

**PROJECT NO. 24521**

<b>RULEMAKING TO IMPLEMENT</b>	§	
<b>THE FCC 14TH REPORT AND</b>	§	<b>PUBLIC UTILITY COMMISSION</b>
<b>ORDER, 01-157, REGARDING</b>	§	
<b>RURAL CARRIERS</b>	§	
<b>DISAGGREGATION PATHS AND</b>	§	<b>OF TEXAS</b>
<b>ANNUAL CERTIFICATION WITH</b>	§	
<b>THE FCC</b>	§	

**ORDER ADOPTING AMENDMENTS TO SUBSTANTIVE RULE §26.418 AS  
APPROVED AT THE MARCH 6, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds with changes to the proposed text as published in the December 7, 2001 *Texas Register* (26 TexReg 10001). The amendments are comprised of several minor non-substantive changes and substantive revisions to add new subsections, §26.418 (j) and (k), that address the requirements of the Federal Communications Commission's (FCC) *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 (FCC's Report and Order)* adopted on May 10, 2001. The amendments are adopted under Project Number 24521.

The commission received written comments on the amendments from the following parties: Office of Public Utility Counsel (OPC); Texas Statewide Telephone Cooperative, Inc. (TSTCI); Western Wireless Corporation (WWC); and State of Texas (State). Reply comments were received from OPC, TSTCI, Texas Telephone Association (TTA), and State.

*Section 26.418(j) pertaining to rural and non-rural carriers' requirements for annual certification to receive FUSF support.*

Section 26.418(j) is added to provide an annual certification process to determine whether the Federal Universal Service Fund (FUSF) support provided to rural and non-rural telecommunications carriers is being utilized consistent with the Federal Telecommunications Act (FTA) §254(e). Specifically, subsection (j) establishes the filing deadlines for the annual certification, and the commission's authority and responsibilities for review of the carriers' submissions.

WWC argued that the proposed language in §26.418(j) inappropriately grants the commission the authority to revoke the FUSF certification of any carrier that it determines has not complied with the federal requirements in 47 United States Code (U.S.C.) §254(e). WWC contended that nowhere in 47 Code of Federal Regulations (C.F.R.) §54.314 or §54.315 does it state that a state commission can revoke FUSF certification or make the determination that a carrier is not in compliance with 47 U.S.C. §254(e). WWC asserted that such language is beyond any authority the commission derives from federal law or regulation and should be stricken.

OPC argued that the commission has not exceeded its authority in including 47 U.S.C. §254(e) as a basis for certificate revocation. OPC contended that WWC's argument is contrary to the *FCC's Report and Order*. OPC maintained that the condition requiring that FUSF support be utilized for

facilities for which support is intended is identical to the certification assertions required of the state regulatory agency under the FCC rules. OPC claimed that the standards under 47 U.S.C. §254(e) and 47 C.F.R. §54.313 and §54.314 are identical. OPC contended that a change in the reference to 47 U.S.C. §254(e) to the standards set out in 47 C.F.R. §54.313 and §54.314 would not result in a republication of the proposed amendment.

The State supported the adoption of §26.418(j)(4), relating to revocation of FUSF support certification. The State maintained that the commission has the authority to rescind a certification.

TSTCI maintained that the substance of 47 C.F.R. §54.313 and §54.314 cited by OPC is included in the proposed rules.

The commission adopts §26.418(j) with changes to the proposed language. The commission finds that §26.418(j) establishes an annual certification process that meets the requirements outlined in the *FCC's Report and Order*. Therefore, the commission shall not include any reference to 47 C.F.R. §54.313 and §54.314 in subsection (j). The commission adopts internal references and minor non-substantive changes in this subsection that are necessary to ensure consistency with changes made by the *FCC's Report and Order*. However, the commission adopts subsection (j)(4) with changes to clarify that the *FCC's Report and Order* grants it authority to recommend the revocation of FUSF certification for any carrier that has not complied with the federal requirements in FTA §254(e).

