

PUC DOCKET NO. 27056

PETITION OF WESTERN	§	PUBLIC UTILITY COMMISSION
WIRELESS CORPORATION TO	§	
SEEK REIMBURSEMENT FOR	§	
THE PROVISIONING OF	§	
UNIVERSAL SERVICE IN	§	OF TEXAS
UNCERTIFICATED AREAS OF	§	
ROBERTS AND HUTCHINSON	§	
COUNTIES, TEXAS PURSUANT TO	§	
P.U.C. SUBST. R. §26.423	§	

ORDER ON CERTIFIED ISSUES

At the April 2, 2002 open meeting, the Commission considered the issues certified by the Commission's administrative law judge (ALJ) in Order No. 5. The Commission finds that the monthly per-line support amount for an uncertificated area should be determined by calculating the simple-average of the per-line support amounts approved for all local telephone company exchanges of the CCN holders that are contiguous to the uncertificated area for which reimbursement is requested. The Commission finds that P.U.C. SUBST. R. 26.417 applies to a telecommunications provider who seeks TUSF support in an uncertificated area under P.U.C. SUBST. R. 26.423. Specifically, the Commission concludes that an ETP requesting TUSF support in any portion of the uncertificated area must amend its ETP designation to include those portions of the uncertificated area it chooses to serve. The Commission finds that a telecommunications provider that seeks TUSF support in an uncertificated area under P.U.C. SUBST. R. 26.423 must meet the requirements outlined in P.U.C. SUBST. R. 26.417. The Commission, however, declines to grant any waivers at this time for any of the requirements outlined in P.U.C. SUBST. R. 26.417.

I. PROCEDURAL HISTORY

On December 5, 2002, Western Wireless Corporation (WWC) filed an application under P.U.C. SUBST. R. 26.423 for authority to provide telecommunications service to consumers

within a portion of Roberts County that is uncertificated. On January 16, 2003, WWC filed an amended petition to include portions of Roberts and Hutchinson Counties.¹ In its amended petition, WWC requested that the Commission (1) calculate the monthly per-line support for the uncertificated area payable out of the Texas Universal Fund (TUSF), (2) mandate that WWC be qualified for the calculated per-line support for providing basic local telecommunications service in the uncertificated area, and (3) clarify that WWC had no mandatory service obligations in the uncertificated area. Specifically, WWC requested TUSF support for approximately 12 customers located in the uncertificated area, that it be permitted to serve only those customers that can reasonably be served, and that no mandatory obligation to provide service to all customers in the uncertificated area be imposed by the Commission.

On December 11, 2002, the ALJ issued Order No. 1 requesting comments and a proposed procedural schedule from the parties. WWC, Commission Staff, and the State of Texas (State) filed comments raising several legal issues on January 31, 2003. Although they were given the opportunity to submit objections with respect to certification and to propose any additional issues for certification to the Commission, the parties did not file objections or comments. On March 7, 2003, the ALJ issued Order No. 5 certifying issues to the Commission.² Western Wireless, Commission Staff, and the State filed briefs in response to the issues certified by the ALJ on March 20, 2003.

II. COMMISSION RULING

The ALJ certified the following issues to the Commission pursuant to P.U.C. PROC. R. 22.127(b)(1).

A. Issue 1

How should the average monthly support amount contemplated in P.U.C. SUBST. R. 26.423(e)(1)(A) be calculated? For example, should the calculation of support be a weighted average based on the number of lines served by the exchange areas contiguous to the uncertificated area, which yields an average support, based on assistance per line,

¹ First Amended Petition of Western Wireless Corporation to Seek Reimbursement for the Provisioning of Universal Service in Uncertificated Areas of Roberts and Hutchinson Counties, Texas Pursuant to P.U.C. SUBST. R. § 26.423, (Jan. 16, 2003) (WWC's Amended Petition)

² Order No. 5 (Mar. 7, 2003).

of \$34.06? Or, should the average monthly support amount be calculated based on the straight average method of the amount of support received by the exchange areas contiguous to the uncertificated area, which yields an average support, based on assistance per line in an exchange, of \$70.83?

P.U.C. SUBST. R. 26.423(e)(2)(A)(i) provides that the monthly per-line support amount for an uncertificated area is determined by calculating the average of the per-line support amounts approved for all local telephone company exchanges of the CCN holders that are contiguous to the uncertificated area for which reimbursement is requested. WWC argued that this language requires that the average per-line support amounts are to be calculated with a simple-average approach, while Commission Staff argued that a weighted average analysis is required. The simple-average results in \$70.83 per-line support while the weighted average results in \$34.06 per-line support.³

The Commission concludes that P.U.C. SUBST. R. 26.423(e)(1)(A) requires that a simple average of the contiguous exchange per-line support amounts be utilized to determine the monthly per-line support available within an uncertificated area. The Commission finds that a simple-average of the per-line support amounts of the contiguous areas would prevent skewing by a low-cost, high density contiguous area in which the cost of provisioning basic local telecommunications service can be spread out among a greater number of customers.

Moreover, a simple-average of the per-line support amounts of the contiguous areas would determine the cost to provision service within an uncertificated area based upon the per-line support amounts in contiguous areas. The per-line support amounts in the contiguous areas were established and relied upon by the Commission in determining TUSF support disbursements.⁴ A weighted average of the per-line support amounts of the contiguous areas, which focuses on the number of lines in contiguous exchanges, does not reflect the costs associated with providing service in an uncertificated area that typically has a low population density.

³ WWC's Amended Petition , Attachment B at 11.

