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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



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PUBLIC UTILITY COMMISSION
FILING CLERK

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Gabriel P. Soto *GPS*
Administrative Law Judge

RE: **Open Meeting of December 7, 2018**
Docket No. 48270 – *Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund*

DATE: November 13, 2018

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Friday, December 7, 2018, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, November 28, 2018.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 48270

APPLICATION OF BORDER TO § PUBLIC UTILITY COMMISSION
BORDER COMMUNICATIONS, INC. §
TO RECOVER FUNDS FROM THE § OF TEXAS
TEXAS UNIVERSAL SERVICE FUND §

PROPOSED ORDER

This Order addresses the application of Border to Border Communications, Inc. to recover lost federal Universal Service Fund (FUSF) revenues from the Texas Universal Service Fund (TUSF). The Commission approves Border to Border Communications Inc.'s request to recover \$1,188,152 from the TUSF for 2018.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Applicant

1. Border to Border Communications is a for-profit corporation registered with the Texas Secretary of State under file number 120571050.

Application

2. On April 13, 2018, Border to Border Communications filed an application to recover \$1,252,457 for 2018 from the TUSF.
3. Border to Border Communications stated the FCC revisions impacted Border to Border Communications's FUSF revenues across the areas of (a) pre-cap support (funding cap) on high-cost loop support and interstate common line support, (b) local switching support, (c) frozen national average cost per loop, and (d) rate-of-return impact on high-cost loop support.
4. In Order No. 2 issued May 18, 2018 the administrative law judge (ALJ) found the application sufficient.
5. Border to Border Communications amended the application on July 26, 2018 to request recovery of \$1,188,152 from the TUSF. Border to Border Communications removed the

loss of the frozen national average cost per loop support from the request. Border to Border Communications also clarified that it seeks to recover 100% of the loss in support for the other areas, rather than 90% of the loss stated in the original application.

Notice

6. Notice of the application appeared in the June 1, 2018, issue of the *Texas Register*.
7. In Order No. 2 issued May 18, 2018, the ALJ found notice sufficient.

Evidence

8. On August 13, 2018, parties filed a joint proposed motion to admit evidence.
9. In Order No. 3 issued August 30, 2018, the ALJ granted the parties' August 13, 2018, joint motion to admit evidence and admitted the following evidence into the record: (a) Border to Border Communications's application and supporting documents filed April 13, 2018; (b) Border to Border Communications's amended application and attachments filed July 26, 2018; (c) Commission Staff's recommendation on the sufficiency of the application and notice filed May 11, 2018; (d) notice published in the *Texas Register* on June 1, 2018; and (e) Commission Staff's recommendation on final disposition and attachments filed July 30, 2018.

FCC Order, Rule, or Policy

10. The FCC's *USF/ICC Transformation Order*,¹ *Regression Analysis Order*,² and *Third Order on Reconsideration*,³ set in motion reforms to the FUSF support mechanisms that have impacted the FUSF revenues of Border to Border Communications.
11. On December 18, 2014, the FCC released the *December 2014 Order*,⁴ adopting further

¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90 et. al, Report and Order and Further Notice of Proposed Rulemaking, FCC No. 11-161, 26 FCCR 17663 (Nov. 18, 2011) (*USF/ICC Transformation Order*).

² *In the Matter of Connect America Fund, High Cost Universal Support*, Order, DA 12-646 (rel. Apr. 25, 2012) (*Regression Analysis Order*).

³ *USF/ICC Transformation Order, Third Order on Reconsideration*, FCC 12-52 (rel. May 14, 2012) (*Third Order on Reconsideration*).

⁴ *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, FCC 14-190 (Dec. 18, 2014) (*December 2014 Order*).

