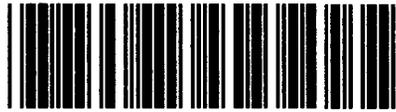


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PUBLIC UTILITY COMMISSION
OF TEXAS

APPLICATION OF SC TXLINK, LLC FOR §
DESIGNATION AS AN ELIGIBLE §
TELECOMMUNICATIONS CARRIER §
AND AN ELIGIBLE §
TELECOMMUNICATIONS PROVIDER §

PUBLIC UTILITY COMMISSION
OF TEXAS

**ORDER NO. 5
NOTICE OF APPROVAL FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER AND
DENIAL OF REQUEST FOR ELIGIBLE TELECOMMUNICATIONS PROVIDER**

Procedural History

On May 5, 2008, SC TxLink, LLC (SC TxLink or the Company) filed a combined application for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. SUBST. R. 26.418, as well as designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. SUBST. R. 26.417. SC TxLink also requested a waiver of P.U.C. SUBST. R. 26.417(c)(1)(A) so that its ETP application could be processed at the same time as its ETC application. Pursuant to 47 U.S.C. § 214(e), the Commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the Commission.

SC TxLink originally sought ETP/ETC designation in the Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas), GTE Southwest d/b/a Verizon Southwest (Verizon), and United Telephone Company of Texas, Inc. d/b/a Embarq (Embarq) exchanges listed in Attachment C of its application. Embarq is a rural incumbent local exchange carrier (ILEC); AT&T Texas and Verizon are non-rural ILECs.

The Commission issued Order No. 1 in this proceeding which established a procedural schedule, including deadlines for comment, motions to intervene, and published notice in the *Texas Register*. Notice was published in the *Texas Register* on May 23, 2008. Pursuant to P.U.C. SUBST. R. 26.417(f)(2)(A)(i) and 26.418(g)(2)(A)(i), the effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed,

whichever is later. Therefore, the earliest effective date for this proceeding was originally established as June 23, 2008, and later modified to July 11, 2008.

On May 15, 2008, Tex-Link Communications, Inc. filed objections, comments, and request for hearing, but did not file a motion to intervene. On June 12, 2008, Embarq filed a motion to intervene in this proceeding, and on June 18, 2008, the motion was granted. SC TxLink amended its application on June 26, 2008, removing the Embarq service area. Based on the amendment, Embarq withdrew its motion to intervene in this proceeding.

On July 8, 2008, Commission Staff (Staff) filed its final recommendation stating that SC TxLink has met the requirements for designation as an ETC, but has failed to meet the requirements for designation as an ETP. Specifically, SC TxLink failed to show that it offers Link-Up services, and the amended application incorrectly uses the header and citation for ETC designation in the section seeking ETP designation.

Designation as Eligible Telecommunications Carrier

To qualify for ETC status, a carrier must meet four conditions:¹

1. The carrier must be a common carrier, as that term is defined by the Federal Telecommunications Act of 1996 (FTA '96), Section 3(10).
2. The carrier must offer the following services (requisite services),² using its own facilities or a combination of its own facilities and the resale of another carrier's services:³
 - (a) voice grade access to the public switched network;
 - (b) local usage;
 - (c) dual tone multi frequency signaling or its functional equivalent;
 - (d) single party service or its functional equivalent;
 - (e) access to emergency services, including such services as 911 or enhanced 911;
 - (f) access to operator services;
 - (g) access to interexchange service;
 - (h) access to directory assistance;

¹ 47 C.F.R. § 54.201(b)-(d) (2001).

² 47 C.F.R. § 54.101 (2001).

³ 47 C.F.R. § 54.201 (2001).

- (i) toll blocking for qualifying low income customers, or
 - (j) toll control for qualifying low-income customers.
3. The carrier must advertise the availability of and charges for the requisite services in a media of general distribution.⁴
 4. The carrier must provide Lifeline and Link Up support, and may not collect a deposit from a customer receiving such support if the customer also elects toll blocking.⁵

SC TxLink meets all of the above criteria. SC TxLink will advertise the designated services and their rates through notices using media of general distribution. Regarding its offering of services using its own facilities, or a combination of its own facilities, and the resale of another carrier's services, SC TxLink will use its own local loops and cross-connect Unbundled Network Elements (UNEs) and will use its own digital switching facilities or leased facilities to provide service. SC TxLink will offer Lifeline Service to qualifying customers in compliance with 47 C.F.R. Part 54, Subpart E, and consistent with P.U.C. SUBST. R. 26.412.

