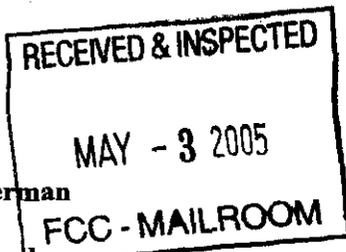


Julie Parsley  
Commissioner

Paul Hudson  
Chairman

Barry T. Smitherman  
Commissioner

W. Lane Lanford  
Executive Director



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## Public Utility Commission of Texas

Marlene H. Dortch - Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W. - TWA 325  
Washington, D.C. 20554

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Irene Flannery - Vice-President of High Cost and Low Income Divisions  
Universal Service Administrative Company  
2000 L. Street, NW - Suite 200  
Washington, D.C. 20036

April 26, 2005

**RE: Federal-State Joint Board on Universal Service, CC Docket No. 96-45**

**TX PUC Project No. 25787 - FCC Letters Regarding ETC Designation Pursuant to FTA '96 §214(e) (2)**

**Docket No. 29144 - Application of Dobson cellular Systems, Inc. for designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. 241(e) and P.U.C. Subst. R. 26.418**

**Docket No. 24481 - Designation of Common Carriers as Eligible Telecommunications Carrier to receive Federal Universal Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting A State Certification Process**

### Amendment of Dobson Cellular Systems, Inc. - ETC Designation for Rural ILEC Service Areas

Pursuant to Section 214(e) (2) of the Communications Act of 1934, as amended (the "Act") and 47 C.F.R. sections 54.201 - 54.203, the Texas Public Utility Commission (TPUC) has granted an amendment to Dobson Cellular Systems, Inc.'s (Dobson's) eligible telecommunications carrier (ETC) designation. Previously the Commission's *Final Order No. 3* in Docket No. 28462, issued on January 14, 2005 granted Dobson designation for the

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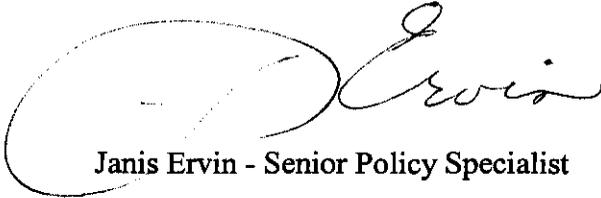
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non-rural ILEC service areas within Verizon Southwest and Southwestern Bell Telephone (d/b/a SBC) territories.

**This letter advises that Dobson has been granted an amendment of its ETC designation for the rural ILEC service areas within Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., Ganado Telephone Company, Inc territories.** Please see the attached *Final Order*, Docket No. 29144, issued February 2, 2005, and *Order No. 12*, Docket No. 24481, issued on April 7, 2005. Please note that Dobson's request for support within the territory of Industry Telephone Company, Inc. study area (SAC No. 442093) is pending and, if approved, will be addressed as an additional amendment at a later date.

If you require any additional information please call Janis Ervin at (512)-936-7372.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janis Ervin". The signature is written in black ink and is positioned above the typed name.

Janis Ervin - Senior Policy Specialist

Telecommunications Division - Texas Public Utility Commission

**PUC DOCKET NO. 29144**  
**SOAH DOCKET NO. 473-04-4450**

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**APPLICATION OF DOBSON § PUBLIC UTILITY COMMISSION**  
**CELLULAR SYSTEMS, INC. FOR §**  
**DESIGNATION AS AN ELIGIBLE § OF TEXAS**  
**TELECOMMUNICATIONS §**  
**CARRIER (ETC) PURSUANT TO 47 §**  
**U.S.C. 241(e) AND P.U.C. SUBST. R. §**  
**26.418 §**

**ORDER**

**I. Introduction**

This Order grants the application of Dobson Cellular Systems, Inc. for designation as an eligible telecommunications carrier (ETC) in the study areas of four rural incumbent local exchange carriers (ILECs) -- Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., Ganado Telephone Company, Inc., and Industry Telephone Company, Inc. For the reasons discussed in this Order, the Public Utility Commission of Texas (Commission) grants Dobson ETC designation in the requested study areas, but conditions Dobson's receipt of federal universal service funds (FUSF) in the Industry Telephone study area contingent upon approval of a compliance filing showing that Dobson's implementation of Phase II E911 service in that area meets federal requirements.

Accordingly, the Commission adopts in part and rejects in part the proposal for decision (PFD) issued by the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ), including the findings of fact and conclusions of law, as discussed in this Order.

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## II. Discussion

### A. Emergency Services

The ALJ found that, even though Dobson has not completed Phase II enhanced 911 (E911) implementation in Austin County, Dobson is not in violation of the federal 911 rules (47 C.F.R. § 20.18), and provides access to emergency services as required by the ETC rule (47 C.F.R. § 54.101(a)(5)).<sup>1</sup> Nevertheless, the ALJ found that, because Dobson had not yet implemented Phase II E911 in Austin County, which includes Industry Telephone's study area, if the Commission were to grant Dobson's ETC application, approval should be conditional. Specifically, the ALJ recommended that the Commission require Dobson to file evidence of Phase II E911 implementation in Austin County in the form of an affidavit.<sup>2</sup>

The Commission agrees with the ALJ's analysis regarding Dobson's provision of 911 service. Although the Commission is overturning the ALJ and granting Dobson ETC designation, the Commission concurs with the ALJ that Dobson's receipt of FUSF in Industry Telephone's study area should be conditioned upon a showing of implementation of Phase II E911 service in Austin County. Therefore, the Commission requires Dobson to submit a compliance filing consisting of an affidavit and any other relevant material attesting that its implementation of Phase II E911 service in Austin County meets the requirements of the *Federal Communications Commission's (FCC's)* rules. While Dobson will be designated as an ETC in Industry Telephone's study area, the Commission will withhold certification to the FCC and the Universal Service Administration Company (USAC) for this study area until Dobson's compliance filing is approved.

