

DOCKET NO. 39097

APPLICATION OF CUMBY  
TELEPHONE COOPERATIVE, INC.  
TO AMEND ITS DESIGNATION AS  
AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER  
(ETC) AND ELIGIBLE  
TELECOMMUNICATIONS  
PROVIDER (ETP)

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PUBLIC UTILITY COMMISSION  
OF TEXAS

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**ORDER NO. 3  
NOTICE OF APPROVAL TO AMEND DESIGNATION AS  
AN ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC) AND  
ELIGIBLE TELECOMMUNICATIONS PROVIDER (ETP)**

**Procedural History**

On January 20, 2011, Cumby Telephone Cooperative, Inc. – CLEC (Cumby-CLEC) filed an application to amend its 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. No parties sought intervention in this proceeding. In addition, Cumby-CLEC sought a waiver of P.U.C. SUBST. R. 26.417(c)(1)(A) so that its ETC and ETP applications may be processed simultaneously. Cumby-CLEC is a common carrier as defined in 47 U.S.C. § 153(10) and a telecommunications provider as defined in PURA § 51.002(10).<sup>1</sup> Cumby-CLEC operates under Certificate of Authority (COA) No. 50017.

Cumby-CLEC seeks to amend its ETC and ETP designation to include the entire study area of the rural ILEC, United Telephone Company of Texas d/b/a CenturyLink (CenturyLink-United).

On January 25, 2011, the Commission issued Order No. 1 in this proceeding which established a procedural schedule, including deadlines for comment, motions to intervene, and publication of notice in the *Texas Register*. Notice was published in the *Texas Register* on

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

February 4, 2011. The Applicant provided a copy of the application to the Office of Public Utility Counsel at the time of filing. 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.

On February 28, 2011, Commission Staff filed its final recommendation requesting administrative approval of the application of Cumby-CLEC to amend its ETC and ETP status based on the following:

**Designation as Eligible Telecommunications Carrier**

To qualify for ETC status, a carrier must meet the following criteria:<sup>2</sup>

1. The carrier must be a common carrier, as that term is defined by the Federal Telecommunications Act of 1996 (FTA), Section 3(10).
2. The carrier must offer the following services<sup>3</sup> using its own facilities or a combination of its own facilities and the resale of another carrier's services:<sup>4</sup>
  - (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 equivalent;
  - (e) access to 911 or enhanced 911;
  - (f) access to operator services;
  - (g) access to interexchange service;
  - (h) access to directory assistance; and;
  - (i) toll limitation for qualifying low income customers.
3. The carrier must advertise the availability of the above services and charges for the services in a media of general distribution.<sup>5</sup>
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.<sup>6</sup>

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<sup>2</sup> 47 C.F.R. § 54.201(b)-(d).

<sup>3</sup> 47 C.F.R. § 54.101.

<sup>4</sup> 47 C.F.R. § 54.201.

<sup>5</sup> 47 C.F.R. § 54.201.

<sup>6</sup> 47 C.F.R. § 54.405.

Cumby-CLEC meets all of the requirements to be designated as an ETC. In addition, Cumby-CLEC commits to meeting all of the additional ETC requirements as listed in 47 C.F.R. 54.202(a)(1)(i). In accordance with 47 C.F.R. 54.202(ii), Cumby-CLEC filed a five-year plan that specified proposed improvements or upgrades to its network.

**Designation as Eligible Telecommunications Provider**

To qualify for ETP 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 that they have been granted ETC status for federal universal service support pursuant to 47 U.S.C. § 214(e). ETC and ETP designations are being handled concurrently in this docket.
3. P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(III) requires carriers to specify the small or rural incumbent local exchange company (ILEC) service area in which they propose to be an ETP. Cumby-CLEC seeks to amend its ETP designation in order to be designated as an ETP throughout the entire study area of CenturyLink-United.
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 Texas High Cost Universal Service Provider 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 services; and
  - (j) Lifeline and Link Up services.

Cumby-CLEC meets these requirements.

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. Cumby-CLEC 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 its exchanges.
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 resale. Cumby-CLEC stated that it will utilize a combination of its own facilities and resale of another carrier's services. Cumby-CLEC states that it will provision switching equipment and local loop distribution facilities to provide the service in areas where it is using its own 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 meets these requirements.
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. Cumby-CLEC meets this requirement.

Cumby-CLEC has also committed to offering the required designated services at a rate not to exceed 150% 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).

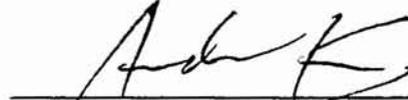
Commission Staff's analysis of the application concludes that Cumby-CLEC meets the requirements established by P.U.C. SUBST. R. 26.417 for designation as an ETP.

#### **Ordering Paragraph**

In accordance with Commission 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, Cumby-CLEC's application to amend its ETC designation to include the entire study area of CenturyLink-United is **APPROVED**. Pursuant to PURA § 56.023 and P.U.C. SUBST. R. 26.417, Cumby-CLEC's application to amend its ETC designation to include the entire study area of CenturyLink-United is **APPROVED**.

SIGNED AT AUSTIN, TEXAS the 8<sup>th</sup> day of March 2011.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**ANDREW KANG**  
**ADMINISTRATIVE LAW JUDGE**