*Section 26.418(k) pertaining to disaggregation of rural carriers' FUSF support.*

Section 26.418(k) is added to provide procedures for disaggregation of rural telecommunications carriers' FUSF support below the study area as outlined in the *FCC's Report and Order*. Specifically, subsection (k) provides rural carriers the flexibility to disaggregate FUSF support according to three "paths" outlined by the FCC. The amendments allow a rural carrier to elect not to disaggregate and to continue receiving funds on an access line averaged basis, in accordance with its federal study area. The amendment also allows a rural carrier to either disaggregate its study area based on a plan that has been approved by the commission or elect a self-certification process to receive greater high cost support for targeted areas. Section 26.418(k) addresses the commission's authority to review and monitor the requirements outlined in the *FCC's Report and Order*.

WWC argued that the proposed rule should provide for the disaggregation of the study area as a service area. WWC contended that the geographic area of the rural telephone company, which is defined as the study area, must be disaggregated to allow competitive carriers to service the same, targeted geographic service area in a manner that parallels the disaggregation of its FUSF support. WWC stated that this change would encourage competition among carriers, such as wireless carriers, with service coverage areas differing from the incumbent rural telephone company. In addition, WWC maintained that the title of §26.418(k) should be amended to read as follows: "Disaggregation of incumbent rural local exchange carriers' service areas and disaggregation and targeting of support by rural incumbent local exchange carriers." Moreover, WWC claimed that §26.418(k)(1)(B), (C), and

(D) should be revised, for the sake of clarification, to state that the disaggregation plan submitted to the commission shall result in the disaggregation of service areas for that carrier (and any Eligible Telecommunications Carriers (ETCs) serving in that incumbent's service area) in the same manner and degree as the disaggregation and targeting of support. WWC maintained that the same disaggregation rules from the *FCC's Report and Order* should apply to the administration of the Texas Universal Service Fund (TUSF) in §26.417 of this title, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF). WWC claimed that §26.417 should be amended and clarified to state that the disaggregation plan submitted to the commission shall result in the disaggregation of service areas for that carrier (and any ETCs serving in that incumbent's service area) in the same manner and degree as the disaggregation and targeting of support.

OPC argued that the paragraphs contained in 47 C.F.R. §53.315(e)(5) and (7), regarding the federal rule requirements for disaggregation plans, should be included in the proposed rule. OPC maintained that the inclusion of these two paragraphs would ensure uniformity with federal law and avoid arguments on the legal interpretation of the rule. In addition, OPC contended that maintaining the study area as a service area substantially mitigates, if not eliminates, "cherry picking". Without the service area being co-extensive with the study area, OPC claimed that a customer's access to telecommunications service may be denied or significantly hindered because the customer does not live within the "more profitable" service area targeted by the competitive carrier. OPC maintained that 47 C.F.R. §54.207 outlines the federal procedure requiring a state regulatory agency to petition the FCC in order to break up a study area into multiple service areas. OPC stated that the statute provides for disaggregation on a rural

telephone company by rural telephone company basis. OPC asserted that a substantive rule attempting to disaggregate rural telephone companies all at once for purposes of FUSF is outside the authority granted by the FCC. OPC agreed with the State that rule amendments should set out the commission's authority to perform audits such as those required for the ETC certification applications. OPC asserted that the proposed rule should require all ETCs to utilize the same accounting procedures used by the National Exchange Carriers Association (NECA) to ensure consistency in the reporting of costs. OPC claimed that such consistency would enhance the commission's auditing and monitoring for ETC certification compliance. OPC asserted that the commission could monitor the effectiveness of the §26.418 amendments without amending §26.417. OPC maintained that §26.417 may be amended to address any deficiencies found in implementing §26.418, if necessary.

The State agreed with OPC regarding the addition of language used in 47 C.F.R. §54.315(e)(5) and (7) to §26.418(k)(3). Moreover, the State argued that the proposed amendments should contain a periodic, competitively neutral, audit requirement for the disaggregation plans filed with the commission. The State argued that the audit requirement would serve as a safeguard to prevent abuse of self-certification and protect the public.

