

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§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 qualify to receive universal service support under these programs.
- (b) **Requirements for establishing ETP service areas.**
- (1) **THCUSP service area.** A THCUSP service area is 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 must 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), is eligible to receive TUSF support in accordance with §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, in accordance with §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 in accordance with subsection (b) of this section and assumes the obligation to offer any customer within an exchange in its ETP service area for which the provider receives support under this section, 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, or resale of another carrier's services;
 - (D) the telecommunications provider renders continuous and adequate service within an exchange in its ETP service area for which the provider receives support under this section, 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 Programs); and
 - (F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

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- (2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it must be eligible to receive TUSF support in accordance with §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 under Public Utility Regulatory Act (PURA) Chapter 58 or 59 it must 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 under PURA Chapter 58 or 59 it must 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 must be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions must be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.
- (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) To receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP must 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 must file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude those exchanges for which it was receiving support from its designated service area.
- (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 must 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 must 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 PUCT Consumer Protection Division at (512) 936-

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7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989.”

- (B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state must file with the commission an application complying with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel.
- (i) Telecommunications providers. The application must:
- (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 under 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) provide 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 must 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 is eligible for administrative review unless the telecommunications provider requests the

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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 must 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 will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will 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 will 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 will be determined 30 days from the 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 under administrative review, commission staff and OPUC may submit requests for information to the applicant. Answers to such requests for information must be provided to commission staff and OPUC 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. Commission staff must and OPUC 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 will issue an order approving, denying, or docketing the application.
- (B) **Approval or denial of application.** The application will 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 will 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 will 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. Answers to requests for information must 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 will be scheduled. A hearing on the merits will be limited to issues of eligibility. The application will be processed in accordance with the commission's rules applicable to docketed cases.

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- (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 will 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 must 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 will 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 will 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 will provide notice in the *Texas Register* of the auction. The announcement must at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed in accordance with §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.

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- (B) The TUSF administrator must 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 must 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 must 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 must be the annual compliance affidavit approved by the commission.