

**PROJECT NO. 32161**

<b>RULEMAKING PROCEEDING TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>IMPLEMENT PURA §56.030</b>	<b>§</b>	<b>OF TEXAS</b>
<b>REGARDING ANNUAL AFFIDAVITS</b>	<b>§</b>	
<b>FROM ELIGIBLE</b>	<b>§</b>	
<b>TELECOMMUNICATIONS</b>	<b>§</b>	
<b>PROVIDERS</b>	<b>§</b>	

**ORDER ADOPTING AN AMENDMENT TO § 26.417  
AS APPROVED AT THE JUNE 7, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), with no changes to the proposed text as published in the March 10, 2006 issue of the *Texas Register* (31 TexReg 1581). The amendment implementing PURA §56.030 will define the requirements for eligible telecommunications providers (ETPs) to submit an annual affidavit of compliance in order to certify that Texas Universal Service Funds (TUSF) received are being used in a manner consistent with the requirements regarding the use of money from each TUSF program for which the ETP receives disbursements. This amendment is adopted under Project Number 32161.

The commission received comments on the proposed amendment from the Texas Telephone Association (TTA).

In its comments submitted to the commission, TTA maintained that the “annual compliance affidavit” for each ETP has already been approved by the commission in Docket No. 31952. According to TTA, because that Order approved the compliance affidavit filed by each ETP attesting to its proper use of TUSF pursuant to PURA §56.029(g), a new proceeding to develop another affidavit is not required. TTA further stated that, should the commission determine a

new compliance affidavit is needed, then it should be undertaken through a docketed proceeding seeking input from interested parties.

*Commission response*

**The commission notes that the affidavit referenced by TTA in its comments, and approved in Order No. 1 in Docket No. 31952, was developed pursuant to PURA §56.029(g), which required each telecommunications provider receiving TUSF to attest by December 31, 2005 that those funds had been used in a manner consistent with the purposes provided by PURA §56.021 and the commission's final orders in Docket No. 18515 and Docket No. 18516. The affidavit that the commission is required to develop pursuant to PURA §56.030, reflected in this rulemaking, will include an additional TUSF program to those TUSF programs listed in the affidavit approved in Docket No. 31952. Docket No. 32567 has been established in order to develop the new affidavit. Parties will have an opportunity to participate in Docket No. 32567.**

All comments were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §56.030, which specifically requires telecommunication providers that receive disbursements from the TUSF to provide the aforementioned affidavits.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.030.

**§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).**

- (a) **Purpose.** This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.
- (b) **Requirements for establishing ETP service areas.**
- (1) THCUSP service area. THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.
  - (2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs.**

(1) **Telecommunications providers.** A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

- (A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;
- (B) the telecommunications provider defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;
- (C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;
- (D) the telecommunications provider renders continuous and adequate service within the area or areas, for which the commission has designated it an

ETP, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service and Link Up Service Programs); and

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1).

(d) **Designation of more than one ETP.**

- (1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.
- (2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) **Proceedings to designate telecommunications providers as ETPs.**

- (1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.
- (2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

- (3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.
- (f) **Requirements for application for ETP designation and commission processing of application.**
- (1) **Requirements for notice and contents of application for ETP designation.**
- (A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application shall:

(I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10);

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of

- this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;
- (IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;
- (V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;
- (VI) show that the applicant offers Lifeline and Link Up services in compliance with §26.412 of this title;
- (VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;
- (VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;
- (IX) provide a copy of the text of the notice;
- (X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

(2) **Commission processing of application.**

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer.

Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.
  - (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
  - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.

- (i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.
  - (ii) Notice was provided as required by this section.
  - (iii) The applicant has met the requirements contained in subsection (c) of this section.
  - (iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (g) **Relinquishment of ETP designation.** A telecommunications provider may seek to relinquish its ETP designation.
- (1) **Area served by more than one ETP.** The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:
- (A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;
  - (B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and
  - (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.
- (2) **Area where the relinquishing telecommunications provider is the sole ETP.** In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:
- (A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and
  - (B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.
- (3) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

- (A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.
- (B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title, in that portion of its ETP service area.
- (h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.
- (1) **Announcement of auction.** Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

- (2) **Bidding procedure.** Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.
- (A) Every bid must contain:
- (i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;
  - (ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and
  - (iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.
- (B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.
- (C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.
- (i) **Requirements for annual affidavit of compliance to receive TUSF support.** An ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support.
- (1) **Annual Affidavit of Compliance.** On or before September 1 of each year, an ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the

use of money from each TUSF program from which the telecommunications provider receives disbursements.

- (2) **Filing Affidavit.** The affidavit used shall be the annual compliance affidavit approved by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), is hereby adopted with no changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 12<sup>th</sup> DAY OF JUNE 2006.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**