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<sup>1</sup> Proposal for Decision at 12-13 (Oct. 6, 2004).

<sup>2</sup> PFD at 13. The Commission notes that, during the hearing on the merits, Dobson volunteered to condition its ETC designation and waive receipt of FUSF support in the Industry Telephone area until it deployed Phase II E911 in Austin County. Tr. at 290 (July 23, 2004).

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### **B. Lifeline and LinkUp**

The ALJ found that Dobson demonstrated that it will offer and advertise Lifeline and LinkUp service to qualifying low-income consumers in compliance with federal rules and P.U.C. SUBST. R. 26.418, but requested clarification from the Commission as to whether Dobson would be required to file tariffs pursuant to the Commission's Lifeline and LinkUp rule (P.U.C. SUBST. R. 26.412).<sup>3</sup>

The Commission concurs with the ALJ that Dobson adequately demonstrated that it will offer Lifeline and LinkUp service to qualifying low-income consumers in compliance with federal and state rules. The Commission notes that P.U.C. SUBST. R. 26.412, which includes a requirement to file tariffs, applies to all ETCs. Consequently, Dobson will be required to comply with the rule. In addition, consistent with prior decisions in other wireless ETC proceedings,<sup>4</sup> the Commission requires Dobson to provide information regarding the availability of the Lifeline and LinkUp discounts in all service contracts, or in separate statements given to all customers.

To reflect the Commission's decision on this issue, conclusion of law 32 is amended to reflect the Commission's practice of requiring other wireless ETC applicants to include Lifeline and LinkUp information in their service plans or in separate handouts to all consumers, and new finding of fact 91A is added, requiring the same of Dobson in this case.

### **C. Advertisement of Analog Services**

The ALJ found that Dobson's commitment to advertise the federally supported services met the requirements of both state and federal rules. However, the ALJ found

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<sup>3</sup> PFD at 22.

<sup>4</sup> See *Application of WWC Texas RSA Limited Partnership, d/b/a CellularOne (Western Wireless) to Amend its Designation as an Eligible Telecommunications Carrier (ETC) in Certain Areas Served by Non-Rural Telephone Companies*, Docket No. 28688, Order at 2-3 (Nov. 24, 2004) (*Western Wireless II*); *Application of Dobson Cellular Systems, Inc. for Designation as a Federal Eligible Telecommunications Carrier and Petition to Redefine Certain Rural Service Areas*, Docket No. 28462, Order at 9, 11 (Jan. 14, 2005) (*Dobson Non-Rural*); and *Application of Sprint Corporation for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418*, Docket No. 28495, Order at 2 (Jan. 14, 2005) (*Sprint*).

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that Dobson does not advertise the analog capabilities of its network and suggested that, while this lack of advertisement does not violate the state or federal ETC rules, if the Commission were concerned about this issue, the Commission could order Dobson to advertise its analog capability. Further, the ALJ proposed that the Commission could require Dobson to maintain analog service beyond 2008, the current federal requirement.<sup>5</sup>

The Commission finds that neither the state nor federal ETC rules contain a requirement for any carrier to advertise analog network capabilities or maintain analog equipment. CMRS providers are subject to separate FCC rules and requirements for network design and equipment. Further, there is no evidence in the record in this proceeding regarding either of these issues on which to base such requirements. Therefore, the Commission declines to adopt a requirement that Dobson advertise the analog capabilities of its network or maintain the analog network beyond the current FCC requirement of 2008.

#### **D. Public Interest**

##### **1. Public Interest Criteria**

The ALJ examined Dobson's application pursuant to prior state and federal ETC orders and rules, and, using criteria set forth in these rules, the FCC's *Virginia Cellular* and *Highland Cellular* orders and the Commission's *Nextel Order*,<sup>6</sup> concluded that Dobson's application was not in the public interest. The ALJ based this decision on the following determinations: (1) Dobson does not plan to change its current service offerings outside of Lifeline/LinkUp service, therefore the rural consumers in these areas

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<sup>5</sup> PFD at 20.

<sup>6</sup> *Id.* at 23-24.

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will not receive any benefit from ETC designation in the form of additional service offerings, and Dobson would not be competing more effectively than under the status quo in terms of price or terms and conditions of service;<sup>7</sup> (2) Dobson's commitment to build three cell site towers is inadequate, as no evidence was submitted showing how much those cell sites would improve reception or signal strength in the study areas;<sup>8</sup> (3) Dobson's commitment to spend \$640,000 in the study areas over the next two years demonstrates too little benefit for an approximate \$1.8 million if FUSF support over those two years, and, in order for the Commission to balance the benefits against the costs of ETC designation, Dobson should have indicated how it will use the FUSF support to benefit rural consumers in the designated areas;<sup>9</sup> and (4) Dobson failed to show that it needed the ETC designation in order to provide the supported services in competition with the ILECs, and this lack of need does not meet the standard set by the Commission in *Nextel* that an ETC applicant demonstrate that its designation would be of material benefit above and beyond the *status quo* of its existing operations.<sup>10</sup>

However, the ALJ also found that Dobson demonstrated that its application would bring several public interest benefits to the areas, including: (1) Dobson demonstrated that it can provide the supported services in a reasonable time;<sup>11</sup> (2) its service offerings have advantages over ILEC offerings because of the mobility wireless service provides;<sup>12</sup> (3) the mobility of its services offers safety, convenience and economic growth needed in

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<sup>7</sup> *Id.* at 39.

<sup>8</sup> *Id.* at 40.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 38.

<sup>12</sup> *Id.*

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low population density areas;<sup>13</sup> (4) Dobson's compliance with the CTIA Code matches the commitment made in *Virginia Cellular* and *Highland Cellular*;<sup>14</sup> and (5) the commitment to purchase backup generators and a cell on light truck Cell on Light Truck (COLT) to ensure continuity of service is a benefit to consumers.<sup>15</sup>

The Commission disagrees with the ALJ's ultimate conclusion, and finds that Dobson's application for designation as an ETC in the four rural ILEC study areas is in the public interest. In *Nextel*, the Commission acknowledged the fact-specific nature of each evaluation, due in part to the diversity of rural areas, and declined to adopt specific public-interest criteria.<sup>16</sup> The Commission finds that, overall, the facts in this case demonstrate that Dobson will go above and beyond the *status quo* of its existing operations in these study areas, and warrant approval of Dobson's application.

The Commission disagrees with the ALJ that Dobson's commitment to build three cell site towers is insufficient because Dobson failed to also provide evidence of signal strength and reception improvements. The Commission is persuaded that this commitment, plus Dobson's commitment to follow the CTIA Consumer Code, add six hours of back-up power, install two portable generators dedicated to serving the ETC areas, and purchase of a COLT, demonstrate material investments beyond the *status quo* of its existing operations in the area that would be in the public interest.

In addition, the Commission disagrees with the ALJ that Dobson's infrastructure-spending commitments are insufficient because the planned expenditures do not exceed

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 39.

<sup>15</sup> *Id.*

<sup>16</sup> In *Nextel*, the Commission also determined that an applicant seeking ETC designation in a rural ILEC's study area "must demonstrate that its designation is of material benefit above and beyond the *status quo* of its existing operations in the requested area." *Application of NCPR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation*, Docket No. 27709, Order at 9 (June 30, 2004) (*Nextel Order*). The Commission, however recommended areas that applicants could address in greater detail that could prove persuasive in a public interest evaluation. *Id.* at 9.



the expected FUSF support. The Commission notes that the determination of eligibility to receive FUSF does not currently include a needs-based test. Therefore, the Commission declines to adopt the ALJ's analysis regarding the necessity of the FUSF support as it relates to the *Nextel Order* and Dobson's application.

Dobson's infrastructure commitments, coupled with the additional reporting requirements regarding customer complaints, customer satisfaction and capital expenditures (see discussion below), persuade the Commission that Dobson has shown that its designation will be of material benefit above and beyond the *status quo* of its existing operations in these study areas.

To reflect its decisions on these issues, the Commission deletes findings of fact 93, 101, 102, 103, 104, and 105, deletes conclusion of law 41, amends finding of fact 106 and conclusion of law 40, and adds finding of fact 100A.

The Commission also deletes finding of fact 72, as it conflicts with findings of fact 65, 91 and 92, amends finding of fact 91 to concur with finding of fact 92, and deletes finding of fact 97 as it is not necessary.

## 2. Reporting Requirements

The ALJ recommended that, if the Commission granted Dobson's application, Dobson be required to track its expenses and investment per designated service area to enable the Commission to monitor its compliance with FUSF spending requirements. The ALJ also recommended that Dobson be required to file an annual customer satisfaction survey and the number of complaints per 1,000 handsets when it files its application for annual certification as an ETC pursuant to P.U.C. SUBST. R. 26.418(j).<sup>17</sup>

The Commission concurs with the ALJ, and finds that these additional reporting requirements are in the public interest. Therefore, Dobson is required to track its expenses and investment for each study area, and submit the following information per study area on an annual basis with its FUSF certification application: (1) a separate affidavit attesting to Dobson's annual, as well as aggregate, expenses and investment in

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<sup>17</sup> PFD at 43.

each study area, with all relevant data attached; (2) the results of an annual customer satisfaction survey, and any relevant background documents, such as a copy of the survey itself; and (3) the total number of complaints received, per 1,000 handsets.

To reflect the Commission's decision in this issue, finding of fact 100B is added.

### III. Other Changes to the PFD

The Commission makes the following additional changes to the PFD.

The Commission amends findings of fact 3, 4, 5, and 7, and conclusions of law 35, 38 and 39 to reflect that the areas at issue in this proceeding are rural ILEC study areas.

The Commission deletes finding of fact 39, as it inaccurately states that "Dobson's wireless service does not reach all of Austin County;" in fact, it is Dobson's Phase II E-911 service that does not reach all of Austin County.

The Commission corrects finding of fact 63 to reflect that Dobson will spend "\$1.7 million," not \$14 million, on advertising in Texas.

The Commission amends finding of fact 94 to include information on Dobson's commitment to provide battery back-up at cell sites.

The Commission has added references to the Commission's ETC rules to findings of fact 56 and 59 to reflect the application of the Commission's rules, as well as federal rules, in evaluating Dobson's filing.

### IV. Findings of Fact

1. Dobson Cellular Systems, Inc. (Dobson) is a provider of commercial mobile radio services (CMRS) licensed by the Federal Communications Commission (FCC) to provide wireless services in Texas and elsewhere.
2. In *Application of Dobson Cellular Systems, Inc. for Designation as a Federal Eligible Telecommunications Carrier and Petition to Redefine Certain Rural Service Areas*, Docket No. 28462 (*Dobson Non-Rural*), Dobson originally applied

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to be designated as an eligible telecommunications carrier (ETC) within 310 exchanges served by 26 incumbent local exchange carriers (ILECs).