- reforms affecting the FUSF revenues of Border to Border Communications. The *December 2014 Order* revised the methodology for applying the cap on high-cost loop support (HCLS), which impacts Border to Border Communications's FUSF revenues for 2018.
12. On March 30, 2016, the FCC issued the *March 2016 Order*,⁵ which provided certain reforms to existing rate-of-return incumbent local exchange carriers' support mechanisms. The *March 2016 Order* reduces the current 11.25% rate-of-return to a 9.75% rate-of-return, which will be transitionally implemented over a six year period, effective July 1, 2016. Each year, the rate-of-return incumbent local exchange carriers will decrease their rate of return by twenty-five basis points until the rate of return reaches 9.75% on July 1, 2021, which impacts Border to Border Communications's FUSF revenues for 2018.
 13. Border to Border Communications's application reflected a 75 basis-points reduction (11.25% to 10.5%) to its rate of return that was effective July 1, 2018.
 14. The *March 2016 Order* also implemented a budget control mechanism for HCLS and interstate common line support (ICLS). However, on March 23, 2018, the FCC released an order that, among other things, resolved or clarified issues raised in petitions for reconsideration of the *March 2016 Order*. In the *March 2018 Order*,⁶ the FCC eliminates the effect of the budget control mechanism for the budget year of July 2017 through June 2018. The *March 2018 Order* states that the FCC will calculate the amounts withheld and make lump sum payments to fully fund support claims to affected carriers. This FCC action impacts Border to Border Communications, therefore, Border to Border Communications does not request recovery of budget control mechanism support in this application.
 15. The FCC's actions can reasonably be projected to reduce Border to Border Communications's 2018 FUSF revenue by \$1,188,152.

⁵ *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, FCC 16-33 (Mar. 30, 2016) (*March 2016 Order*).

⁶ *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking*, FCC 18-29 (Mar. 23, 2018) (*March 2018 Order*).

Recovery of Reductions in 2018 FUSF Revenues and True-up

16. Border to Border Communications's current residential rates, including basic local telecommunications service (BLTS) rates and allowed surcharges, are in excess of \$31.00 per month and its current business rates, including BLTS rates and allowed surcharges, are in excess of \$56.00 per month.
17. Border to Border Communications's local rates exceed the rate floor established by the FCC; therefore, Border to Border Communications will not recover any lost FUSF revenue through rate increases.
18. The net amount in lost FUSF revenues that Border to Border Communications will recover from the TUSF is \$1,188,152.
19. Border to Border Communications will report to the Commission on or before October 31, 2020 the final and actual FUSF impacts for 2018.
20. Border to Border Communications's report will provide all supporting documentation from National Exchange Carrier Association and the Universal Service Administrative Company to the Commission, supported by affidavits that will show the actual impact to Border to Border Communications's FUSF revenues including the impact to the funding cap on HCLS, LSS, and the rate-of-return impact on HCLS.

Informal Disposition

21. At least 15 days have passed since the completion of notice in this docket.
22. Border to Border Communications and Commission Staff are the only parties to this proceeding.
23. The recovery allowed by this Order is not adverse to any party.
24. No party requested a hearing and no hearing is necessary.
25. On July 30, 2018, Commission Staff recommended approval of the application.

II. Conclusions of Law

1. The Commission has jurisdiction over the application under PURA § 56.025.⁷
2. Notice of the application complies with 16 Texas Administrative Code (TAC) § 22.55.
3. The Commission processed the application in accordance with the requirements of PURA, the Administrative Procedure Act (APA),⁸ and Commission rules.
4. The application complies with the requirements of PURA § 56.025 and 16 TAC § 26.406.
5. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves Border to Border Communications's request to recover \$1,188,152 from TUSF for 2018.
2. On or before October 31, 2020, Border to Border Communications must report to the Commission the final and actual FUSF impacts for 2018. The impacts that Border to Border Communications reports to the Commission shall reflect the FCC's mandated rate of return of 10.5% that was effective July 1, 2018.
3. In the event that actual reductions in 2018 FUSF revenues realized by Border to Border Communications exceed the revenue realized in the same period from the revenue recovered from the TUSF, Border to Border Communications may seek to recover the additional realized reduction in FUSF revenues from the TUSF or through increases in customer rates.
4. In the event the actual reductions in calendar year 2018 FUSF revenues realized by Border to Border Communications are less than the recovery realized by Border to Border Communications from the additional TUSF recovery, Border to Border Communications

⁷ Public Utility Regulatory Act, Tex. Util. Code §§ 11.013–66.017 (PURA).

⁸ Administrative Procedure Act, Tex. Gov't Code §§ 2001.001–.902.

shall refund to the TUSF the amount of recovery received from the TUSF in excess of its actual lost FUSF revenues.

5. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the calculations and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the calculations herein.
6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of December 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER