

**PROJECT NO. 24527**

<b>RULEMAKING REGARDING HIGH</b>	§	
<b>COST ASSISTANCE TO A</b>	§	
<b>TELECOMMUNICATIONS</b>	§	<b>PUBLIC UTILITY COMMISSION</b>
<b>PROVIDER THAT VOLUNTEERS TO</b>	§	
<b>PROVIDE VOICE-GRADE SERVICE</b>	§	<b>OF TEXAS</b>
<b>IN AN UNCERTIFICATED SERVICE</b>	§	
<b>AREA</b>	§	
	§	

**ORDER ADOPTING NEW § 26.423 REGARDING HIGH COST ASSISTANCE FOR THE VOLUNTARY PROVISION OF BASIC LOCAL TELECOMMUNICATIONS SERVICE, AS APPROVED AT THE APRIL 18, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.423, relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service with changes to the proposed text as published in the January 4, 2002 *Texas Register* (27 TexReg 24). This new section provides guidelines concerning universal service fund reimbursement to a telecommunications carrier that voluntarily provides, without the expectation of up front capital reimbursement, voice-grade telecommunications service to customers in uncertificated areas of the state. Implementation of this new section is expected to enhance the provision of basic local telephone service throughout the state by providing a mechanism for Universal Service Fund support that has not otherwise been available in the manner outlined in this section. This new section is adopted under Project Number 24527.

The commission received written comments for consideration on the proposed new rule from the following parties: Texas Statewide Telephone Cooperative, Inc. (TSTCI) and Western Wireless Corporation (WWC). Reply Comments were received from those same two parties.

A workshop for this rulemaking was conducted at the commission offices on October 17, 2001 and a public hearing was held at the commission offices on February 12, 2002. Parties making appearances and/or providing oral comments at these proceedings include: GVNW Consulting; Office of the Attorney General; Southwestern Bell Telephone Company (SWBT); John Staurulakus, Inc. (JSI); Texas Telephone Association (TTA); Texas Statewide Telephone Cooperative Inc. (TSTCI); Valor Telecommunication, Inc.; Verizon, Inc.; Verizon Wireless; and Western Wireless Corporation (WWC). To the extent that comments at the workshop/public hearing differ from those provided in written form, those differences are recognized herein.

No comments were received for subsections (a) through (d).

*§26.423(e), Support for uncertificated areas.*

*Subsection (e)(1), Determining base support amount available to ETPs*

TSTCI raised concerns in its comments that because the proposed reimbursement methodology is based on the average costs of the contiguous exchanges of the certificate of convenience and necessity

(CCN) holders, it may only be attractive to wireless providers. TSTCI indicated that wireless carriers typically do not have to make a significant investment in additional facilities to serve an area if they have facilities close by, and therefore, TSTCI rationalized the resulting outcome of the proposed rule may prove to be a windfall for wireless providers.

More specifically, TSTCI stated that the language in this subsection requires clarification on what the specific inputs will be for the formula, indicating that Texas Universal Service Fund (TUSF) support is different for small and large incumbent local exchange carriers (ILECs) based on either average support for all lines served or specific support based on residential lines, business lines and/or wire center criteria. TSTCI also expressed confusion as to whether support is based on the average support of each contiguous ILECs' service area or just the average of the contiguous exchanges.

WWC, on the other hand, indicated that the proposed support mechanism is based on the "average" Texas universal service support amounts of the exchanges surrounding the uncertificated areas. The support amounts have been predetermined by the commission in Docket Number 18515 – *Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan* (using a forward-looking hybrid cost model) and Docket Number 18516 – *Compliance Proceeding for Implementation of the Small and Rural ILEC Service Plan* (using embedded or historical costs). Because the support amounts are based on either the ILECs' forward looking costs or embedded costs of provisioning service to high-cost rural areas of Texas, WWC concluded that the resulting supporting amounts for uncertificated areas should be attractive to incumbent carriers and wireless carriers alike.

The commission agrees with TSTCI's assessment that the formula requires further clarification and adds two sentences at the end of subsection (e)(1)(A): "The per line support amounts used for this calculation shall include, as appropriate, the support amounts approved for only those exchanges directly contiguous to the uncertificated area for which support is being requested. The resulting average support shall apply to a line at a premises in the uncertificated area regardless of the residential or business status of the line." The commission believes that this addition clarifies the calculation and will allow the commission to determine appropriate support amounts.

