

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§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) in accordance with 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). 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) **Application.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller. Subsection (i) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (c) **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 in accordance with 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 in accordance with 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.
- (d) **Criteria for determination of ETCs.** A common carrier must 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.
- (e) **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 (d) 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).
- (f) **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 will designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) and (d) of this section.

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- (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 (c)(2) and (d) of this section if the commission finds that the designation is in the public interest.
- (g) **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) To receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC must 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 must 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.
- (h) **Application requirements and commission processing of applications.**
- (1) Requirements for notice and contents of application.
 - (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 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 PUCT Consumer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989.”
 - (B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC 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 (OPUC). The application must:
 - (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;

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- (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 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. The application must:
 - (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 is eligible for administrative review unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.
 - (i) The effective date will 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 the staff of OPUC may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information must be provided to commission staff and OPUC 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 commission staff with written comments or recommendations concerning the application. Commission staff 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.
 - (i) An application filed in accordance with paragraph (1)(B) of this subsection will 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);

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- (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 (c) 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 in accordance with paragraph (1)(C) of this subsection will 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 will docket the application.
 - (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. Three copies of all 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.
 - (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 must 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.
- (i) **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, will determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and will order such carrier or carriers to provide such service for that unserved community or portion thereof.

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- (j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.
- (1) **Area served by more than one ETC.** The commission will 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.
- (k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area must 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 1 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 1 each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1 of each year.
 - (2) **Failure to file.** Common carriers failing to file an affidavit by September 1 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 applies.
 - (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 in accordance with 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.
- (l) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
- (1) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier is prohibited from disaggregating its FUSF support unless it is ordered to do so by the commission in accordance with the terms of paragraph (5) of this subsection.
 - (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;

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- (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 is prohibited from disaggregating its FUSF support unless it is ordered to do so by the commission in accordance with the terms of paragraph (5) of this subsection.
- (3) **Requirements for rural ILECs' disaggregation plans.** In accordance with federal requirements, a rural ILEC's disaggregation plan, whether submitted in accordance with 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 must remain fixed over time, except as changes are required in accordance with paragraph (5) of this subsection;
 - (C) the ratio of per line FUSF support must be publicly available;
 - (D) the per line FUSF support amount for each disaggregated zone or wire center must 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 must 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 must 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.** In accordance with federal requirements, 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;
 - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that the benchmark 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.

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- (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 must be as specified by federal law.