

Texas telephone companies team up in lawsuit against Public Utilities Commission

Brandon Lingle, San Antonio Express-News, Staff Writer, Feb. 25, 2021

More than 50 Texas telephone companies and co-ops have sued the state's Public Utilities Commission for reductions it made in payments from a fund meant to guarantee phone service to rural residents.

The lawsuit alleges the Texas Universal Service Fund shrank as a result of PUC inaction, leading to a 70 percent cut in payments to phone service providers.

Since 1987, the fund has subsidized carriers to offset high costs of providing phone service to rural areas that account for 55 percent of Texas' land mass, an area larger than Montana. Currently, the fund doesn't subsidize broadband service.

The legal dust-up is more than a spat over a fund based on 34-year-old legislation. It's part of a protracted battle between landline and wireless telephone companies, a sign of how technology is changing how people communicate and how laws struggle to keep up.

The debate is also exposing the digital divide — the gulf between those who have internet connectivity and those who don't — that exists throughout the state. Many rural residents depend on their telephone lines to access the internet, but traditional copper lines have limited bandwidth. And according to the Federal Communications Commission, "high-speed internet access, or broadband, is critical to economic opportunity, job creation, education and civic engagement."

The TUSF's money comes from a 3.3 percent fee on telecoms' intrastate telephone revenue.

Starting in 2019, the fund began shrinking at an alarming rate.

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Between 2018 and 2019, the TUSF saw a \$1 billion drop in revenue from which it could extract the 3.3 percent fee, said then-PUC chief operating officer Thomas Gleeson in September testimony to the Texas Legislature's House State Affairs Committee. Gleeson became the PUC's executive director in December.

In November, the fund had \$51 million, down more than 70 percent from \$188 million three years earlier. The TUSF has contracted an average of 20 percent every quarter for the last six quarters.

"The primary cause was related to billing changes made by many of the wireless (cellular phone) companies," he said. "They began allocating a larger proportion of the customers' bills to data and away from voice services. And the statute only allows the TUSF assessment to be put onto the voice services."

So if someone received a \$100 bill and \$50 went to data and \$50 went to voice, the TUSF could assess 3.3 percent of the \$50 for the voice portion. If the same \$100 bill shifted to \$90 data and \$10 voice, then the TUSF fee shrinks significantly.

Gleeson also said the state is losing landlines at a rate of three-quarters of 1 percent each month, which is also contributing to the fund's declining revenue.

According to the FCC's most recent voice telephone service report, Texas landline connections decreased from 3.2 to 2.9 million between 2017 and 2018.

The 3.3 percent fee works out to an average of 50 cents on monthly phone bills, said Mark Seale, executive director of the Texas Telephone Association, the industry advocacy group leading the lawsuit.

In 2020, PUC staff recommended increasing the rate to 6.4 and then 8 percent to help the fund survive through August 2021, said Gleeson.

But despite adjusting the fee rate seven times between 2004 and 2014, the PUC did not raise the rate at the end of 2020 as they had discussed, according to the lawsuit.

"The PUC knew about the impending funding shortfall for over a year but did nothing to address it — even when its own staff recommended immediate action," Seale said. "This is the first time in history that the PUC has chosen not to meet legislatively mandated funding obligations."

Because of dwindling revenue, the PUC reprioritized how it would pay out the various programs under the TUSF, and the "high-cost programs" that account for 80 percent of the fund's payments took the hit, according to Gleeson.

These include the TUSF's programs that subsidize landlines for rural areas.

The TUSF's social programs account for 20 percent of the fund's payments, including money to help low-income residents pay for telephone service and to support speech- and hearing-impaired phone customers. The PUC has not cut these programs, according to Gleeson.

"The result of this policy shift is an immediate, drastic cut in funding of the high-cost programs that rural providers rely upon most to keep all Texans connected," the lawsuit states. That's "about \$10 million in collective losses anticipated every month" that began in January.

The Texas Telephone Association filed the lawsuit Jan. 20 in the Travis County District Court.

"While rural providers will strive to maintain uninterrupted telecommunications service to consumers, it is hard to guess at the ultimate impacts of the severe, growing shortfall of revenues," Seale said. "The PUC's inaction could affect investment in new infrastructure, payrolls, network maintenance or other issues — and could force rate increases to rural customers."

The changes, he said, could increase service times and decrease quality of service for up to 3 million customers across the state.

Before his election as Texas House speaker, Dade Phelan (R-Beaumont) chaired the House State Affairs Committees, which held a hearing on the dwindling fund in September.

The TUSF is “one of those legacy funds that’s been around a very long time and served a tremendous purpose, but as you get into the digital age and discuss other options — rural broadband and broadband in general — COVID really shined a huge light on the digital divide in Texas,” Phelan said during the hearing. “Obviously, in rural Texas versus urban and suburban Texas, I can make an argument that there’s still a divide even in the urban areas where individuals just do not have access to internet because of their own personal situation.”

The PUC declined to comment, citing the litigation. A hearing in the case is scheduled for March 29.



Telecommunications Technician Jonathan Zuniga and network engineer Wade Rust install the first GVTC gigabyte ultra-fast Internet service in the region Friday October 3, 2014 while Carol Steele and GVTC spokesman Bruce Forey watch. Photo Courtesy: Julysa Sosa, Freelancer / For the Express-News

Local cuts

Guadalupe Valley Telephone Cooperative, or GVTC, is one of the San Antonio-area carriers that benefit from the TUSF. The company serves communities around Boerne, Bulverde, Blanco, New Braunfels and Gonzales.

It's seen a decrease in payments from the fund, and the number "appears to be trending downward," said GVTC spokesperson John Hill.

"Obviously, anything of this magnitude would have massive impacts on any business," Hill said. "It's hard to know the specific impacts, until we have an understanding of how long this may continue and total amounts."

From September to November, the company received \$229,648 each month from the TUSF's "small and rural incumbent local exchange carrier support" program.

However, according to numbers provided by the Texas Telephone Association, GVTC has only received \$63,555 each month since then, a decrease of \$166,093 in monthly revenue.

Bruce Forey, founder of BroadMax Group, an internet consulting company, said problems with the TUSF are nothing new or surprising, and carriers are used to dealing with decreases in their allotments.

"I think the extent of the cut caught everybody off guard," he said. "I think the PUC and the Texas legislators need to rethink how to source the Texas Universal Service Fund."

He said one idea is to change the law so the fund can assess fees on broadband and wireless data in addition to only traditional telephone hookups.

Broadband customers are growing in market share and Texas telephone customers are declining, he added. Selling broadband services would give telephone companies a large base of customers because 2 million Texans — mostly in rural areas — don't have broadband connections.

"Why not help these telephone operators reinvent their business and help them become broadband providers instead of telephone providers?" he said. "To set them up for a growing business versus a business that's struggling to survive."