3. In its Preliminary Order filed on November 24, 2003 in *Dobson Non-Rural*, the Public Utility Commission of Texas (Commission) found Dobson was required to offer the required services throughout the study areas of rural telephone companies in order to receive ETC designation in those areas. Dobson did not meet that requirement for most of the rural telephone companies affected by that application. Therefore, in accordance with the Preliminary Order, Dobson amended the application in *Dobson Non-Rural* to encompass only non-rural ILEC service areas.
4. After the Commission's Preliminary Order in *Dobson Non-Rural*, Dobson filed this application for ETC designation within the study areas of four rural ILECs: Colorado Valley Telephone Cooperative, Inc. (Colorado Valley), Comanche County Telephone Company, Inc. (Comanche County), Ganado Telephone Company, Inc. (Ganado), and Industry Telephone Company, Inc. (Industry).
5. Designation as an ETC would enable Dobson to receive support from the Federal Universal Service Fund (FUSF) for use in the study areas of these four rural ILECs.
6. The Commission issued its Preliminary Order in this case March 15, 2004.
7. In its Preliminary Order, the Commission determined it could grant ETC designation to a wireless carrier that commits to provide service throughout a rural ILEC's study area. The Commission determined Dobson's commitment to provide service to any customer throughout the study areas upon "reasonable request," as set forth in the application, did not on its face contravene P.U.C. SUBST. R. 26.418(b)(2).
8. In its Preliminary Order, the Commission identified the following issues to be addressed in this docket:
  - a. With respect to designation as an ETC, does Dobson satisfy the requirements of P.U.C. SUBST. R. 26.418?

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- b. Does Dobson's commitment to serve customers upon "reasonable request" satisfy the criteria of P.U.C. SUBST. R. 26.418?
  - c. Would designation of Dobson as an ETC in the areas served by rural telephone companies be in the public interest?
9. The Commission referred this case to the State Office of Administrative Hearings (SOAH) March 24, 2004.
  10. A prehearing conference was held April 28, 2004. The following entities, in addition to Dobson, were admitted as parties and subsequently participated in the case: Colorado Valley, Comanche County, Ganado, and Industry; Texas Statewide Telephone Cooperative, Inc. (TSTCI); the State of Texas, and the Commission Staff.
  11. Dobson filed its supplemental direct testimony July 12, 2004, which suspended the effective date of its application until November 9, 2004.
  12. The hearing was held July 22-23, 2004, before Administrative Law Judge Henry D. Card.
  13. Dobson began providing wireless telephone services in 1990 in Oklahoma and the Texas Panhandle and now provides wireless services in portions of 16 states, with over 1.5 million subscribers.
  14. Two of Dobson's Texas Rural Service Areas (RSAs) are affected by this application: RSA 9 -Runnels and RSA 16 - Burleson.
  15. RSA 9 - Runnels includes the following counties: Runnels, Coleman, Eastland, Brown, Mills, Comanche, Erath, Somervell, Hamilton, Bosque, and Hill.
  16. RSA 16 - Burleson includes the following counties: Burleson, Lee, Bastrop, Caldwell, Gonzales, Lavaca, Jackson, Matagorda, Wharton, Colorado, Fayette, Austin, and Washington.
  17. Dobson markets its services in the affected areas under the brand name "Cellular One," which it uses under license.

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18. Three of the rural ILECs that intervened in this case -- Colorado Valley, Ganado, and Industry -- are located entirely in RSA 16. The fourth, Comanche County, is located entirely within RSA 9.
19. Dobson serves approximately 2,300 customers in the study areas of those four companies.
20. Dobson, through its interconnection agreements with LECs, enables all its Texas customers to make and receive calls on the public switched telephone network within a minimum bandwidth of 300 to 3000 Hertz.
21. Dobson includes some amount of local usage in every service offering eligible for universal service support, and has committed to continue to do so.
22. The FCC has not specified any minimum amount of local usage for universal service offerings.
23. Dobson has committed to complying with any future minimum amounts for local usage.
24. Dual tone multi-frequency (DTMF) signaling is a method of signaling that facilitates the transportation of call set-up and call detail information, and makes "touchtone" dialing possible.
25. Dobson uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.
26. Dobson provides a dedicated message path for the length of a customer's wireless transmission, which is the functional equivalent of single-party service.
27. Dobson provides 911 access to all its Texas customers.
28. Enhanced 911(E911) service may be implemented in two phases. Phase I requires the ability to locate the originating cell site or base station of a 911 call. Phase II includes the ability to provide both automatic numbering information and automatic location information, when the public service answering point (PSAP) is capable of receiving such information.

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29. Dobson has received and implemented requests for Phase I E911 with 100 percent of the PSAPs in its Texas service area.
30. To implement Phase II E911, carriers may choose either a handset-based or a network-based technology. Dobson has chosen a network-based solution.
31. Dobson has received requests for Phase II E911 service from the PSAPs of two counties, Austin and Henderson, which had not yet been fulfilled at the time of the hearing.
32. Industry's study area is partly within Austin County. None of the study areas at issue in this case is in Henderson County.
33. The Austin County PSAP requested Phase II E911 service on January 28, 2003; the Henderson County PSAP requested Phase II E911 service on July 29, 2003.
34. Dobson has worked with the PSAP administrators in both Austin and Henderson Counties to solve the technical obstacles to implementing Phase II E911 service.
35. In Henderson County, after receiving the request, Dobson worked with its third-party vendor to develop a "market plan" that outlines the equipment to be ordered and installed to implement location identification data. In that case, the vendor took approximately four months to develop a plan to meet the FCC's specifications. Mr. Kurtanich then contacted the Henderson County PSAP administrator and ordered the equipment.
36. Location identification is performed by triangulation among three cell sites.
37. In Austin County, triangulation was impossible because the cell sites were aligned in a "string of pearls" configuration. After working on a number of possible solutions, Dobson prepared a market plan that utilized a cell site in another county. After its vendor confirmed the plan would meet FCC specifications, Dobson provided that information to Austin County and ordered the equipment.
38. The administrators in both Austin County and Henderson County are satisfied with Dobson's implementation of Phase II E911.
39. DELETED

