

**PROJECT NO. 32171**

**RULEMAKING REGARDING THE § PUBLIC UTILITY COMMISSION  
STATE-ISSUED CERTIFICATE OF §  
FRANCHISE AUTHORITY § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF NEW CHAPTER 28 AND §28.6  
AS APPROVED AT THE MARCH 8, 2006, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-issued Certificate of Franchise Authority (CFA) Certification Criteria in compliance with PURA Chapter 66. Subchapter A, General Provisions, §§28.1-28.5 will be reserved for future use. The proposed new rule §28.6 will establish the certification criteria for a State-Issued Certificate of Franchise Authority (CFA) to provide cable and/or video services in the state. This rule is necessary to implement the provisions of the Public Utility Regulatory Act (PURA), Chapter 66, sections 66.001-66.004, and sets forth certain reporting requirements of CFA holders as well. Project Number 32171 is assigned to this proceeding.

Bill Franz, Director of Telecommunications, Legal Division, and Nara Srinivasa, Director of Telecom Network and Service Quality, Infrastructure Reliability Division have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the above-referenced sections. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. These costs are likely to vary from business to

business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Franz and Mr. Srinivasa have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the orderly processing of applications for certificates of franchise authority.

Mr. Franz and Mr. Srinivasa have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Comments on the proposed section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 32171.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2005) (PURA), which provides the Public Utility

Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA Chapter 66, grant(s) the commission the authority to issue State-Issued Certificate of Franchise Authority to an entity to provide cable and/or video services in the state of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act, Section 14.002, and Chapter 66, Sections 66.001- 66.004.

**CHAPTER 28. SUBSTANTIVE RULES APPLICABLE TO CABLE AND VIDEO SERVICE PROVIDERS.****Subchapter B. PROVISIONS RELATING TO APPLICATION FOR A STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY****§28.6. State-Issued Certificate of Franchise Authority (CFA) Certification Criteria.**

- (a) **Scope and purpose.** This section applies to the commission's certification of persons and entities to provide cable and/or video service as holders of a state-issued certificate of franchise authority (CFA), as established in the Public Utility Regulatory Act (PURA), Chapter 66, Sections 66.001—66.004.
- (b) **Application for CFA.** An entity or person seeking to provide cable and/or video service in this state shall file an application for a CFA with the commission as provided in subsection (e) of this section.
- (c) **Eligibility to File Application.**
- (1) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service is not eligible to seek a CFA to provide service in that municipality until the expiration date of the existing franchise agreement for such municipality.
  - (2) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service may file an application for a CFA to provide service in such municipality no earlier than 17 business days before the expiration of the municipal franchise provided that the application requests issuance of the CFA after the expiration of the municipal franchise.

- (3) For purposes of this subsection a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality. The terms “affiliates or successor entity” in this subsection include but are not limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.
- (d) **Procedure for reviewing CFA applications.**
- (1) The commission shall notify an applicant for CFA whether the application is complete before the 15<sup>th</sup> business day after the application was submitted.
- (2) The commission shall issue a CFA before the 17<sup>th</sup> business day after the application, including the requisite affidavit, has been filed if the commission finds the application to be complete and sufficient.
- (e) **Standards for granting franchise authority to CFA applicants.**
- (1) An applicant for a CFA shall submit a completed Application for State Issued Certificate of Franchise Authority, which shall include the following items:
- (A) An affidavit signed by an officer or general partner of the applicant affirming the following:
- (i) the applicant has filed or will timely file with the Federal Communications Commissions (FCC) all forms that the FCC

requires from entities seeking to provide cable or video services in Texas;

- (ii) the applicant agrees to comply with all applicable federal and state statutes and regulations;
  - (iii) the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable and/or video service, including the police powers of the municipalities in which the service is delivered;
  - (iv) all statements made in the Application for State Issued Certificate of Franchise Authority are true and correct.
- (B) A description of the service area footprint to be served. Service areas may be an entire municipality or a portion thereof and may include incorporated areas as well as unincorporated areas. Acceptable service area descriptions include properly labeled maps that clearly define the service area using city/municipality limits, county boundaries, metes and bounds, subdivisions, and/or other geographic areas with distinct boundaries.
- (C) The street address and telephone number of the applicant's principal place of business.
- (D) The name, addresses, and telephone numbers of an authorized representative, a regulatory contact, and an emergency contact.
- (E) The names of the applicant's principal executive officers.

(f) **Name(s) on CFA.**

- (1) All cable and/or video services provided under a CFA shall be provided in the name under which certification was granted by the commission. The requested name(s) must be registered with the proper authorities to conduct business in Texas (*i.e.*, the Texas Secretary of State with the exception of sole proprietorships that are registered with the county in the requested service area), and may not be deceptive, misleading, vague, inappropriate, or duplicative of an existing CFA holder.
- (2) The holder of the CFA may request commission approval to add, delete or change the name(s) on the franchise authority in accordance with subsection (g)(4) of this section.

(g) **Amendments, Terminations and Transfers of a CFA.**

- (1) **Termination of CFA.** A CFA may be terminated by the certificate holder by submitting written notice to the commission. The CFA Termination Notice shall be filed with the commission in the project number established by staff for that purpose.
- (2) **Transfer of Ownership/Control.** A CFA is fully transferable to any successor in interest to the entity to which the CFA was originally granted. The successor in interest shall file a written notice of transfer with the commission and the relevant municipality within 14 business days of the completion of such transfer. The notice to the commission shall be in the form of an application to amend the

existing CFA and shall contain the information described in subsection(e) of this section

- (3) **Expansion of Service Area Footprint.** Changes to the description of the existing service area footprint shall be accomplished by filing an application to amend the existing CFA with the commission prior to any such change.
  - (4) **Name Changes.** The holder of the CFA may request commission approval to add, delete, or change the name(s) on the CFA by filing with the commission an application to amend its CFA.
- (h) **Reporting Requirements.**
- (1) All CFA holders shall notify the commission of changes in company contact information within 14 business days of any such change.
  - (2) Every CFA holder shall file with this commission a copy of any order or ruling issued by a court of competent jurisdiction that either modifies or revokes its CFA or makes it ineligible to hold a CFA within 14 business days of the issuance of such order or ruling.
- (i) **Records requirements.**
- A franchise holder shall maintain a copy of records required by applicable federal or state laws and regulations for a period of not less than 24 months. Upon commission staff request, the franchise holder shall provide an accurate and complete copy of any such records no later than 10 business days after the date of such request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 8th DAY OF MARCH 2006 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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