In response to WWC's initial comments, TSTCI argued that the rule should not provide for the disaggregation of the study area as a service area. TSTCI contended that such a position is beyond the scope of the *FCC's Report and Order*. Moreover, TSTCI maintained that the *FCC's Report and Order* is based on maintaining the integrity of the rural carrier's study areas. TSTCI stated that

disaggregation of a rural carrier's study area has serious implications for the public interest and the rural carrier's ability to serve as the carrier of last resort (COLR). TSTCI claimed that such an action would seriously undermine the integrity of the incumbent rural carrier and its ability to service the least profitable zones of their study area as the COLR. TSTCI contended that WWC, or any other interested party, has the ability, under subsection (k)(5), to file a motion requesting the commission order disaggregation of a rural Incumbent Local Exchange Carrier's (ILEC's) FUSF support. TSTCI argued that WWC or any other interested party should be required to make a case for disaggregation of any rural ILEC's FUSF support on a case-by-case basis.

TSTCI stated that the proposed amendments do not impact §26.417. TSTCI contended that it would be more appropriate and efficient to determine the impact of the FCC's disaggregation order on the TUSF in the context of the commission's upcoming scheduled review of the TUSF. In addition, TSTCI claimed that proposed §26.418(k)(3) and (k)(3)(G) capture the meaning of the corresponding federal rule without distortion. In response to the State's initial comments, TSTCI argued that it was not necessary to include a specific audit requirement for the disaggregation plans filed with the commission. TSTCI maintained that the Public Utility Regulatory Act (PURA) §§14.201-14.207 provides the commission with broad authority to conduct audits and inspections. TSTCI asserted that ILECs are subject to the existing oversight responsibility and reporting requirements of the NECA. Moreover, TSTCI claimed that there are sufficient safeguards and oversight procedures in place to ensure the integrity of the program.

TTA argued that WWC is attempting to bypass the process established by FTA §214(e) and the rules established by the FCC with regard to a rural telephone company's service area. TTA contended that state commissions lack independent jurisdiction to redefine a rural telephone company's service area for purposes of FUSF support under FTA §214(e). TTA maintained that the procedural steps for the redefinition of a rural telephone company's service area by a state commission are outlined in 47 C.F.R. §54.207(c). TTA stated that the procedure requires both state commission and FCC consensus on changes to the rural service area definition. TTA claimed that a reference to the federal rules outlining the procedure is unnecessary in a state commission's substantive rules. In addition, TTA contended that WWC acknowledged that state commissions lack independent authority to redefine a rural telephone company's service area in the *Direct Testimony of Mr. Blundell* in Docket Number 22289, *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. SUBSt. R. §26.417*, and Docket Number 22295, *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(c) & P.U.C. SUBST. R. §26.418*. TTA maintained that any FUSF funding disaggregation that may be sought by any of the underlying rural telephone companies will simply move universal support to certain higher cost zones in which costs are lower. TTA claimed that the redistribution of universal support from one or more cost zones to other cost zones will have no benefit to WWC given its current obligations to provide its competitive ETC services to all end users within its ETC designated service area. TTA argued that the prevention of "cream skimming" is specifically the reason why the service areas of rural telephone companies are defined as study areas. TTA contended that the commission would prevent competitive ETCs from

"cream skimming" customers within lower cost zones by rejecting WWC's proposal to redefine a rural telephone company's study area. TTA claimed WWC is seeking relief that has been previously requested and rejected by the FCC in the *Petition for Reconsideration* filed by the Competitive Universal Service Coalition in the *FCC's Report and Order*.

The commission adopts §26.418(k) with clarifying changes to the proposed language in subsection (k)(3)(D) and (k)(4) that it believes address the concerns expressed by parties regarding adoption of the precise language in 47 C.F.R. §54.315(e)(5) and (7). The commission intends all of the federal requirements to apply to applications for disaggregation. The revised adopted language accomplishes this purpose.

The commission declines to adopt WWC's proposal that the proposed rule should provide for the disaggregation of the study area as a service area. The commission finds that the FCC does not grant it the authority to disaggregate a carrier's study area as a service area. The commission finds that the adopted language will prevent, if not eliminate, "cream skimming", by defining a carrier's service areas as its study areas. The commission finds that the adopted language shall prevent competitive ETCs from "cream skimming" customers within lower cost zones, thereby ensuring that all customers throughout Texas have access to affordable basic local telecommunications services. The commission notes that 47 C.F.R. §54.207, which outlines the federal procedure requiring a state regulatory agency to petition the FCC in order to disaggregate a study area into multiple study areas, provides for disaggregation of any rural ILEC's FUSF support after a case-by-case analysis. Therefore, the commission finds that an

attempt to disaggregate rural telephone carriers all at once for purposes of FUSF support is outside of the authority granted by the FCC. Moreover, consistent with its determination in WWC's *Application for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(e) and PUC SUBST. R. 26.418*, PUC Docket Numbers 22289 and 22295, Final Order at paragraph 6 (October 30, 2000), "if the [commission] determines that it is appropriate to redefine [an ILEC's] service area, it will file a petition with the FCC and seek its agreement."

