

PROJECT NO. 24519

RULEMAKING TO IMPLEMENT HB	§	
2388, 77TH LEG., PROVISION OF	§	PUBLIC UTILITY COMMISSION
TELECOMMUNICATIONS	§	
SERVICES TO AN AREA NOT	§	OF TEXAS
INCLUDED IN A CERTIFICATED	§	
SERVICE AREA	§	

**ORDER ADOPTING NEW §26.421 AND §26.422 CONCERNING DESIGNATION OF
ETPs TO PROVIDE SERVICE TO UNCERTIFICATED AREAS
AS APPROVED AT THE APRIL 5, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.421 relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas and new §26.422 relating to Subsequent Petitions for Service in Uncertificated Areas, with changes to the proposed text as published in the January 4, 2002 *Texas Register* (27 TexReg 21). The rule implements Subchapter F, Chapter 56 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2002) (PURA) as added by House Bill 2388, 77th Legislature (HB 2388) which authorizes the commission to designate a telecommunications provider to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of certificate of convenience and necessity (CCN) and for the reimbursement of costs from the Texas Universal Service Fund (TUSF). These new sections were adopted under Project Number 24519.

A workshop for this rulemaking was conducted at the commission's offices on October 17, 2001, and a public hearing on the proposed sections was held at commission offices on February 12, 2002.

Representatives from Texas Statewide Telephone Cooperative, Inc. (TSTCI), John Staurulakis, Inc. (JSI), and Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company (SWBT) attended the hearing and provided comments on the proposed rules. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new sections from TSTCI, JSI, Verizon Southwest (Verizon), Western Wireless Corporation (Western Wireless), and SWBT. Reply comments on the proposed new sections were received from TSTCI and Verizon.

No comments were received on §26.421(a) *Purpose*, (b) *Definitions*, (c) *Application*, (g) *Evidentiary Hearing*, (h) *Commission decision*, (l) *Cap on TUSF reimbursements*, or on §26.422.

General Comments

Confidentiality

Western Wireless, in its initial comments, and Verizon, in its reply comments, proposed that cost data filed by carriers be treated as confidential.

The commission does not find it necessary to make any changes to the rule to address the concerns of Western Wireless and Verizon. Any material or data determined to be confidential by the carrier should be filed in accordance with established processes in §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Material) regarding confidential material.

Portability of support

Western Wireless recommended adding a new section to address the concept of portability of support. Western Wireless stated that as a competitive provider, it is entitled to exactly that which the incumbent local exchange carriers (ILEC) would receive in support. Western Wireless argued that once per line support has been determined by the commission for each uncertificated area, competitive carriers must have the ability to draw the same level of support as the ILEC would for serving the uncertificated areas. Western Wireless noted that the concept of portability has been endorsed by the commission and the FCC.

Verizon on the other hand disagreed with Western Wireless' proposal to add a new section that addresses "the concept of portability of support." Verizon highlighted that the proposed rule indicated that a portion of the recovery may be provided from the TUSF and that the portability of TUSF funding is already addressed in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

TSTCI also took strong exception to Western Wireless' recommendation on portability of support. TSTCI commented that the support awarded under this section is based on HB 2388, which provides a mechanism for residents in uncertificated areas to petition for service. TSTCI commented that to make the support awarded under this section portable would be inappropriate and contrary to the intent of the legislation.

The commission agrees with TSTCI and Verizon and refrains from adding a new subsection to address the concept of portability of per line support. As Verizon noted, the portability of TUSF funding is already addressed in §26.403(e)(3)(C) and therefore there is no need to address it in this rule.

Unique identifiers

Western Wireless recommended that the commission attribute unique identifiers to each uncertificated area in Texas, and overlay these areas with relevant carriers' coverage. Western Wireless stated this would enable the commission to make a determination as to which carriers can potentially provide service in the relevant uncertificated areas.

The commission agrees with Western Wireless that there may be potential for an overlay map with unique identifiers for each uncertificated area. However, the commission notes that this would be an administrative function, on an as needed basis, and does not need to be addressed in the rule.