The commission agrees with WWC's observation that because the support amounts are based on either the ILECs' forward looking costs for large ILECs' service areas and/or the embedded costs of provisioning service for small ILECs, the resulting support amounts for uncertificated areas should not just be attractive to wireless carriers, but should be attractive to both wireless and wireline carriers. Additionally, any ETP (wireless or wireline) can receive identical support within a specific uncertificated area for providing basic local service under this section. As such, the commission finds that the reimbursement methodology, with the clarifying changes described above is reasonable and competitively neutral.

WWC believed that the commission should add to subsection (e) the sentence "Support under the Texas High-Cost Universal Service Plan (THCUSP) is portable with the consumer," as the concept is explicitly stated in §26.403(e)(1)(C), Texas High Cost Universal Service Plan (THCUSP), as it relates

to the determination of support amounts under THCUSP. WWC argued that once per line amounts have been determined by the commission, competitive carriers must have the ability to draw exactly the same support that ILECs would receive for serving the uncertificated area. WWC indicated that the concept of portability, as it is known, has been promoted by this commission and the Federal Communications Commission (FCC) as a means of bringing competition to areas which have typically not benefited from choice in telecommunications service. TSTCI indicated that it does not take issue with the concept of portability of support under this section.

Consumer portability of THCUSP support is in fact available for certificated high cost rural areas of the state as addressed by §26.403. The commission believes that portability of support is necessary for the fund to be competitively neutral. The commission therefore adds the following language to §26.423(e)(1)(B) consistent with the suggestion of WWC and the concurrence of TSTCI: "Support under this section is portable with the consumer."

*Subsection (e)(2), Proceeding to determine support amount*

*Subsection (e)(2)(A)(i), Establishing a monthly per line support amount*

WWC requested that the commission include a provision in this subsection that allows the commission upon its own motion and within a certain time frame from the effective date of this section, to determine and set the support amounts available to a provider in each uncertificated area of the state. WWC

maintained that this would allow consumers to receive telephone service within a specific uncertificated area in an expedited fashion. Furthermore, WWC recommended that such proceeding should be handled administratively in an uncontested and expedited fashion to promote the policy of providing the customer service as soon as is practicable.

At the public hearing, TSTCI and WWC indicated that it would be helpful to providers if the commission would calculate and publish the support that would be available under this section for the different uncertificated areas in the state. TSTCI further stated that it would be helpful if the commission posted a map of the state showing the uncertificated areas and the support available for each area. Additionally, TSTCI suggested that having the amount of TUSF support publicly available for the uncertificated areas would simplify the process for providers and could lead to more providers volunteering to serve these areas.

TSTCI raised concerns in its comments that this section did not contain a procedural timeline for processing applications of volunteering providers. TSTCI indicated that it would support a provision that establishes a 30 day administrative approval process, contending that such a provision for review and approval would allow, for example, a small company interested in volunteering under this section the opportunity to participate without being deterred by the prospect of a lengthy and expensive regulatory process.

The commission recognizes the potential timesaving for all parties affected by this rulemaking in having a single proceeding to set support amounts for specific uncertificated areas of the state rather than having individual proceedings for separate areas. The commission also recognizes that, once support is established for an uncertificated area, the process of receiving support for more than one premises in an area should be streamlined for that area, and the process of obtaining approval as an ETP for that area should be straight forward. However, establishment of support amounts for well over 50 uncertificated areas of the state, many of which may be uninhabitable or do not currently contain a population of potential subscribers, may not provide the time-savings expected and could substantially delay the implementation of this section for those areas where service may actually be funded quickly through an administrative process. The commission recognizes the value of establishing support levels for more than one uncertificated area in a single proceeding. To address these issues of economy and time without an undue burden being placed on staff or the parties, the commission modifies the language in subsection (e)(2)(A) to allow an ETP, upon petition, to request establishment of monthly per-line support amounts for more than one uncertificated area of the state in a single administrative proceeding, where it has been determined that prospective telecommunications subscribers exist. The commission also adds new subsection (e)(2)(A)(iii) indicating that the commission may establish monthly support amounts for uncertificated areas upon its own motion. These additions should add flexibility and provide greater efficiency in the processing of requests under this rulemaking.