SC TxLink has not requested any waivers of FCC requirements. SC TxLink commits to offer toll limitation services in accordance with 47 C.F.R. §§ 54.400 and 54.401.

Staff's analysis of the application concludes that SC TxLink meets all of the requirements established by the FCC for designation as an ETC.

Designation as Eligible Telecommunications Provider

P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II) requires carriers applying for ETP status to meet the definition of a local exchange carrier as defined in P.U.C. SUBST. R. 26.5. SC TxLink meets this definition.

P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II) requires carriers applying for ETP status to show that they have been granted ETC status for federal universal service support pursuant to U.S.C. §214(e). ETP and ETC designations are being handled concurrently in this consolidated docket.

⁴ 47 C/R/R. § 54.201.

To qualify for ETP status, P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(III), requires carriers to specify the small or rural ILEC service in which they propose to be an ETP. SC TxLink seeks designation in the Texas High Cost Universal Service Plan (THCUSP) service area of AT&T Texas and Verizon. The specific wire centers in which they propose to offer service are listed in Attachment C of SC TxLink's application.

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 incumbent local exchange carrier service areas for which the carriers seek ETP status. The designated services required for ETP status are:

1. flat rate, single party residential and business local exchange telephone service, including primary directory listings;
2. tone dialing service;
3. access to operator services;
4. access to directory assistance services;
5. access to 9-1-1 service when provided by local authority;
6. dual party relay service;
7. ability to report service problems seven days a week;
8. availability of annual local directory;
9. access to toll services; and
10. lifeline and link up services.

P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(III) also requires the applicant to assume the obligation to provide the services required under P.U.C. SUBST. R. 26.403 to any customer. SC TxLink states that it meets and assumes the responsibility to offer the basic services defined in P.U.C. SUBST. R. 26.403 to all customers in the THCUSP service area for which it seeks designation. However, as discussed below, SC TxLink did not confirm that it offers Link-Up service to all of its eligible customers, pursuant to P.U.C. SUBST. R. 26.412.

P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(IV) requires that applicants show that they offer the designated services through a means other than total service resale. SC TxLink will provide the

⁵ 47 C.F.R. § 54.405

service through UNEs which qualify in lieu of their own facilities⁶ and resell other providers' facilities.

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. Neither AT&T Texas nor Verizon are small or rural ILECs.

SC TxLink has also committed to offering the required designated services at a rate not to exceed 150 percent of the ILEC's tariffed rate in the same designated areas pursuant to the requirements of P.U.C. SUBST. R. 26.417(c)(1)(B).

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. 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. SC TxLink has failed to show that it meets the requirement regarding Link-Up services.

Furthermore, the amended application's section seeking designation as an ETP incorrectly copies the heading from the section seeking ETP designation and cites to requirements for ETC designation, or "I(1)(B)," on the last page of its application for designation as an ETP.

Staff's analysis of the application concludes that SC TxLink fails to meet the requirements established in P.U.C. SUBST. R. 26.417 for designation as an ETP.

⁶ 47 C.F.R. § 54.201(f)

Ordering Paragraph

In accordance with Staff's recommendation and for all the reasons stated therein, pursuant to the FTA § 214(e)(2) and P.U.C. SUBST. R. 26.418, SC TxLink's application for ETC designation is **APPROVED**, as amended, effective July 11, 2008. SC TxLink's application for designation as an ETP is denied due to its failure to show that it meets the requirements of to P.U.C. SUBST. R. 26.412, regarding Link-Up service, and other less substantive errors in the amended application for ETP designation.

SIGNED AT AUSTIN, TEXAS the 11th day of July 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

**ANDREW KANG
ADMINISTRATIVE LAW JUDGE**