Unforeseeable circumstances

TSTCI urged the commission to add a provision to the cost recovery section of the rule to account for situations where a customer may move from the premises, die or legally discharge their obligation after the provider has been required to make an investment to serve that premises. TSTCI believes that the rule should clarify that under these circumstances, a provider is assured of recovering any investment made to serve that premises as allowed under the law.

The commission recognizes that unforeseeable circumstances may arise. However, under subsection (j) of the rule, a designated carrier will recover its actual costs of deployment from a combination of the aid to construction charge and the TUSF. Additionally, if service is terminated, for whatever reason, there will be no recurring charges. Therefore, under the rule, the carrier will not be denied recovery of any actual investment.

Combination with proposed §26.243

TSTCI expressed concern that having two rules for volunteering providers in uncertificated areas, §26.421 and §26.423 as proposed in Project Number 24527, *Rulemaking Regarding High Cost Assistance to a Telecommunications Provider that Volunteers to Provide Voice-Grade Service*, may cause confusion and allow for abuses of the system. TSTCI suggested that one rule would be better to address the issues. Furthermore, TSTCI urged the commission to add a provision in the rule

to prevent the possibility of awarding TUSF support simultaneously under both rules to serve the same premises.

Although the commission proposes to have multiple rules applicable to service in uncertificated areas, one may distinguish between §§26.421, 26.422 and 26.423 by examining the circumstances necessitating the adoption of each rule. Section 26.421 and §26.422 were proposed in response to HB 2388, which amended PURA by creating a process whereby consumers may petition the commission to designate an eligible carrier to provide basic local telephone service to consumers. Because the commission is mandating that the carriers serve outside of their service territory, the carriers are guaranteed to recover their actual costs of deployment and their recurring costs through a commission-determined combination of funds from the TUSF and the consumers. On the other hand, proposed §26.423 is necessary to fill a gap in TUSF support. Currently, there is no mechanism in commission rules to calculate and allow for TUSF support for service in uncertificated areas. Section 26.423 addresses the situation where a carrier, of its own volition, provides service beyond its service territory, to an uncertificated area. In such an instance, §26.423 sets up the mechanism for the commission to determine the TUSF per line support applicable to the uncertificated area.

Carriers and consumers may determine which rule applies by looking to the conduct initiating the process. If a consumer initiates the process by filing a petition under §26.421, even if the carrier "volunteers" in response to a notice of completeness issued pursuant to §26.421(e)(2), cost recovery and per line support will be calculated under §26.421. If a carrier initiates the process by filing a

request under proposed §26.423, per line support will be calculated under proposed §26.423(e). No up-front recovery for costs of deployment is provided under proposed §26.423(e); instead, recovery of capital costs is included in the per line support calculation.

Although the commission acknowledges TSTCI's concern about the possibility of the commission awarding TUSF support simultaneously under both rules, the commission does not find it necessary to include specific language in the rule to address this concern. It will be the joint responsibility of the commission, the carriers, and the TUSF administrator to insure that carriers are receiving support under the appropriate mechanism only. The commission will address on a case-by-case basis any circumstances where §26.421 and proposed §26.423 may overlap.

§26.421(d)(2)(C)

Subsection (d)(2)(C) outlines the contents of a petition that will be filed by a petitioner requesting service in an uncertificated area.

TSTCI noted that HB 2388 provides that if a provider voluntarily agrees to provide service to the petitioning premises, the provider need not be serving in a contiguous service area, assuming the provider is designated an eligible telecommunications provider (ETP). TSTCI commented that in the interest of including as many carriers as possible, a clarification should be added to subsection (d)(2)(C) describing the nomination of potential service providers.

The commission does not find it necessary to add clarification to subsection (d) because subsection (f) already notes that a provider may volunteer to provide services.

§26.421(e)

Subsection (e) outlines the steps that the commission will undertake upon receipt of a petition. Specifically, subsection (e)(2) states that the commission will send a notice of completeness to the petitioner(s) and to all telecommunications providers identified in the petition and seek volunteers to serve.

SWBT commented that the petitioner(s) may not know the names of all potentially eligible telecommunications providers providing service in contiguous territories and as a result, the notice of completeness would be sent only to a limited set of providers as identified by the petitioner(s). SWBT cautioned that this could greatly reduce the likelihood of finding a provider who is willing to volunteer to provide service. Therefore, SWBT recommended that subsection (e)(2) be modified to indicate that the commission will send the notice of completeness to all telecommunications providers providing service in contiguous territories.

