

**PROJECT NO. 24521**

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

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE  
NOVEMBER 20, 2001, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.418 relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. The proposed 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'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*) (refer to FCC No. 01-157 for review at the FCC's website: [www.fcc.gov](http://www.fcc.gov)) adopted on May 10, 2001. Project Number 24521 is assigned to this proceeding.

*Non-Substantive Changes to Rule Language*

Proposed §26.418 amends internal references and reflects minor non-substantive changes necessary to ensure consistency with changes made by the FCC.

*Substantive Changes to Rule Language*

Proposed §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, proposed §26.418(j) establishes the filing deadlines for the annual certification process, and the commission's authority and responsibilities for review of the carriers' submissions.

Proposed §26.418(k) is added to provide the procedures for disaggregation of rural telecommunications carriers' FUSF support as outlined in the FCC's *Report and Order*. Specifically, proposed §26.418(k) provides rural carriers the flexibility to disaggregate their FUSF support according to three "paths" established by the FCC. The amendments allow a rural carrier to elect not to disaggregate and continue receiving funds on an access line averaged basis, in accordance with their federal study areas. The amendment also allows a rural carrier to either disaggregate their 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. Proposed §26.418 also addresses the commission's authority to review and monitor the requirements outlined in the FCC's *Report and Order*.

Janis Ervin, Telecommunications Utility Analyst, Telecommunications Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ervin has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the continuous provisioning of affordable basic local telecommunications service in high cost areas throughout the state. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested, pursuant to Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Texas 78701, at 10:00 a.m. on Monday, January 15, 2002.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 24521.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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 specifically, the FCC's *Fourteenth Report and Order* in CC Docket No. 96-45, 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 FTA §254(e) and 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 [ETCeligible telecommunications carrier](#) 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 [ETCeligible telecommunications carrier](#).
- (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 the Small and Rural

Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 [C.F.R. Code of Federal Regulations](#) §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 ~~ETC~~eligible telecommunications carriers.** 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. Code of Federal Regulations](#) §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) (No change.)

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

(1) (No change.)

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 [C.F.R. Code of Federal Regulations](#) 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. Code of Federal Regulations~~ §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).
- (e) **Designation of more than one ETCeligible telecommunications carrier.**
- (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 ETCeligible telecommunications carrier 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 ETCeligible telecommunications carrier 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 ETCeligible telecommunications carriers.**
- (1) (No change.)
- (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETCeligible telecommunications carrier shall file an application, within 30 days after the date of the

purchase, to amend its ~~ETCeligible telecommunications carrier~~ service area to include those geographic areas that are eligible for support.

- (3) If an ~~ETCeligible telecommunications carrier~~ 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 ~~ETCeligible telecommunications carrier~~ 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 ~~Office of~~ 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 ~~ETCeligible telecommunications carrier~~ designation. A common carrier that seeks to be designated as an ~~ETCeligible telecommunications carrier~~ 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. United States Code~~ §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 ~~ETCeligible telecommunications carrier~~;
- (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. United States Code~~ §254(c) to any consumer in the service area for which it seeks designation as an ~~ETCeligible telecommunications carrier~~;

(iii) (No change.)

(iv) show the service area in which the applicant seeks designation as an ~~ETCeligible telecommunications carrier~~;

(v) - (viii) (No change.)

(C) Contents of application for each common carrier seeking ~~ETCeligible telecommunications carrier~~ designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ~~ETCeligible telecommunications carrier~~ 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) (No change.)

(ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 ~~C.F.R. Code of Federal Regulations~~ Part 54, Subpart E; and

- (iii) show that the applicant offers toll limitation services in accordance with 47 ~~C.F.R. Code of Federal Regulations~~ §54.400 and §54.401.

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

(A) (No change.)

(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. United States Code~~ §254(c);

- (II) - (V) (No change.)

- (VI) if, in areas served by a rural telephone company, the ~~ETCeligible telecommunications carrier~~ 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) (No change.)

- (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47

~~C.F.R. Code of Federal Regulations~~ Part 54, Subpart

E; and

(III) the applicant offers toll limitation services in accordance with 47 ~~C.F.R. Code of Federal Regulations~~ §54.400 and §54.401.

(C) - (D) (No change.)

(E) Waiver. In the event that an otherwise ~~ETCeligible telecommunications carrier~~ 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 ~~ETCeligible telecommunications carrier~~ 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. United States Code~~ §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 ~~ETCeligible telecommunications carrier~~ designation.** A common carrier may seek to relinquish its ~~ETCeligible telecommunications carrier~~ designation.

(1) **Area served by more than one ~~ETCeligible telecommunications carrier~~.** The commission shall permit a common carrier to relinquish its designation as an ~~ETCeligible telecommunications carrier~~ in any area served by more than one ~~ETCeligible telecommunications carrier~~ 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 ~~ETCeligible telecommunications carrier~~;

(B) - (C) (No change.)

(2) **Area where the common carrier is the sole ~~ETCeligible telecommunications carrier~~.** In areas where the common carrier is the only ~~ETCeligible telecommunications carrier~~, the commission may permit it to relinquish its ~~ETCeligible telecommunications carrier~~ 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 ~~ETCeligible telecommunications carrier~~; and
- (B) commission designation of a new ~~ETCeligible telecommunications carrier~~ for the service area or areas.

**(i) 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 state 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 be certified by the commission for annual FUSF effective January 1st of the following year. If a common carrier makes a late filing, 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) **Revocation of FUSF support certification.** The commission may revoke 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 to review any challenge to a carrier's FUSF support certification.

(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 targeting 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 targeting 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 apply;
- (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:

(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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 26th DAY OF NOVEMBER 2001 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**