Once the base support amount has been determined and approved by the commission for an uncertificated area and that area has been identified by the commission for TUSF high cost assistance,

the commission acknowledges that any ETP may request approval for funding in that designated area by "amending its ETP designation," as it normally would when adding additional areas of the state to its ETP designation. The ETP should file an application pursuant to §26.417 relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF). Once an ETP's amended designation has been approved, that ETP may claim support for each qualifying customer served in such uncertificated area. No further commission action is needed. The funding of support for each qualifying customer would be processed directly by the THCUSP Administrator through the submission of the appropriate forms and/or affidavits.

*Subsection (e)(3)(B), Adjustment for federal USF support*

In its comments, TSTCI questioned the justification in this subsection that adjustments should be made for federal universal service fund (USF) support, indicating that under federal USF rules, no federal support is available for uncertificated areas.

While the commission recognizes that today no federal support is available in uncertificated areas, consistency of application of support among carriers would dictate that the commission should retain this requirement in the rule. Leaving the statement in the rule does not affect any providers draw from the TUSF fund at this time. However, if federal support does become available for uncertificated areas in the future, the commission will already have in place a provision for this funding consistent with the large ILEC funding provided under §26.403 relating to Texas High Cost Universal Service Plan (THCUSP).

§26.423(f), *Reporting requirements*

*Subsection (f)(1)(B)*

WWC indicated that §26.423(f)(1)(B) refers to "tariffed" rates, and does not apply to WWC since they are not a "tariffed" provider of service. Further, WWC stated that as a designated ETP and eligible telecommunications carrier (ETC), the company is required to provide a "price list" and "service agreement" to the commission for informational purposes. TSTCI, in its reply comments, disagreed with WWC, stating that WWC was required by the commission Order in Docket Number 22289 – *Application of WWC Texas RSA Limited Partnership for Designation as a Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. Sec 214(e) and PUC SUBST. R 26.418, and as a Eligible Telecommunications Provider (ETP) Pursuant to 47 U.S.C. Sec 214(e) and PUC SUBST. R 26.417, and Docket Number 22295 – Application of WWC Texas RSA Limited Partnership for Designation as a Eligible Telecommunications Provider (ETP), to file a tariff detailing the content, pricing, and terms and conditions of WWC's universal offering. At the most recent public hearing, WWC indicated that, for its USF offering, it filed a rate sheet and terms and conditions of service with the commission.*

In response to comments, the commission incorporates minor changes to §26.423(f)(1)(B) to delete the term "tariff" and add a more general explanation of the requirement for rates and charges. This change

recognizes that some ETPs will have tariffs on file with the commission, while other ETPs will have price sheets or price lists and other documents, as specifically required by the commission, indicating descriptions of service, recurring and nonrecurring rates, terms, and/or conditions of service, as appropriate.

*Subsection (f)(3)*

WWC suggested that the information requested in §26.423(f)(3) is proprietary and competitively sensitive, and accordingly, should be submitted on a confidential basis.

Substantive rule §26.420(j) relating to Administration of Texas Universal Service Fund (TUSF) addresses the treatment of proprietary information. That section governs any proprietary information received under §26.423. As such, the commission acknowledges WWC's comments but finds that no changes to this section are necessary to address proprietary information.

*General comments on the proposed rule*

WWC recommended in its comments that the commission include a new section to the proposed rule stating that, once support amounts have been determined and set by the commission under this section, any ETP who volunteers to provide service may not receive a higher support amount than that which

has been set by the commission. WWC indicated that such language would ensure that no ETP is being unjustly enriched for serving an uncertificated area.

The commission declines to incorporate WWC's recommendation into this rulemaking. Once a support amount is determined by the commission for an uncertificated area, no ETP will receive more support per line under this section unless a subsequent commission order allows it to do so. Furthermore, any determination of discrimination or inconsistency in funding may be dealt with on an individual case basis as necessary and appropriate, and may be brought before the commission upon the request of a telecommunications provider alleging such inconsistency.

