

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§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. 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.
- (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;

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- (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.

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- (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.

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- (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.