Verizon commented that subsection (e)(2) should be clarified to exclude pure resellers, as §26.421 applies only to those telecommunication providers that are ETPs.

At the public hearing, Commission Staff and participants discussed the problems associated with SWBT's proposal, such as the inability of the commission to know which providers, specifically competitive local exchange carriers (CLECs), are providing service in the contiguous exchanges. The participants acceded that the most effective way of expanding the pool of potential carriers would be to insure that the ILECs were notified and that notice be published in the *Texas Register*.

The commission agrees with SWBT's concern that the rule limits the number of carriers receiving the notice of completeness and therefore modifies subsection (e)(2). In accordance with the discussion at the public hearing, the notice of completeness will be sent to all carriers identified in the petition and all ILECs providing service in contiguous exchanges. Additionally, to reach as many potential providers as possible, the commission amends the rule to require that the commission publish notice of the petition and of the notice of completeness in the *Texas Register*.

The commission does not find it necessary to make any changes relating to resellers. As stated by Verizon, §26.421 only applies to ETPs therefore pure resellers are automatically excluded. Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)), requires that all ETPs provide service through their own facilities or through a combination of their own facilities and the resale of another carrier's services.

§26.421(f)(1)

Subsection (f)(1) states that telecommunications providers shall respond to the commission's notice of approval and request for volunteers within 21 business days after receipt of the notice.

TSTCI recommended that to attract more providers, the notice provision in subsection (f)(1) should be extended to 30 or 45 days and a special commission website be established to facilitate the notice process.

Verizon recommended extending the deadline to 60 calendar days to allow the volunteering provider to adequately plan, engineer and cost its proposal.

The commission agrees with the parties that more time is needed and revises the rule to extend the deadline from 21 days to 30 days. The commission finds that 30 days would be adequate to develop a cost proposal. Additionally, the commission maintains a website and utilizes it for a variety of projects and dockets as needed. Therefore, the commission does not find it necessary to specifically require a website for these types of dockets as suggested by TSTCI, as this will be addressed by the commission's current practice.

§26.421(f)(1)(A)

Subsection (f)(1)(A) states that a provider may respond to the commission's notice of approval by stating that it is not eligible to be designated to serve the premises under this section.

Western Wireless recommended that clarifying language be added to subsection (f)(1)(A) stating that a Commercial Mobile Radio Service (CMRS) carrier that has been designated an ETP by the commission may still be unable to provision service if the uncertificated area is not within the company's Federal Communications Commission (FCC)-licensed geographical service area.

While the commission agrees with Western Wireless that a CMRS carrier may not provide service outside of its FCC-licensed area, the commission does not find that it is necessary to make any changes to the rule. If a CMRS carrier receives a notice of completeness applicable to a geographic area outside of its FCC-licensed area, the CMRS carrier would respond to the notice consistent with §26.421(f)(1)(A).

§26.421(f)(1)(C)

Subsection (f)(1)(C) states that a telecommunications provider may respond to the notice of approval and request for volunteers by "refusing to provide service to the premises."

SWBT highlighted that in subsection (f)(1)(C) the commission is only seeking volunteers and therefore recommended modifying subsection (f)(1)(C) to state that a provider may respond to the notice by "Refusing to volunteer to provide services to the premise."

The commission agrees with SWBT that subsection (f)(1)(C) pertains to volunteering of services and therefore adds the suggested clarification.

§26.421(f)(3)

Subsection (f)(3) outlines the actions that the commission will take upon receipt of a volunteering provider's proposal.

Western Wireless recommended that an ETP be able to recover its costs, or alternatively, enable the commission to determine the dollar amounts an ETP may recover for serving the uncertificated area.

The commission finds that no changes to subsection (f)(3) are necessary to address Western Wireless' concerns. Carriers volunteering in response to a notice of completeness will recover their costs of deployment and recurring costs consistent with subsection (j).

§26.421(i)

Subsection (i) states that the commission will issue an order within 180 days of the filing of the petition granting or denying the filed petition, and that the order will address, among other things, the estimated costs and the amount and method of recovery.