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40. Dobson's implementation plans will provide Phase II E911 service within FCC accuracy specifications.
41. Dobson provides all its Texas customers with access to operator services.
42. Dobson provides all its Texas customers with access to interexchange service to make and receive interexchange calls.
43. Dobson provides all its Texas customers with access to directory assistance via "411" or "555-1212."
44. "Toll limitation" refers to the offering of either "toll control" or "toll blocking" to qualifying low-income customers.
45. "Toll control" allows consumers to specify a certain amount of toll usage that may be incurred per month or per billing cycle. "Toll blocking" allows consumers to elect not to allow the completion of outgoing toll calls.
46. At this time, Dobson cannot provide toll control. It can provide toll blocking to Lifeline customers upon request, however.
47. Dobson's coverage maps show that Dobson has coverage throughout the study areas, except for small portions in the southern part of the Comanche County area.
48. Although Dobson's drive tests generally show adequate signal throughout the study areas, they also show areas in which the signal falls below the level to which Dobson tries to engineer its network, as well as a number of "dead spots," in which a call was dropped.
49. Dobson has committed to providing service to any consumer within the study areas.
50. Dobson committed to take the following steps if a customer's signal coverage is unsatisfactory:
  - a. First, Dobson will determine whether the customer's equipment can be modified or replaced to provide service to the desired location.

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- b. **Second, Dobson will determine whether the customer could be provided with other network equipment, such as a booster, antenna, or three-watt unit, to provide service in the requested location.**
  - c. **Third, Dobson will determine whether adjustments at the nearest cell site can be made to provide service.**
  - d. **Fourth, Dobson will determine whether there are any other adjustments to either the network or the customer facilities that can be made to provide service.**
  - e. **Fifth, Dobson will explore the possibility of offering service via resale or roaming agreements with other carriers.**
  - f. **Sixth, Dobson will determine whether additional network infrastructure, such as an additional cell site, extender, or repeater, could be constructed to provide service, and evaluate the costs and benefits of using high-cost universal service support to serve a number of customers requesting service.**
51. **If Dobson still could not provide service after following the steps set out in the previous finding of fact, it would notify the Commission, which could determine whether Dobson had failed to meet its service obligations.**
52. **The ILEC tariffs do not assure service to all customers regardless of cost, but include line extension charges under certain circumstances.**
53. **Dobson's service commitment is equivalent to the commitment undertaken by the ILECs.**
54. **Dobson can provide service in some situations the ILECs cannot, e.g. in a remote pasture or in a car traveling down a rural road.**
55. **The booster technology and other steps set out by Dobson should cover all customers, including those in the small patches of Comanche County where Dobson's map does not show coverage.**
56. **Dobson has committed to providing service to any customer within the Comanche County study area pursuant to P.U.C. SUBST. R. 26.418(g)(1)(B)(ii).**
57. **Dobson can and will maintain analog network capability until 2008.**

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58. Dobson has committed to provide the federally supported services throughout the study areas for which it seeks ETC designation pursuant to P.U.C. SUBST. R. 26.418(g)(1)(B)(iv).
59. Dobson's current service offerings contain the federally supported services.
60. Dobson has committed to advertise the availability of the federally supported services and the corresponding charges in a manner that fully informs the general public within its designated ETC service areas of such services and charges, in the same media it currently employs to advertise its universal service offerings.
61. Dobson's service under the Cellular One brand is advertised through several media channels, including newspaper, radio, television, billboard, and print advertising.
62. Dobson advertises through point-of-sale marketing efforts and over the internet.
63. Dobson expects to spend approximately \$1.7 million in advertising in Texas in 2004.
64. Dobson maintains 26 retail store locations, although none is within the rural study areas at issue in this case.
65. Dobson can and will provide Lifeline service and discounts, and well as the one-time Link Up discount to qualifying consumers.
66. Dobson offers digital voice and digital feature services, including Caller ID, Message Waiting, *etc.*, to its entire population over its digital network. It has updated its network and, by the end of 2004, will offer enhanced data services throughout its service areas.
67. Dobson has adopted the Cellular Telecommunications and Internet Association's (CTIA's) Consumer Code for Wireless Service as its minimum benchmark.
68. Under the CTIA Code, a wireless carrier agrees to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is available; (3) provide contract terms to customers and confirm changes in service; (4) allow a 14-day trial period for new service; (5) provide specific disclosures in

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advertising; (6) separately identify carrier charges from taxes on billing instruments; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies of consumer privacy.

69. The only direct consequence of failing to follow the CTIA Code is denial of the right to display the Code's "gold ribbon" logo, although another consequence could be the loss of customers.
70. The estimated size of the universal service fund for the second quarter of 2004 was \$910,181,029.
71. Dobson's portion of the universal service fund would be approximately .0025% of the total high-cost support available to all ETCs.
72. DELETED
73. Dobson markets its services by RSA rather than by rural LEC study area, and therefore cannot create specific plans for the areas at issue in this case.
74. If it receives ETC designation, Dobson committed to building three additional cell sites in 2005 and 2006, with the time line subject to adjustment depending on when ETC designation was received:

DESCRIPTION	LOCATION	ESTIMATED COST
construction of cell site tower to improve capacity and coverage in Comanche County study area	Stag Creek, TX	\$150,000
construction of cell site tower to improve capacity and coverage in Colorado Valley study area	West Point, TX	\$150,000
construction of cell site tower to improve capacity and coverage in Ganado study area	Lake Texana, TX	\$150,000