The commission declines to adopt an audit requirement for the disaggregation plans filed at the commission. The commission points out that its complaint procedures allow a party to file a complaint against another parties' disaggregation plan if warranted. The commission finds that existing safeguards and oversight procedures during the review of disaggregation plans will ensure the integrity of the program, and, therefore, make an audit requirement unwarranted.

The commission declines to amend §26.417 to address any deficiencies found in the implementation of §26.418. The commission finds that the adopted amendments to §26.418 do not impact the administration of the TUSF. The commission believes that the impact of the *FCC's Report and Order* upon §26.417 requirements, if any, shall be determined in the commission's upcoming scheduled review of the TUSF.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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, specifically, the FCC's *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 (FCC's Report and Order)* adopted on May 10, 2001, which requires a state commission to implement an annual certification process to determine whether rural and non-rural carriers are utilizing FUSF support consistent with 47 U.S.C. §254(e) and to establish procedures for the disaggregation of a rural carrier's FUSF support below the study area.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021-56.028.

**§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.**

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF). Only common carriers designated by the commission pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service) as eligible for federal universal service support may qualify to receive universal service support under the FUSF. In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.
- (b) **Service areas.** The commission may designate ETC service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.
  - (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported

services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(c) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:

- (1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (2) advertises the availability of and charges for such services using media of general distribution.

(d) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

- (1) meet the requirements of subsection (c) of this section;
- (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and
- (3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(e) **Designation of more than one ETC.**

- (1) **Non-rural service areas.** In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (b)(1) of this section and subsection (c) of this section.
  - (2) **Rural service areas.** In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (b)(2) of this section and subsection (c) of this section if the commission finds that the designation is in the public interest.
- (f) **Proceedings to designate ETCs.**
- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
  - (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.
  - (3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(g) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

- (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 eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas 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 for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC 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's Regulatory Division and one

copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an ETC;
- (v) contain 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 proposed notice is reasonable and in compliance with applicable law;
- (vi) contain a copy of the text of the notice;
- (vii) contain the proposed effective date of the designation; and

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

(C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support 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. The application shall:

- (i) comply with the requirements of subparagraph (B) of this paragraph;
- (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
- (iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

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

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

- (i) The effective date 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 telecommunications carrier. 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 telecommunications carrier.
- (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 the commission staff with written comments or recommendations concerning the application. 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.
- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
    - (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);
    - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
    - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
    - (IV) notice was provided as required by this section;
    - (V) the applicant satisfies the requirements contained in subsection (b) of this section; and
    - (VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.

- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
  - (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;
  - (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
  - (III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (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.
- (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.

- (E) **Waiver.** In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (h) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

- (i) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.

- (1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
  - (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;
  - (B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier'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 eligible telecommunications carrier or carriers.
  
- (2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:
  - (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and
  - (B) commission designation of a new ETC for the service area or areas.
  
- (j) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.

- (1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.
- (2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.
- (3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.
- (4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.

- (k) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
- (1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:
- (A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;
  - (B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;
  - (C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or
  - (D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315, (June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

- (2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.
- (3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:
- (A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;
  - (B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;
  - (C) the ratio of per line FUSF support shall be publicly available;
  - (D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;
  - (E) each support category complies with subparagraphs (A) and (B) of this paragraph;

- (F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and
  - (G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.
- (4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:
- (A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;
  - (B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;
  - (C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);
  - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

- (E) maps identifying the boundaries of the disaggregated zones within the study area.
- (5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:
- (A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;
  - (B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or
  - (C) changes in ownership or changes in state or federal regulation warrant the commission's action.
- (6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

This agency hereby certifies that the rule, as adopted, 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 §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 18th DAY OF MARCH 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Commissioner Brett A. Perlman**

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**Commissioner Rebecca Klein**