Verizon noted that the rules do not explain how the estimated cost will be "trued up" to reflect the provider's actual costs, which the provider is entitled to recover under HB 2388. Verizon proposed that the rules be amended to provide for a subsequent commission order that addresses the recovery of actual costs as documented by the provider.

The commission agrees with Verizon that a procedure is necessary to address the recovery of the actual costs incurred by the provider as allowed under PURA. Accordingly, the commission adds new subsection (k), Submission of actual costs, which sets forth an administrative process for the commission to review a providers' actual costs.

§26.421(i)(3)

Subsection (i) outlines the contents of the order granting or denying a petition. Specifically, in subsection (i)(3), the commission noted that it shall include in the order the aid to construction fee to be paid by the petitioner.

TSTCI recommended that the language in subsection (i)(3) mirror HB 2388 and limit the fee paid by the petitioner to not more than \$3,000.

The commission agrees with TSTCI's recommendation and modifies subsection (i)(3) to limit the petitioner's contribution to not more than \$3,000.

§26.421(i)(8)

Subsection (i)(8) sets forth a schedule of cost recovery.

SWBT contended that this paragraph does not specify which costs are to be recovered pursuant to the schedule. SWBT noted that PURA §56.209(b) clearly indicates that recovery of costs should pertain only to a provider's "original cost of deployment" and not the recovery of any operating costs. Therefore, SWBT recommended that subsection (i)(8) clearly specify the type of costs that are to be recovered.

The commission agrees with SWBT that PURA §56.209(b) only allows for the recovery of the provider's original cost of deployment. Therefore, subsection (i)(8) has been modified to clearly specify that the schedule of cost recovery pertains only to the provider's original cost of deployment.

§26.421(j)

Subsection (j) outlines the types of costs a designated provider may recover from the TUSF. This subsection implements PURA §56.209(b), which specifies that a provider is entitled to recover only its original cost of deployment from the TUSF and aid to construction charges pursuant to a specified schedule based on the original cost of the deployment. A provider is entitled to recover only its actual recurring costs through the monthly rate charged to the customer and a monthly per line TUSF payment.

SWBT commented that subsection (j), as proposed, suggests that a provider may recover through a monthly recurring charge, all, or a portion of the original cost of deployment. SWBT suggested rewording subsection (j) for clarification.

The commission agrees with SWBT and rewords subsection (j) to clarify that a designated provider may only ". . . recover from the TUSF the provider's actual costs of providing service to the premises, including the provider's original cost of deployment not recovered from the petitioner(s) through an aid to construction charge and the provider's actual recurring costs not recovered from the petitioner(s) through a monthly recurring charge."

All comments, including any not specifically referenced herein, were fully considered by the commission. The commission has made minor conforming changes to §26.422 concerning the title of referenced §26.421.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §56.202, which grants the commission the authority to designate a telecommunications provider to provide services in uncertificated areas of the state.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.001, 56.021, 56.023, and 56.201-56.213.

§26.421. Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas.

- (a) **Purpose.** The provisions of this section establish the procedures for the commission to designate an eligible telecommunications provider (ETP) to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity (CCN), and for the reimbursement of costs from the Texas Universal Service Fund (TUSF).
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Designated provider** — A telecommunications provider designated by the commission to provide services to premises located within an uncertificated area
 - (2) **Eligible telecommunications provider (ETP)** — A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
 - (3) **Permanent residential or business premises** — A premises that has permanent facilities for water, wastewater, and electricity.
 - (4) **Preferred provider** — A designated provider for any permanent residential or business premises within reasonable proximity to those petitioning premises for later

petitions filed under §26.422 of this title (relating to Subsequent Petitions for Service in Uncertificated Areas).

(c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

(d) **Petition for service.**

(1) **Eligibility.** Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a holder of a CCN may petition the commission to designate an ETP to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.