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75. Dobson committed to making annual reports describing its progress on that and future construction.
76. If it receives ETC designation, Dobson will ensure that all cell sites serving the study areas will remain equipped with at least six hours of back-up power capabilities.
77. If it receives ETC designation, Dobson will purchase two portable generators to be dedicated to serving the study areas in case of an outage.
78. Generators cost approximately \$20,000 each.
79. If it receives ETC designation, Dobson will purchase a "cell on light truck (COLT)" -- essentially, a mobile cell site -- that will be available to serve the designated areas if a cell site were to go down or if other coverage or capacity issues needed a short-term remedy.
80. A COLT costs approximately \$150,000.
81. The ILECs charge the following rates for basic local service:
- | ILEC            | Local Tariffed Rate Plus<br>Federal Subscriber Line Charge |
|-----------------|--|
| Colorado Valley | \$14.90/month  |
| Comanche County | \$16.10/month  |
| Ganado/Industry | \$13.60 - 17.10/month                                      |
82. Based on second quarter FUSF projections and Dobson's number of subscribers, Dobson will be eligible for approximately \$75,778 monthly (\$909,331 annually) in FUSF support.
83. The network and service improvements Dobson has committed to make, over calendar years 2005 and 2006, would cost \$640,000.
84. Increased competition is valuable in rural areas.
85. The designation of Dobson as an ETC would not adversely affect the universal fund in any significant way.

86. Dobson can provide the supported services within the designated area in a reasonable time, to the extent it is not already doing so.
87. Dobson's service offerings provide advantages over wireline service offerings because of the mobility wireless service provides rural customers.
88. Dobson's consumer protection standards are adequate to support ETC designation.
89. Dobson has committed to offering Lifeline and Link Up, as required, in the designated areas.
90. Lifeline and Link Up are particularly relevant to the provision of universal service.
91. Other than its Lifeline and LinkUp offerings, Dobson does not plan to change its current service offerings.
- 91A. It is appropriate to require Dobson to include language in all service contracts, or in separate statements given to all customers, that informs customers of the availability of Lifeline and LinkUp discounts.
92. Rural consumers, other than Lifeline customers, would not receive any benefit from ETC designation in the form of additional service offerings.
93. DELETED
94. Dobson's commitment to maintain battery back-up at cell sites, and to purchase back-up generators and a COLT to ensure continuity of service, though not large financially, is a concrete and specific benefit to the consumers.
95. Although the maps provided in Dobson's application and testimony are not particularly detailed, they should be sufficient to show whether a customer is within Dobson's designated rural ETC area, because all customers of the rural ILECs would be within those designated areas.

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96. The information regarding the cell sites Dobson has committed to build consists of the cell site names and a cursory statement that each will improve service in one of the study areas.
97. DELETED
98. Dobson did not correlate the general cell site locations with the results of Dobson's drive tests.
99. Dobson provided no engineering testimony or studies to explain its rationale for building the particular cell sites.
100. The evidence is inadequate to allow the Commission to judge how much, if any, those new cell sites would improve reception or signal strength in the study areas.
- 100A. Dobson demonstrated that its designation -- specifically the addition of three cell towers, six hours of back-up power, two portable generators dedicated to serving the ETC areas, the purchase of a COLT, a commitment to follow the CTIA Code, and additional reporting requirements -- would bring material benefit above the *status quo* of its existing operations.
- 100B. It is in the public interest for Dobson to track its expenses and investment for each study area, and submit the following information per study area on an annual basis with its FUSF certification application: (1) a separate affidavit attesting to Dobson's annual as well as aggregate expenses and investment in each study area, with all relevant data attached; (2) the results of an annual customer satisfaction survey, and any relevant background documents, such as a copy of the survey itself; and (3) the total number of complaints received, per 1,000 handsets.
101. DELETED
102. DELETED
103. DELETED
104. DELETED
105. DELETED

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106. Designation of Dobson as an ETC would be of material benefit above and beyond the *status quo* of its existing operations in the study areas.

#### V. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 214(e), and the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. §§ 52.001 *et seq.* (Vernon 1998 and Supp. 2004-2005).
2. The notice provided in this docket is legally sufficient under P.U.C. PROC. R. 22.55 and P.U.C. SUBST. R. 26.418(g) [16 TEX. ADMIN. CODE §§22.55 and 26.418(g)].
3. SOAH has jurisdiction over all matters relating to the conduct of the hearing in this proceeding, including the preparation of a Proposal for Decision with Findings of Fact and Conclusions of Law in accordance with PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049.
4. The Federal Telecommunications Act of 1996 requires the FCC and the states to act jointly to establish a mechanism for universal service support to ensure the availability of quality, affordable telecommunications services to all Americans. 47 U.S.C § 254(a).
5. The federal mechanism for universal service support is the FUSF.
6. To be eligible for FUSF support, a carrier must be an ETC.
7. To be designated as an ETC, the carrier must meet the requirements of 47 Code of Federal Regulations (C.F.R.) § 54.201(d).
8. The Commission has incorporated the federal requirements into P.U.C. SUBST. R. 26.418.
9. To be designated as an ETC in an area served by a rural ILEC, a carrier must prove:
  - a. it is a common carrier under federal law [P.U.C. SUBST. R. 26.418(a)];