TSTCI raised concerns in its comments and at the workshop that having two rules on serving uncertificated areas may create carrier and customer confusion and, as explained later, potential abuses of the system. TSTCI therefore suggested that it would be better to have one rule that addressed volunteering providers. TSTCI stated that House Bill 2388, 77th Legislature (HB2388), provides a framework for compensating providers to serve uncertificated areas as proposed in §26.421 relating to designation of an Eligible Telecommunications Providers to Provide Service to Uncertificated Areas and §26.422 relating to Subsequent Petitions for Service in Uncertificated Areas. In reply comments and the public hearing, TSTCI indicated that clarifying language in the preamble to this rule would help to minimize customer and provider confusion about two rules dealing with uncertificated areas.

In response to TSTCI's comments, the commission makes no change to this section. The commission clarifies that this section and §26.421 and §26.422 governing the provision of service in uncertificated areas are meant to complement one another by implementing different alternatives to accomplish the task of providing basic local telecommunications service in uncertificated areas of the state. In this section an ETP, on the basis of established support amounts, "volunteers" to provide service within a designated uncertificated area without the necessity of a petition by potential subscribers. In §26.421 and §26.422, a petition by potential subscribers is required before the commission requests a response from potential providers indicating that they will either volunteer to provide service or refuse to volunteer to provide service. After these responses are received an administrative proceeding or evidentiary hearing is conducted to determine the nature of the provisioning of service, if any, to the petitioners. The rules clearly represent distinctly separate mechanisms to obtain high cost assistance for uncertificated areas.

TSTCI was also concerned with the possibility of a customer being served under two different "volunteer" provider rules (§26.421 and §26.423), and whether that was in the public interest. TSTCI urged the commission to add a provision to these sections to prevent the possibility of awarding TUSF support simultaneously under both rules to serve the same premises and to coordinate the regulatory process in the event that providers and petitioners are applying to serve the same premises in the same timeframe under both sections.

The commission agrees with TSTCI that it would be inappropriate for a customer and the providing local service telecommunication carrier to receive support under both rules simultaneously. However, the commission finds that no change to this section is necessary because the commission believes that it is implicit that no ETP will receive TUSF support from two high cost programs at the same time for the same customer and no two ETPs will receive duplicate high cost support for any designated premises within an uncertificated area at the same time. Furthermore, during the petitioning approval process or ETP amendment process, the commission can insure that this will not occur.

*Additional comments*

There were discussions at the workshop about whether it would be necessary for an ILEC to amend its CCN to provide service in an uncertificated area under this section. SWBT brought to the commission's attention Public Utility Regulatory Act (PURA) §54.002(a), *Exceptions to Certificate Requirement for Service Extension*, and requested clarification as to its applicability under this section. SWBT questioned whether the voluntary provision of basic telecommunications service into an uncertificated area under this section constituted an expansion of an ILEC's service area boundary and CCN or constituted an "obligation to serve" for a competitive local exchange carrier (CLEC).

While the original TUSF support mechanism was established based on existing CCN territories, the commission recognizes a need to expand beyond those predetermined boundaries to ensure, to the greatest extent possible, the provision of universal telephone service throughout the geographic regions

of the state. Furthermore, an amendment to a CCN could take 90 to 180 additional days of waiting to provide service to a residential or small business customer in an uncertificated area. The commission believes that requiring an amendment to a CCN to voluntarily serve an uncertificated area would apply constraints to a process where none are warranted. The commission therefore confirms that the voluntary provision of service under this section is not meant to constitute an expansion of a CCN for a dominant carrier or an obligation to serve for a non-dominant telecommunications provider.

WWC expressed concern that the only thing that is not clear in calculating a support amount is where the uncertificated areas are and which exchanges are contiguous to those areas. WWC suggested that "access to a map" that identifies all of the exchanges that are contiguous areas to an uncertificated area would be helpful. Further, WWC raised issues concerning who has which area (e.g. exchange) and how a telecommunications provider can research an area without a map to estimate the potential TUSF support.

As noted at the public hearing, various maps, although not up-to-date, are available to identify "exchanges" (the geographic medium used to determine existing TUSF support amounts). To the extent that these maps are produced by the commission, the staff will work with parties to make that information available.

In addition to publication of the proposed new rule, the commission requested comments on the following question: "Is there a different approach other than that provided within the proposed rule

which would provide incentives for a carrier to voluntarily provide service to an uncertificated area?"

No comments were received regarding an approach other than that provided for in the proposed rulemaking.