(2) **Contents of petition.** A petition for designation of an ETP must:

(A) State with reasonable particularity the locations of the permanent residential or business premises for which the petitioner(s) are requesting service;

(B) Establish that the premises are within reasonable proximity to one another so that the petitioners possess a sufficient community of interest;

(C) Nominate as potential providers of service, not more than five telecommunications providers serving territory that is contiguous to the location of the permanent residential or business premises using wireless or wireline facilities, resale, or unbundled network elements; and

- (D) Include as an attachment or an appendix, documentation indicating the required residence or ownership, such as a state-issued license or identification, tax records, deeds, or voter registration materials.
- (3) **Eligibility of petitioner(s).** Except as provided by paragraph (4) of this subsection, the petition must be signed by at least five persons who:
- (A) Are not members of the same household;
 - (B) Reside in the permanent residential premises or are the owners of the permanent residential or business premises for which service is sought;
 - (C) Desire service to those premises;
 - (D) Commit to pay the aid to construction charges for service to those premises as determined by the commission; and
 - (E) Commit to enter into an assignable agreement for subscription to basic local service to the premises for a period of time determined by the commission.
- (4) **Number of petitioners.** The commission may accept a petition that is signed by fewer than five persons if the petitioner(s) provides an affidavit stating that the petitioner(s) has taken all reasonable steps to secure the signatures of the residents of permanent residential premises or the owners of permanent residential or business premises within reasonably close proximity to the petitioner's premises who are not receiving telephone service when the petition is filed and who want telephone service initiated.
- (5) **Form.** The petitioner(s) shall file the petition using the commission-approved forms.

(e) **Completeness of petition.**

- (1) **Commission action.** Upon receipt of a petition, the commission shall review the petition for completeness. Within 15 working days from the date of receipt of the petition, the commission shall determine if the petition is complete and has been filed consistent with subsection (d) of this section.
- (2) **Petition complete.** If the commission determines the petition is complete, the commission will send a notice of completeness to the petitioner(s), to all telecommunications providers identified in the petition, and if not otherwise notified, to the incumbent local exchange carriers serving the contiguous exchanges. In the notice, the commission shall seek volunteers to provide telecommunications services in the permanent residential or business premises. The commission shall also include with the notice a copy of the petition. The commission shall publish notice of the petition and the notice of completeness in the *Texas Register*.
- (3) **Petition denied.** If a petition is denied, the commission shall send a notice of denial explaining the reason(s) for denial to the petitioner(s).

(f) **Responding to notice of completeness.**

- (1) **Response.** Telecommunication providers shall respond to the commission's notice of completeness and request for volunteers within 30 days after receipt of the notice. A provider may respond by:

- (A) Stating that it is not eligible to be designated to serve the premises under this section;
 - (B) Volunteering to provide service to the premises; or
 - (C) Refusing to volunteer to provide service to the premises.
- (2) **Volunteering to serve.** A provider volunteering to provide service to the premises shall respond to the commission by providing a proposal that includes:
- (A) An affidavit duly signed by an officer of the company;
 - (B) A description of the technology proposed for deployment;
 - (C) An estimate of the costs for deployment and the recurring monthly costs of service; and
 - (D) An estimated timeline for deployment of facilities and a date by which service will be extended to the premises.
- (3) **Commission action.** Upon receipt of a volunteering provider's proposal, the commission may:
- (A) Approve a proposal administratively and permit the ETP to serve the uncertificated area and recover its costs pursuant to subsection (j) of this section; or
 - (B) Reject a proposal and proceed to a hearing pursuant to subsection (g) of this section.

- (g) **Evidentiary hearing.** If the petition cannot be processed administratively, the commission shall conduct an evidentiary hearing to determine:
- (1) If an ETP is willing to be designated to provide service to the petitioner(s); or
 - (2) The ETP that is best able to serve the petitioner(s).
- (h) **Commission decision.** The commission should consider all relevant factors, including, but not limited to:
- (1) The original cost to be incurred by a designated provider to deploy service to the petitioning premises, and the effect of reimbursement of those costs on the state universal service fund;
 - (2) The number of access lines requested by the petitioners for the petitioning premises;
 - (3) The size of the geographic territory in which the petitioning premises are included;
 - (4) The proximity of existing facilities and the existence of a preferred designated provider under the Public Utility Regulatory Act (PURA) §56.213; and
 - (5) Any technical barriers to the provision of service.
- (i) **Commission order.** The commission shall issue an order granting or denying a petition within 180 days of the filing of the petition. In any order granting a petition the commission shall include the following:
- (1) Description of the facilities to be deployed;
 - (2) Estimated costs of deployment;