- b. it offers the services specified for FUSF support in 47 C.F.R. § 54.101(a) (the federally supported services) throughout the rural ILEC's study area, either through its own facilities or a combination of its own facilities and resale of another carrier's services [P.U.C. SUBST. R. 26.418(b)(2) and (c)(1)];
  - c. it advertises the availability of and charges for such services using media of general distribution [P.U.C. SUBST. R. 26.418(c)(2)];
  - d. it offers Lifeline Service to qualifying low-income consumers, and toll limitation services [P.U.C. SUBST. R. 26.418(d)(2-3)]; and
  - e. designation of the requesting carrier as an ETC is in the public interest [P.U.C. SUBST. R. 26.418(e)(2)].
10. The following services are designated for support in 47 C.F.R. § 54.101(a): (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling; (4) single-party service; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers.
11. Under P.U.C. SUBST. R. 26.418(e), the Commission may designate an additional ETC if that carrier meets the requirements and if the Commission finds the designation is in the public interest.
12. As set forth in the *Nextel Order (Application of NPCR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation, Docket No. 27709, June 30, 2004)*, for rural ILEC study areas, an applicant bears the burden of showing that its designation would be in the public interest.
13. A state commission cannot require a carrier to prove it is providing service throughout the service area as a condition of eligibility for ETC designation. Instead, the carrier must demonstrate its capability and commitment to providing universal service. Federal-State Joint Board on Universal Service, *Petition of Western Wireless for Preemption of an Order of the South Dakota Public Utility Commission, CC Docket No. 96-45, Declaratory Ruling (rel. Aug. 10, 2000)*.
14. Dobson is a common carrier as defined in 47 U.S.C. § 153(10).

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15. Dobson provides voice-grade access to the public switched network, as required by 47 C.F.R. § 54.101(a)(1).
16. Dobson offers local usage, as required by 47 C.F.R. § 54.101(a)(2).
17. Dobson offers DTMF, as required by 47 C.F.R. § 54.101(a)(3).
18. Dobson provides single-party service, as required by 47 C.F.R. § 54.101(a)(4).
19. Dobson has not violated 47 C.F.R. §20.18 in its timing of Phase II E911 service in Austin and Henderson Counties.
20. If a carrier is fulfilling its obligations under 47 C.F.R. § 20.18, it is fulfilling its obligation to provide E911 under 47 C.F.R. § 54.101(a)(5).
21. Dobson's Phase II E911 plans are designed to comply with the accuracy requirements of 47 C.F.R. § 20.18.
22. Dobson provides, or has committed to provide, access to emergency services as required by 47 C.F.R. § 54.101(a)(5).
23. Dobson provides all its Texas customers with access to operator services, as required by 47 C.F.R. § 54.101(a)(6).
24. Dobson provides all its Texas customers with access to interexchange service to make and receive interexchange calls, as required by 47 C.F.R. § 54.101(a)(7).
25. Dobson provides all its Texas customers with access to directory assistance via "411" or "555-1212," as required by 47 C.F.R. § 54.101(a)(8).
26. The FCC does not require a carrier to offer toll control and toll blocking if it is incapable of doing so. 47 C.F.R. § 54.400(d).
27. Dobson can provide toll limitation, as required by 47 C.F.R. § 54.101(a)(9).
28. The existence of dead spots does not preclude designation of a carrier as an ETC. *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC-03-338, Memorandum Opinion and Order at ¶ 23 (rel. Jan. 22, 2004) (*Virginia Cellular*).

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29. Service to the hearing-impaired is not an ETC issue. *Nextel Order* at 7.
30. Dobson's failure to advertise the availability of analog services does not place it in violation of P.U.C. SUBST. R. 26.418.
31. Dobson has committed to provide the federally supported services throughout the study areas for which it seeks ETC designation, as required by P.U.C. SUBST. R. 26.418(b)(2) and (c)(1).
32. Neither the FCC nor the Commission has adopted any particular standard for federal ETCs regarding the advertising requirement found in P.U.C. SUBST. R. 26.418(c)(2). However, in other wireless ETC proceedings, the Commission has required Lifeline and LinkUp information to be distributed to all customers, or included in all service contracts.
33. Dobson has committed to advertise the availability of and charges for the federally supported services, as required by P.U.C. SUBST. R. 26.418(c)(2).
34. Dobson has committed to providing Lifeline and Link Up services, and toll limitation, as required by P.U.C. SUBST. R. 26.418(d)(2-3).
35. The public interest requirement for designation of an ETC in a rural ILEC study area is found in the Federal Telecommunications Act of 1996 at 47 U.S.C. §214(e) and in P.U.C. SUBST. R. 26.418(e)(2).
36. In *Virginia Cellular*, the FCC considered whether the benefits of an additional ETC in rural service areas outweighed any potential harms. The FCC weighed the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. *Virginia Cellular Order* at ¶28.

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37. State commissions have the authority to adopt additional criteria for federal universal service recipients, as long as those criteria do not conflict with the federal standards. 47 U.S.C. §254(f).
38. As set forth in the *Nextel Order*, an applicant for ETC designation in a rural ILEC study area must demonstrate that its designation is of material benefit above and beyond the *status quo* of its existing operations in the requested areas.
39. As set forth in the *Nextel Order*, information on the following criteria may be pertinent to an ETC determination for a rural ILEC study area: (1) service offerings, including additional service offerings for the proposed ETC designation areas, (2) additional service quality commitments, (3) detailed coverage areas, (4) continuation of service commitments, such as back-up power capability, and (5) consumer protection standards, and (6) information regarding how the company will better serve the consumer if granted designation.
40. Dobson's designation is in the public interest, as required by 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418(e)(2).
41. DELETED

#### VI. Ordering paragraphs

1. The application of Dobson for designation as an ETC in the study areas of the following four rural ILECs is granted: Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., Ganado Telephone Company, Inc., and Industry Telephone Company, Inc.
2. The Commission will certify to the FCC and USAC Dobson's eligibility to receive FUSF support in Industry Telephone's study area, contingent upon approval of Dobson's compliance filing showing that Dobson's implementation of Phase II enhanced 911 service in Industry Telephone's study area meets FCC requirements.