In addition to modifications made in response to comments, the commission makes minor changes to the rule in order to clarify its intent and to correct typographical and grammatical errors. All comments, including any not specifically referenced herein, were fully considered by the commission.

This new section is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) which provides the commission with the authority to make and to enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §56.021 which requires the commission to adopt and enforce rules relating to the universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Chapter 56.

**§26.423. High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.**

- (a) **Purpose.** This section establishes the guidelines for financial assistance to ETPs that serve uncertificated areas of the state where an ETP volunteers to provide basic voice-grade telecommunications service to permanent residential and single-line business premises.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Eligible line** — A residential line and a single-line business line as defined by §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).
  - (2) **Eligible telecommunications provider (ETP)** — A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
  - (3) **Permanent residential or business premises** — A premise as defined pursuant to §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas).
  - (4) **Uncertificated areas** — An area of the state that is not included within the certificated area of a holder of a certificate of convenience and necessity (CCN).

- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.
- (d) **Service to be supported by the High Cost Universal Service Plan for uncertificated areas where an ETP volunteers to provide basic local telecommunications service.** The High Cost Universal Service Plan for uncertificated areas shall support the provision by ETPs of basic local telecommunications services as defined in §26.403(d) of this title.
- (e) **Support for uncertificated areas where an ETP volunteers to provide service.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3)(B) of this subsection.
- (1) **Determining base support amount available to ETPs.**
- (A) The monthly per-line support available for uncertificated areas shall be determined by calculating the average of the per-line support amount approved for all local telephone company exchanges of CCN holder's that are contiguous to the uncertificated area for which reimbursement is requested. The per line support amounts used for this calculation shall include, as appropriate, support amounts approved for only those exchanges directly contiguous to the uncertificated area for which support is being requested. The resulting average

support shall apply to a line at a premises in the uncertificated area regardless of the residential or business status of the line.

(B) Support under this section is portable with the consumer.

(2) **Proceedings to determine support amount.**

(A) Initial determination for uncertificated areas.

(i) Upon petition by an ETP, the commission shall establish a monthly per-line support amount for an uncertificated area as identified by the ETP where it has been determined that prospective telecommunications subscribers exist. The establishment of support for more than one uncertificated area may be requested within a single petition.

(ii) The review of the petition shall be accomplished in an administrative or docketed proceeding initiated by the ETP requesting support for the provision of single-line residential or business service within an uncertificated area or areas.

(iii) The commission, on its own motion, may initiate a proceeding to establish monthly per-line support amounts for uncertificated areas.

(B) Subsequent determination of support amount.

(i) The commission shall subsequently review the support for uncertificated areas consistent with the review provided for under §26.403 and §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

- (ii) The commission may initiate review of the support for uncertificated areas and base support amounts under this section on its own motion at any time.
- (3) **Calculating amount of support payments to individual ETPs.** After the monthly per-line amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.
  - (A) **Payments.** The payment to each ETP shall be computed by multiplying the per-line amount established by paragraph (1) of this subsection for a given uncertificated area by the number of eligible lines served by the ETP in such uncertificated area for the month.
  - (B) **Adjustment for federal USF support.** The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.
- (f) **Reporting requirements.**
  - (1) An ETP eligible to receive support under this section shall provide the TUSF administrator with the following information:
    - (A) A report of the total number of eligible lines served by the ETP in a designated uncertificated area to the TUSF Administrator on a monthly basis;

- (B) The telecommunications provider's residential and single-line business rates on file with the commission, as of the provisioning date for service;
  - (C) The average per-line assistance for each local exchange telephone company exchange contiguous to the area in question; and
  - (D) A calculation of the base support in accordance with the requirements of this subsection and subsection (e) of this section.
- (2) Upon request by the commission, the telecommunications provider awarded support under this section shall explain the basis on which it is establishing rates under this section.
- (3) An ETP shall report any other information required by the commission and the TUSF Administrator, including any information necessary to assess contributions to and disbursements from the TUSF.
- (g) **Initial support provided pursuant to this section.** Initial payment of support under this section shall be retroactive to the latter of the date on which a telecommunications provider either:
- (1) Petitions the commission for THCUSP assistance; or
  - (2) Begins providing basic local telephone service to the residential or business location approved for support.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §26.423 relating to a High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF MAY 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

---

**Commissioner Brett A. Perlman**

---

**Commissioner Rebecca Klein**