCC rate of return, and the need of the PUC to continue to evaluate solutions to sustain, administer and modernize the TUSF.

OPUC recommends either continuation of the use of the FCC’s rate of return or conducting a deeper review. TSTCI would rely on its initial comments and point to those of TTA also in support of the continued appropriateness of the use of the FCC Rate of Return. TSTCI would again emphasize that the bottom of the reasonable range is currently 6.75%, and a majority of the small and rural carriers were earning below the bottom of the reasonable range, even after adjustment, prior to the PUC failing to fully fund, or fully distribute TUSF revenues.

TSTCI would concur in the comments of OPUC that the PUC should reconsider all of its options under current statute, without the need for Legislative approval, to improve the strength and continued resiliency of the TUSF. While OPUC states that it may be time for the Legislature to consider changes to qualifications and structure of TUSF, TSTCI would again urge that the procedures and processes developed by SB 586 be allowed to work for small and rural ILECs for a reasonable time with full funding and distributions before any changes are considered.

V. RESPONSE TO COMMENTS OF CTIA

CTIA does not provide answers to the specific questions posed by Commission staff, but rather generally provides comments as it relates to the availability of appropriated federal broadband funding. While CTIA is correct that there are billions of dollars available for deployment and operation of broadband networks, it falsely makes the assumption that these funds are available for the same networks that the Texas small and rural ILECs use to provide regulated services.

Yes, there are funds available for Broadband, but TUSF is limited to intrastate regulated services. The small and rural ILECs must follow allocation and separations processes to carefully make sure that TUSF is only being used for those purposes. Generally, in the regulated territories of the small and rural ILECs, they are not eligible for the Broadband funding of which CTIA speaks.

Most Broadband funding opportunities, including those set out in Texas's recently adopted broadband plan limit funding opportunities to deployment only. The focus is also on eligible areas which are typically areas that are considered underserved. Because the existing networks of the small and rural ILECs are largely deployed, and they provide more than the minimum service to have their territories considered as served, they are not eligible for funding intended for deployment. Rural ILECs, such as those eligible for SB 586 are required to use existing federal USF funding, and existing state USF funding (TUSF) to recover investments already made, maintain, operate, and expand the networks necessary to provide required and requested services within their territories.

Many rural ILECs are seeking available Broadband funding to expand outside their current regulated territory to reach unserved and underserved areas, but that funding cannot be used to recover the investments that have been made, and continue to be made, in their regulated territories.

VI. CONCLUSION

On behalf of its member companies, TSTCI appreciates the Commission's consideration of these reply comments and looks forward to discussing them further with other stakeholders, Commission staff, and the Commissioners in the future.

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.