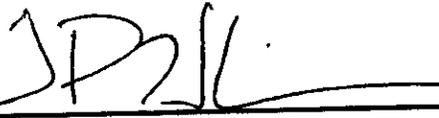
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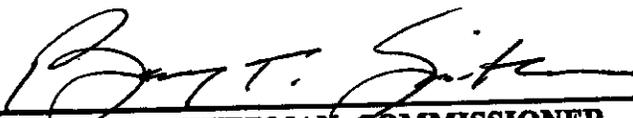
3. Dobson shall include language in all service contracts, or in separate statements given to all customers, advising customers of the availability of the Lifeline and LinkUp discounts and the requirements for such discounts.
4. For each study area, Dobson shall track its expenditures and investments, and submit the following information per study area on an annual basis with its FUSF certification application: (1) a separate affidavit attesting to Dobson's annual as well as aggregate expenses and investment in each study area, with all relevant data attached; (2) the results of an annual customer satisfaction survey, and any relevant background documents, such as a copy of the survey itself; and (3) the total number of complaints received, per 1,000 handsets.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

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SIGNED AT AUSTIN, TEXAS the 2nd day of February 2005.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
**PAUL HUDSON, CHAIRMAN**

  
\_\_\_\_\_  
**BARRY T. SMITHERMAN, COMMISSIONER**

I respectfully dissent from the portion of this decision wherein the Commission holds that granting Dobson's ETC designation is in the public interest. Instead, I agree with the ALJ's conclusion on the public interest issue, and I would affirm the Proposal for Decision.

  
\_\_\_\_\_  
**JULIE FARSLEY, COMMISSIONER**



DOCKET NO. 24481

DESIGNATION	OF	COMMON	§	PUBLIC UTILITY COMMISSION
CARRIERS	AS	ELIGIBLE	§	
TELECOMMUNICATIONS CARRIERS			§	OF TEXAS
(ETC) TO RECEIVE FEDERAL			§	
UNIVERSAL FUNDS PURSUANT TO			§	
THE FEDERAL COMMUNICATIONS			§	
COMMISSION'S FOURTEENTH			§	
REPORT AND ORDER ADOPTING A			§	
STATE CERTIFICATION PROCESS			§	

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**ORDER NO. 12**  
**APPROVING REQUEST FOR SUPPORT IN CERTAIN STUDY AREAS**

*Background.* On February 2, 2005, a Final Order was issued in Docket No. 29144<sup>1</sup> granting Dobson Cellular Systems, Inc. (Dobson) designation as an eligible telecommunications carrier (ETC) for the purpose of receiving federal universal service fund (FUSF) support for the study areas of Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Ganado Telephone Company, and Industry Telephone Company. The Final Order conditioned Dobson's receipt of FUSF in the Industry Telephone Company study area "upon approval of a compliance filing showing that Dobson's implementation of Phase II E911 service in that area meets federal requirements."

On March 29, 2005, Dobson filed a motion for expedited approval of certification to receive FUSF. Dobson provided an affidavit pursuant to P.U.C. SUBST. R. 26.418(j) certifying its use of federal high cost support (FUSF HCF) for the year 2005. P.U.C. SUBST. R. 26.418(j) provides that carriers not meeting the September 1, 2004 deadline for the Commission's certification to the Federal Communications Commission (FCC) may make a late filing to be subsequently provided to the universal service administration corporation (USAC) and FCC by the Commission, allowing the carrier to receive appropriate funding support. Dobson also provided Exhibit B. Exhibit is a letter directed to the FCC and USAC

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<sup>1</sup> Application of Dobson Cellular Systems Inc. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. 241 (e) and P.U.C. SUBST. R. 26.418, Docket No. 29144 (Feb. 2, 2005).

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directing that Dobson be recognized as certified for FUSF HCF pursuant to the FCC's requirements for the third and fourth quarter of 2005 but not effective in the Industry Telephone Company study area.

On April 4, 2005, amended by a filing on April 5, 2005, Commission Staff (Staff) filed their recommendation regarding Dobson's motion for expedited approval of certification. Staff recommended that Dobson's request for FUSF HCF support for the federal study areas of Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., and Ganado Telephone Company, Inc. be granted. Staff stated that it will advise the USAC and FCC administrators that Dobson's ETC designation has been granted.

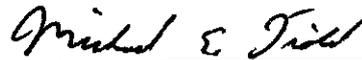
In regard to the situation related to the Industry Telephone study area, Staff stated that it is prepared to verify Dobson's designation as an ETC in the Industry study area and to provide USAC and FCC with the appropriate notice once (1) Dobson provides the Commission with its necessary annual affidavit regarding the appropriate use of such funds; and (2) Dobson provides the Commission with an affidavit attesting that it is in compliance with all FCC Phase II E911 requirements for the Industry study areas as required by the Final Order in Docket No. 29144. Staff recommended that no action be taken in either Docket No. 29144 or Docket No. 24481 at this time with regard to the Industry study area.

Therefore, based on Staff's recommendation, Dobson's request for FUSF HCF support for the federal study areas of Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., and Ganado Telephone Company, Inc. is granted. Staff will advise the USAC and FCC administrators that Dobson's ETC designation has been granted.

No action will be taken at this time in either Docket No. 29144 or Docket No. 24481 with regard to the Industry study areas. At such time that Dobson makes its compliance filing satisfying the Final Order contingency, Staff will provide the necessary letter of approval to be processed for the receipt of FUSF support in the Industry study area.

SIGNED AT AUSTIN, TEXAS on this the 7<sup>th</sup> day of April 2005.

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**MICHAEL E. FIELD**  
**DIRECTOR, DOCKET MANAGEMENT**  
**POLICY DEVELOPMENT DIVISION**

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