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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 23, 1999

Re: CC Docket Nos. 96-45 and 97-160

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth St. S.W.
TW-A325
Washington, D.C. 20554

Dear Ms. Salas:

Enclosed, please find an original and six copies of the comments of TXU Communications Telephone Company in CC Docket Nos. 96-45 and 97-160.

Sincerely,

Benjamin H. Dickens, Jr.
Mary J. Sisak
Attorneys for
TXU Communications
Telephone Company

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUL 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Forward-Looking Mechanism for High Cost Support for Non-Rural LECs	)	CC Docket No. 97-160

COMMENTS OF TXU COMMUNICATIONS TELEPHONE COMPANY

TXU Communications Telephone Company ("TXU Communications"),[1] by its attorneys, hereby files comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding concerning modifications to the procedures for distinguishing rural and non-rural companies for the purpose of determining federal universal service support.

I. INTRODUCTION

Pursuant to the Commission's orders, federal support for rural and non-rural carriers will be determined by separate mechanisms, at least until January 1, 2001. The Commission defined rural carriers as those carriers that meet the statutory definition of a "rural telephone company" in Section 153(37) of the Communications Act. In the

[1] Formerly Lufkin-Conroe Telephone Exchange, Inc.

FNPRM, the Commission asks whether it should reconsider its decision to use the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of calculating universal service support. The Commission asks whether there are differences between its universal service policies and the competitive policies underlying Sections 251(f)(1) and 214(e)(2) that would justify different definitions of "rural telephone company" and "rural carrier."

The Commission also seeks comment on the interpretation of certain aspects of the definition of a rural telephone company in Section 153(37), including the interpretation of Section 153(37)(D) of the Act. Section 153(37)(D) states that a "local exchange carrier operating entity" is a "rural telephone company" if such entity "has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."[2] The Commission asks whether it should define communities of more than 50,000 by using Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places. In the alternative, the Commission asks whether it should distinguish between rural and non-rural communities in applying this provision. Specifically, the Commission asks whether it should use the methodology in Section 54.5 of the Commission's rules to determine whether a community is in a rural area.

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[2] 47 USC Section 153(37)(D).

II. THE COMMISSION SHOULD USE THE RURAL TELEPHONE COMPANY DEFINITION TO DISTINGUISH BETWEEN CARRIERS

The Commission was correct to use the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of implementing federal universal service support and it should continue to do so because it comports with the Act's method for distinguishing between rural and non-rural carriers. As noted by the Commission, the Act treats "rural telephone companies" differently for both competitive and universal service purposes. For example, Section 251(f)(1) initially exempts "rural telephone companies" from the interconnection, unbundling, and resale requirements placed on incumbent local exchange carriers in Section 251(c) until the state commission finds that the request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service requirements in Section 254. In addition, Section 214(e)(2), which provides for the designation of eligible telecommunications carriers, also provides for different treatment of "rural telephone companies." Thus, in an area served by a "rural telephone company" the Act states that the State commission "may" designate more than one common carrier as an "eligible telecommunications carrier," whereas, in all other areas, the State commission "shall" designate more than one common carrier as "eligible." Also, for an area served by a "rural telephone company," the State commission must find that the designation is in the public interest. Accordingly, the Commission also should distinguish between rural and non-rural carriers for universal service purposes based on the definition of a "rural telephone company."

Moreover, the Commission should continue to follow the Act's method for distinguishing between rural and non-rural carriers because it properly reflects the

relationship between universal service and competition. As recognized by the Commission, as competition develops, implicit universal service support may erode, thus necessitating a sufficient, explicit federal fund. In its recent Order, the Commission states that universal service is "an ongoing process intended to transform universal service mechanisms so that they are both sustainable as competition in local markets develops, and explicit in a manner that promotes the development of efficient competition across the nation.[3] The Commission's decision to continue the existing method for providing federal universal service support for rural telephone companies, therefore, is appropriate in light of the exemptions from certain competitive requirements afforded to rural telephone companies at this time.

III. DEFINING "COMMUNITIES OF MORE THAN 50,000"

For the purpose of determining whether a carrier is a "rural telephone company" pursuant to Section 153(37)(D), the Commission asks whether it should define communities of more than 50,000 by using Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places. In the alternative, the Commission asks whether it should use the methodology in Section 54.5 of the Commission's rules to determine whether a community is in a rural area.

The Commission differentiated between "rural" and "non-rural" carriers for universal service purposes based on its conclusion that "small, rural carriers generally

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[3] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform*, CC Docket No. 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, , FCC 99-119, at para. 20, (rel. May 28, 1999).

serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit from economies of scale and scope as much as non-rural carriers."[4] To ensure that all such carriers receive universal service support as a "rural telephone company," the Commission should define the relevant "community" based on any Census Bureau tabulations of population including, incorporated localities, consolidated cities, and estimates of the population of places, that reflect the exchange areas served by a carrier's facilities. If the available Census Bureau data do not reflect a carrier's exchange areas, then the carrier should be able to rely on any verifiable estimate of population as long as the source of the data is provided to the Commission.

The characteristics of a carrier's exchange area best support the Commission's definition of a carrier as "rural" because it reflects the geographic area covered by a carrier's facilities that would benefit from economies of scale and scope. For example, TXU Communications' entire service area covers 1,513 square miles, divided between 16 exchanges. The exchanges, which are not all contiguous, range in size from 13 square miles to 203 square miles. TXU Communications' access line penetration, by exchange, ranges from 4 to 314 access lines per square mile. Because the population served is spread out over a large area, and because the exchanges are not all contiguous, TXU Communications is not able to benefit from economies of size and scope. Accordingly, local exchange carriers like TXU Communications are appropriately categorized as "rural."

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[4] *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8934 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), appeal pending in Texas Office of Public Utility Counsel v. FCC and USA, No. 97-60421 (5th Cir. 1997).

The plain language of the Act does not require a determination that a "community" is in a "rural area", which the Commission has defined in Section 54.5 of its rules, before a local exchange carrier can meet the requirements of Section 153(37)(D). Therefore, the Commission should not impose such a requirement. Moreover, under the Commission's definition, a "rural area", which is defined as "a non-metropolitan county or county equivalent...or any contiguous non-urban Census Track or Block Numbered Area within an MSA-listed metropolitan county...",[5] may not accurately reflect a carrier's exchange areas. For example, although TXU Communications provides service in Montgomery County, Texas, which is designated as a non-rural area, TXU Communications' exchange area includes only part of the county, which had incorporated areas with a population of less than 50,000 in 1996. Thus, even in Montgomery County, TXU Communications was a "rural telephone company" in that it had fewer subscribers and it did not benefit from economies of scale and scope to the same extent that a carrier serving the entire area would have benefited.

IV. RE-CERTIFICATION REQUIREMENT

Finally, the Commission asks how often carriers should be required to re-certify their status as rural telephone companies. TXU Communications supports a requirement that carriers should only be required to re-certify if their status has changed. Filings on a more frequent basis simply impose unnecessary costs on carriers and serve no useful purpose.

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[5] 47 C.F.R. Section 54.5.

V. CONCLUSION

Based on the foregoing, TXU Communications respectfully requests that the Commission continue to use the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of implementing federal universal service support. TXU Communications also requests that the Commission adopt the definition of "communities of more than 50,000" and a re-certification requirement as specified herein.

Respectfully submitted,

TXU COMMUNICATIONS TELEPHONE COMPANY

By: _____

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