



Control Number: 38504



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DOCKET NO. 38504

APPLICATION OF CUMBY TELEPHONE COOPERATIVE, INC. TO AMEND ITS ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC) DESIGNATION AND ELIGIBLE TELECOMMUNICATIONS PROVIDER (ETP) DESIGNATION	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files its final recommendation in the above-referenced proceeding and would submit the following:

On July 29, 2010, Cumby Telephone Cooperative, Inc. (Cumby or the Company) filed an Application to Amend its Eligible Telecommunications Carrier (ETC) Designation pursuant to 47 U.S.C. 214(c) and P.U.C. SUBST. R. 26.418 and to amend its Eligible Telecommunications Provider (ETP) Designation pursuant to P.U.C. SUBST. R. 26.417 (Application). Cumby asks to amend its ETC and ETP designations to add the exchange of Shirley which is within the service area of GTE Southwest, Inc. d/b/a Verizon Southwest. Cumby also requested simultaneous processing and approval of the ETC and ETP amendments by September 8, 2010.

On July 30, 2010, Order No. 1 was issued requiring Staff to file its recommendation on notice, sufficiency and consolidation by August 5, 2010 and its final recommendation by September 7, 2010. On August 5, 2010, Staff filed its response to Order No. 1, recommending that Cumby's Application be found sufficient and not opposing simultaneous processing of Cumby's ETC and ETP amendments. On August 10, 2010, Order No. 2 was issued, deeming Cumby's Application sufficient. No parties have intervened in this proceeding and a request for hearing has not been made.

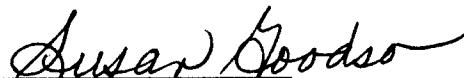
Recommendation. Staff Market Analyst, Competitive Markets-Wholesale, Liz Kayser has reviewed Cumby's Application and determined that Cumby complies with the requirements of P.U.C. SUBST. R. 26.417 for amendment to its designation as an ETP and with the requirements of 47 U.S.C. 214(c) and P.U.C. SUBST. R. 26.418 for amendment to its ETC designation. Thus, for reasons more thoroughly addressed by Ms. Kayser, Staff recommends that Cumby's Application be approved as filed.

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DATE: September 7, 2009 Respectfully Submitted,

Thomas S. Hunter
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 7th day of September 2009 in accordance with P.U.C. Procedural Rule 22.74.




Susan E. Goodson

PUBLIC UTILITY COMMISSION OF TEXAS

Memorandum

TO: Susan Goodson- Attorney - Legal Division

FROM: Liz Kayser – Market Economist 
Competitive Markets Division - Wholesale

DATE: September 7, 2010

RE: Docket No. 38504 – *Application of Cumby Telephone Cooperative, Inc. to Amend its Eligible Telecommunications Carrier and Eligible Telecommunications Provider Designations*

RECOMMENDATION

Regarding Final Recommendation of ETC and ETP Amendment Applications

On July 29, 2010, Cumby Telephone Cooperative, Inc. - CLEC (Cumby CLEC or the Company) filed an application to amend its current designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. § 214(c) and P.U.C. SUBST. R. 26.418 and to amend its designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. SUBST. R. 26.417, in order to be eligible to receive funds from the federal Universal Service Fund (FUSF) and the Texas Universal Service Fund (TUSF) under the Texas High Cost Universal Service Plan (THCUSP).¹ Cumby CLEC operations, though a part of Cumby Telephone Cooperative, are a “below the line” business in which all subscribers are members of Cumby Telephone Cooperative and receive capital credit distributions based on the subscriber’s usage.²

Cumby is a common carrier as defined in 47 U.S.C. §153(10) and a telecommunications provider as defined by PURA §51.002(10). Cumby CLEC holds Certificate of Operating Authority No. 50017 for the Brashear, Lone Star and Miller

¹ Application of Cumby Telephone Cooperative, Inc. to Amend Its Eligible Telecommunications Carrier (ETC) Designation and Eligible Telecommunications Provider (ETP) Designation, Docket No. 38504.

² Cumby CLECs *Response to Commission’s First Requests for Information*, Docket No. 38504, Item 10 at 4 (August 11, 2010).

Grove exchanges. On September 13, 2002, the Company's COA was amended to expand the geographic area to include the entire Dallas Local Access and Transport Area (LATA). Cumby CLEC requested that it be granted a waiver of P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II) to permit it to seek designation as an ETC and ETP simultaneously.

In this application, Cumby seeks to amend its current ETC/ETP designations to include the Shirley wire center (SHRLTXXA) which is in the THCUSP service area of the non-rural ILEC, Verizon Southwest. The Shirley wire center is located wholly within the Verizon Southwest Shirley Exchange. The Company will provide the supported services through the use of its own facilities. Additionally, the Company states that it may use, in limited instances, a combination of unbundled network elements (UNEs) and other providers' facilities to provide the supported services. Cumby CLEC previously received ETC/ETP designations for the GTE Southwest, Inc. d/b/a Verizon Southwest Lone Oak, Miller Grove, and Brashear exchanges and the Sprint-United Cooper exchange.

On July 30, 2010, Order No. 1, *Requesting Recommendation on Sufficiency, and Setting Procedural Schedule*, was issued. Order No. 1 established an effective date of September 13, 2010, and advised that the Commission would provide *Texas Register* notice on August 13, 2010. Order No. 1 also established September 2, 2010, as the deadline for comments or intervention to be filed by interested parties.

Order No. 2, *Deeming Application Sufficient for Further Review*, was issued on August 10, 2010.

I recommend that Cumby CLEC be granted an amendment to its existing ETC and ETP designations in Texas to incorporate the Shirley wire center of the non-rural ILEC Verizon. Additionally, I recommend that Cumby CLEC be granted a waiver of P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II) to permit it to be designated in the Shirley wire center as an ETC and ETP simultaneously.

I. Analysis

Designation as an ETC is required for a provider to be eligible to receive support from the FUSF. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support.”³

Under 47 C.F.R. 54.201(b), the FCC granted states the authority to designate common carriers that meet certain requirements as ETCs. Numerous states have taken on the responsibility of designating such qualified carriers as ETCs. The Public Utility Commission of Texas (Commission) performs this review of common carriers seeking ETC designation.

The Code of Federal Regulations (CFRs) addresses a state commission’s responsibility related to an ETC designation:⁴

A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

Designation as Eligible Telecommunications Carrier

To qualify for ETC status a carrier must meet certain criteria.⁵ The criteria that Cumby CLEC must meet to be granted ETC designation and the manner in which it meets those criteria is listed below:

³ 47 U.S.C. § 214(e)(2).

⁴ 47 C.F.R. § 54.201 (b - c).

⁵ 47 C.F.R. § 54.201 (b-d).

1. Company must be a common carrier as defined by the Act, Section 3(10).
CUMBY CLEC is a common carrier as defined by the Communications Act, as amended, (Act) Section 3(10).

2. Carrier must offer the following services⁶ using its own facilities or a combination of its own facilities and the resale of another carrier's services.⁷
CUMBY CLEC stated in its application that will provide the following supported services throughout the entire proposed study area either by using its own facilities or a combination of its own facilities, unbundled network elements (UNEs) and other provider's facilities to provide the supported services.
 - a. Voice grade access to the public switched network – “Voice grade access” is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3000 Hertz. **In its application, CUMBY CLEC states that it provides voice grade access.**

 - b. Local usage – “Local usage” is defined as an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users. **In its application, CUMBY CLEC states that it offers local usage.**

 - c. Dual tone multi-frequency (DTMF) signaling or equivalent – “Dual tone multi-frequency (DTMF)” is defined as a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time. **CUMBY CLEC states that it provides DTMF signaling or its functional equivalent.**

⁶ 47 C.F.R. § 54.101.

⁷ 47 C.F.R. § 54.201.

- d. Single-party service or its functional equivalent – “Single-party service” is defined as telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission. **CUMBY CLEC states that it provides single-party service or its functional equivalent.**
- e. Access to 911 or enhanced 911 – “Access to emergency services” is defined as access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code “911,” to call emergency services through a Public Service Access Point (PSAP) operated by the local government. Enhanced 911 is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems. **CUMBY CLEC states that it provides access to emergency services, i.e. 9-1-1 or enhanced 9-1-1.**
- f. Access to operator services – “Access to operator services” is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. **CUMBY CLEC states that it provides customers access to operator services.**

- g. Access to interexchange service - "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carriers' network. **CUMBY CLEC states that it provides customers access to interexchange services.**
 - h. Access to directory assistance – "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request information contained directory listings. **CUMBY CLEC states that it provides customers access to directory assistance.**
 - i. Toll limitation for qualifying low income customers –Toll limitation or blocking restricts all direct dialed toll access. **CUMBY CLEC states that it provides toll blocking for qualifying low income customers.**
- 3. Carrier must advertise the availability of the above services and the charges for the services in media of general distribution⁸. **CUMBY CLEC has committed to advertise its services in newspapers with general circulation within the designated service area.**
 - 4. Carrier must provide Lifeline and Link Up services and may not collect a deposit from a customer receiving such support if the customer also elects toll blocking. **CUMBY CLEC states that it will provide Lifeline and Link Up services throughout the newly designated service area in compliance with 47 C.F.R. Part 54, Subpart E and P.U.C. SUBST. R. 26.412.**
 - 5. Public Interest Analysis - Pursuant to 47 C.F.R. 54.201(c), prior to designating an additional eligible telecommunications carrier for an area served by a rural

