

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	§	

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE
DECEMBER 19, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.421, relating to Designation of Eligible Telecommunication Provider to Provide Service to Uncertificated Areas and new §26.422, relating to Subsequent Petitions for Service in Uncertificated Areas. These sections implement 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 and for the reimbursement of costs from the Texas Universal Service Fund (TUSF). HB 2388 amends the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2002) (PURA) §§51.002, 56.001, 56.021 and 56.023 and adds new Chapter 56, Subchapter F. Project Number 24519 is assigned to this proceeding.

The proposed new sections outline the procedures for residents or businesses in uncertificated areas to petition the commission for voice-grade telecommunications services. Section 26.421 explains the factors that the commission would consider in approving or denying the petition, and if necessary, the procedures for conducting an evidentiary hearing. Section 26.421 also describes the method for recovery of actual construction costs and monthly recurring costs from the Texas Universal Service

Fund (TUSF). In addition, §26.421 provides guidelines to the commission on issuing an order granting or denying a petition. Proposed §26.422 provides guidelines for petitions requesting service for premises within a reasonable proximity to premises that were the subject of an earlier approved petition. Section 26.422 also describes the method for cost recovery relating to later filed petitions.

Ms. Jennifer Fagan, Attorney, Legal Division and Mr. Elango Rajagopal, Policy Analyst, Telecommunications Division, have determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Fagan and Mr. Rajagopal have determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be that persons previously unable to obtain voice-grade telecommunications service because they are located outside the certificated area of any local exchange carrier, will be afforded an opportunity to obtain such services. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Ms. Fagan and Mr. Rajagopal have also determined that for each year of the first five years the proposed sections are in effect, there should be no effect on a local economy. Therefore, no local employment impact statement is required under Administrative Procedure Act, §2001.022.

Written comments on the proposed rules (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. Reply comments may be submitted within 45 days after publication. The commission invites comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to adopt these sections. All comments should refer to Project Number 24519.

The commission staff will conduct a public hearing on this rulemaking, pursuant to Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, February 12, 2002, at 1:30 p.m.

These new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 1998, Supplement 2002), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. These sections are also proposed under §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 Telecommunication Provider 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 telecommunication 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) and to all telecommunications providers identified in the petition. In its notice, the commission shall seek volunteers to provide telecommunications services in the permanent residential or business premises. The commission shall also include with its notice a copy of the petition.
- (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 approval.**

- (1) **Response.** Telecommunication providers shall respond to the commission's notice of approval and request for volunteers within 21 business 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 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 (k) 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);
 - (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 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 and actual recurring costs, not recovered from the petitioner(s) either through an aid to construction charge or 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) **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 Telecommunication Provider 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 20th DAY OF DECEMBER 2001 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**