⁴ *Compliance Proceeding for Implementation of Texas High Cost Universal Service Plan*, Docket No. 18515 (Jan. 14, 2000).

B. Issue 2

Must an ETP that volunteers to provide service in an uncertificated area amend its Texas High Cost Universal Service Plan (THCUSP) service area to include the uncertificated area it serves?

C. Issue 3

Must an ETP that volunteers to provide service in an uncertificated area and that receives monthly support under P.U.C. SUBST. R. 26.423 comply with P.U.C. SUBST. R. 26.417(c)(1)?

Certified Issues 2 and 3 both address whether P.U.C. SUBST. R. 26.417 applies to a telecommunications provider who seeks TUSF support in an uncertificated area. P.U.C. SUBST. R. 26.417 requires the establishment of a TUSF designated service area and outlines requirements that a telecommunications provider must meet in order to receive TUSF for the designated TUSF service area. The Commission finds that P.U.C. SUBST. R. 26.417 applies to a telecommunications provider that seeks TUSF support in an uncertificated area under P.U.C. SUBST. R. 26.423. The Commission notes that P.U.C. SUBST. R. 26.417 applies to TUSF support under P.U.C. SUBST. R. 26.403, which is structured in a similar manner to P.U.C. SUBST. R. 26.423.

P.U.C. SUBST. R. 26.423 governs USF reimbursement to ETPs that voluntarily provide voice-grade telecommunications service to customers in portions of an uncertificated area within the state. P.U.C. SUBST. R. 26.423 applies to telecommunications providers who have been designated as ETPs under P.U.C. SUBST. R. 26.417. The rule allows TUSF support for uncertificated areas, defines the method to calculate the base support amount for an uncertificated area, and requires certain reports. Although P.U.C. SUBST. R. 26.423 does not contain any requirements that an ETP must meet in order to receive TUSF in an uncertificated area, the Commission finds that P.U.C. SUBST. R. 26.423 does not contain any exemptions from the requirements of P.U.C. SUBST. R. 26.417. P.U.C. SUBST. R. 26.423 applies only to a telecommunications provider that has been designated an ETP under P.U.C. SUBST. R. 26.417 to receive TUSF support. Therefore, the Commission finds that P.U.C. SUBST. R. 26.417, by its

express terms, applies to the designation of ETPs to receive TUSF support for uncertificated areas under P.U.C. SUBST. R. 26.423.

Specifically, in response to Certified Issue 2, the Commission points out that an ETP may request TUSF support in any portion of the uncertificated area by amending its ETP designation to include those portions of the uncertificated area it chooses to serve.⁵ The Commission finds that requiring an ETP to amend its designated service area for TUSF support purposes does not, however, constitute an expansion of a dominant carrier's CCN or non-dominant telecommunications provider's obligation to serve. Rather, an ETP has an obligation to serve those areas as a condition of receiving TUSF support, and such an obligation exists until such time that an area is removed from an ETP's designated service area for TUSF support purposes.⁶

D. Issue 4

If so, are waivers appropriate for any requirements found in P.U.C. SUBST. R. 26.417(c)(1)?

The Commission declines to grant any waivers to the requirements in P.U.C. SUBST. R. 26.417 at this time. The Commission does not have any specific information at this time on which to base granting of any waiver of the requirements in P.U.C. SUBST. R. 26.417(c)(1). However, waivers to the requirements outlined in P.U.C. SUBST. R. 26.417(c)(1) could be granted when WWC files its application to amend its service area pursuant to P.U.C. SUBST. R. 26.423, if good cause is demonstrated for such waivers.

The Commission notes it does not have sufficient information to determine whether WWC should be subject to the same waivers that were ordered in its underlying ETC/ETP certification proceeding.⁷ However, the Commission finds that a telecommunications

⁵ *Order Adopting New P.U.C. SUBST. R. 26.423 Regarding High Cost Assistance for the Voluntary Provision of Basic Local Telecommunications Service, as Approved at the April 18, 2002 Open Meeting at 7-8 (May 3, 2002).*

⁶ *Id.* at 13-14.

⁷ *Application of WWC Texas RSA Limited Partnership as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(e) and P.U.C. SUBST. R. 26.418, Docket No. 22289; Application of WWC Texas RSA*

provider must obtain ETC designation before it can obtain ETP designation that is required for receiving TUSF support. Therefore, the requirement that a telecommunications provider be designated as an ETC to be eligible to receive FUSF support in P.U.C. SUBST. R. 26.417(c)(1)(A) should not be waived. If necessary, the Commission finds that the requirement that an ETP's rate not exceed 150% of the ILEC's tariffed rate in P.U.C. SUBST. R. 26.417(c)(1)(B) should be settled in hearing. The Commission believes that it does not have sufficient information to determine how an ETP that is provisioning service within an uncertificated area would meet this requirement at this time.

The Commission finds that an ETP is obligated to provide basic local telecommunications service to all customers within its designated TUSF service area pursuant to P.U.C. SUBST. R. 26.417(c)(1)(A). However, an ETP has the sole discretion to decide what portions of an uncertificated area it designates to voluntarily serve. Once a telecommunications provider begins receiving TUSF support, the Commission finds that it is obligated to serve such customers. The Commission finds that an ETP would be allowed, however, to abandon service to customers in an uncertificated area by amending its TUSF service area to remove such customers and giving up TUSF support for those customers.

SIGNED AT AUSTIN, TEXAS the 7th day of April 2003

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

JULIE PARSLEY, COMMISSIONER