- (3) Aid to construction fee to be paid by the petitioner(s), not to exceed \$3,000;
 - (4) Monthly recurring charge to be paid by the petitioner(s);
 - (5) Estimated cost to be recovered from the TUSF;
 - (6) Recurring, monthly per line fee to be recovered from the TUSF;
 - (7) Date by which services must be extended to the premises; and
 - (8) Schedule of cost recovery for the provider's original cost of deployment consistent with the following:
 - (A) Not later than the third anniversary of the date of the order, for a deployment with an estimated original cost of \$1 million or less;
 - (B) Not later than the fifth anniversary of the date of the order, for a deployment with an estimated original cost of more than \$1 million, but not more than \$2 million; and
 - (C) Not later than the seventh anniversary of the date of the order, for a deployment with an estimated original cost of more than \$2 million.
- (j) **Cost recovery.** A designated provider may recover from the TUSF the provider's actual costs of providing service to the premises, including the provider's original cost of deployment not recovered from the petitioner(s) through an aid to construction charge and the provider's actual recurring costs not recovered from the petitioner(s) through a monthly recurring charge.
- (1) The original cost of deployment includes the cost of the provider's facilities installed in, or upgraded to permit the provision of service to, the premises, as determined by the

financial accounting standards applicable to the provider, including an amount for the recovery of all costs that are typically included as capital costs for accounting purposes.

- (2) The provider is permitted to recover interest at the prevailing commercial lending rate on its original costs of deployment.
 - (3) Actual recurring costs include maintenance and the ongoing operational costs of providing service after deployment of the facilities to the premises and a reasonable operating margin.
- (k) **Submission of actual costs.** Upon completion of the construction, the designated provider shall file the actual costs with the commission.
- (1) No later than 30 days after filing the actual costs, commission staff shall file with the presiding officer written comments or recommendations concerning the actual costs.
 - (2) No later than 60 days after filing the actual costs, the presiding officer shall issue a notice stating whether the costs may be submitted to the TUSF administrator for recovery consistent with the order issued pursuant to subsection (i) of this section.
 - (3) The designated provider or the commission staff may appeal to the commission an administrative notice issued by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders changes to the actual costs submitted, the designated provider

shall be ordered to make those changes within a reasonable period of time before they may be submitted to the TUSF administrator for recovery.

- (l) **Cap on TUSF reimbursements.** The commission may not authorize or require any services to be provided under this section during a fiscal year if the total amount of required reimbursements, together with interest and obligations from preceding years, would equal an amount that exceeds 0.02% of the annual gross revenues reported to the TUSF during the preceding fiscal year.

§26.422. Subsequent Petitions for Service in Uncertificated Areas.

- (a) If the commission approves a petition requesting service, residents of permanent residential premises or owners of permanent residential or business premises in reasonable proximity to the premises that were the subject of an approved petition who did not sign the prior petition requesting service are not entitled to receive service under the Public Utility Regulatory Act (PURA), Chapter 56, Subchapter F, prior to the fifth anniversary of the date the prior petition was filed, unless the residents or owners file a new petition and agree to pay aid to construction charges on the same terms as applicable to the prior petitioner(s).

- (b) The designated provider shall receive reimbursement for the original cost of deployment and actual recurring costs of providing service to those additional residents in the same manner as the provider received reimbursement of those costs in relation to the prior petitioner(s). The provider may not receive reimbursement for the original cost of deployment under a subsequent petition if the provider previously received complete reimbursement for those costs from the Texas Universal Service Fund (TUSF). If the TUSF has completely reimbursed the original cost of deployment as provided by §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas), each subsequent petitioner must pay into the TUSF an amount equal to the aid to construction charge paid by each prior petitioner.

This agency hereby certifies that the rules, as adopted, have 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 §26.421 relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas and §26.422 relating to Subsequent Petitions for Service in Uncertificated Areas are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF APRIL 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Commissioner Brett A. Perlman

Commissioner Rebecca Klein