⁸ 47 C.F.R. § 54.201.

telephone company, the state commission shall find that the designation is in the public interest. **Even though the public interest analysis is not required for designation in a non-rural wire center, Cumby CLEC states that it will provide enhanced quality telecommunications services to consumers that are superior to what is currently available.**

Based on the review of CUMBY CLEC's application, I find that CUMBY CLEC does meet all the requirements of P.U.C. SUBST. R. 26.418 and 47 C.F.R. §§ 54.201 - 54.202 to be designated as an ETC.

Designation as Eligible Telecommunications Provider

To qualify for ETC status a carrier must meet the following criteria:

- 1) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(I) requires carriers applying for ETP status to meet the definition of a telecommunications provider as defined in PURA § 51.002(10). **CUMBY CLEC meets this definition.**

- 2) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(II) requires carriers applying for ETP status to show they have been granted ETC status for federal universal service support pursuant to U.S.C. §214(e). **In its application, CUMBY CLEC requests that it be granted a waiver of P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II) to permit it to seek an amendment to its current designation as an ETC and ETP simultaneously.**

- 3) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(III) requires carriers to specify the small or rural ILEC service area in which they propose to be an ETP. **CUMBY CLEC seeks to expand its existing designation to the Shirley wire center of the non-rural ILEC Verizon.**

4) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(III) requires applicants for ETP status to show that they offer the designated services defined in P.U.C. SUBST. R. 26.403 throughout the THCUSP or small and rural ILEC service area for which the carriers seek ETP status. The designated services required for ETP status are:

- (a) Flat rate single party service including primary directory listings;
- (b) Tone dialing;
- (c) Access to Operator Services;
- (d) Access to Directory Assistance Services;
- (e) Access to 911 service when provided by local authority;
- (f) Dual Party Relay service;
- (g) Ability to report service problems seven days a week;
- (h) Availability of annual local directory;
- (i) Access to toll service; and
- (j) Lifeline and Link Up Services.

CUMBY CLEC states in its application that it will offer the services listed above in the Shirley wire center for which it's requesting ETP designation.

5) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(III) also requires applicants to assume the obligation to provide the services required under P.U.C. SUBST. R. § 26.403 to any customer. **In its application, CUMBY CLEC states that it assumes and will meet the obligation to offer the above basic local telecommunication services as defined in P.U.C. SUBST. R. §26.403 to all customers throughout the area for which it seeks ETP designation at a rate not to exceed 150% of the ILECs tariffed rate.**

6) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(IV) requires that applicants show they offer the designated services through a means other than total service resale. **CUMBY CLEC states that it will provide the services listed in P.U.C.**

SUBST. R. §26.403 using its own facilities or a combination of its own facilities, unbundled network elements (UNEs) and other provider's facilities.

- 7) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(V) - (VI) requires applicants to show that they have offered continuous service that meets the quality of service standards in P.U.C. SUBST. R. §26.52 - §26.54, and that they offer Lifeline and Link-Up services in compliance with P.U.C. SUBST. R. §26.412. **CUMBY CLEC states that as a non-dominant provider, Cumby CLEC does not provide compliance reports pursuant to P.U.C. SUBST. R. 26.52, 26.53, and 26.54. Cumby CLEC goes on to say that even though it's not required to submit compliance reports, the Company renders continuous and adequate service within the area for which it seeks designation as an ETP in compliance with the quality of service standards defined above.**

- 8) P.U.C. SUBST. R. §26.417(f)(1)(B)(i)(VII) requires applicants to advertise the availability of, and charges for, the designated services using media of general distribution. **In its application, CUMBY CLEC has committed to advertise its services in newspapers of general distribution.**

6. **P.U.C. SUBST. R. §26.417(d)(2) provides that the Commission may designate an additional ETP in a small or rural ILEC study area if it is in the public interest. Even though the public interest analysis is not required for designation in a non-rural wire center, Cumby CLEC states that it will provide enhanced quality telecommunications services to consumers that are superior to what is currently available.**

Based upon the review of CUMBY CLEC's application, I find that CUMBY CLEC does meet the requirements established by P.U.C. SUBST. R. §26.417 for designation as an ETP.

II. Recommendation

Based on CUMBY CLEC's application for an amendment to its existing ETC/ETP designation, I recommend that CUMBY CLEC be GRANTED ETC and ETP designation in the additional service area of the Shirley wire center.