

PROJECT NO. 35246

RULEMAKING REGARDING P.U.C.	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES, CHAPTER 26,	§	
SUBCHAPTER E (CERTIFICATION,	§	OF TEXAS
LICENSING AND REGISTRATION -	§	
§§26.101, 26.102, 26.103, 26.107, 26.109,	§	
26.111, 26.113 AND 26.114)	§	

PROPOSAL FOR PUBLICATION OF REPEAL OF §§26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113, AND 26.114 AND NEW §§26.101, 26.102, 26.107 AND 26.111 AS APPROVED AT THE MAY 27, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes the repeal of §§26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113, and 26.114 relating to Certification, Licensing, and Regulation and new §§26.101, 26.102, 26.107 and 26.111. This rulemaking project is a complete revision of Chapter 26, Subchapter E relating to Certification, Licensing and Registration. The commission proposes to repeal and replace rules in Subchapter E as follows: repeal and propose new §§26.101, 26.102, 26.107, and 26.111; repeal §26.103 and incorporate it into new §26.101; and repeal §§26.109, 26.113, and 26.114 and incorporate all three into new §26.111. This rulemaking takes eight substantive rules and streamlines the rules into four proposed substantive rules. The proposed rules will remove obsolete language, update reporting requirements, strengthen certification requirements, and consolidate the rules to omit redundant requirements. Project Number 35246 is assigned to this proceeding.

Gordon Van Sickle, Senior Network Analyst of the Infrastructure & Reliability Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Van Sickle has determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the section will be making communications with telecommunications companies easier and improving commission efficiency in the activities related to the certification and registration of telecommunications providers by obtaining access to additional company contact information, more accurate certification and registration information, electronic submittal of reports to improve accuracy, convenience for users of the information, and compliance with commission rules, setting out clear standards for filing amendments to certifications, and consolidating and streamlining rule requirements to eliminate redundant requirements. There may be some impact in increased monitoring of reporting, but the benefits are expected to outweigh the costs. There will be no adverse economic effect on small business or micro-businesses as a result of enforcing this section. Therefore, no flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas

78701 on Wednesday, August 11, 2010 beginning at 1:00 p.m. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed repeals and new sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the repeals and new sections are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. 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 35246.

Additionally, the commission solicits comments on the following questions:

1. Is it appropriate to require disclosure of a felony or misdemeanor charge where the charge has not resulted in a conviction, a guilty plea, or a plea of nolo contendere?
2. What types of misdemeanors described by 26.111(g)(3)(B)(iii) would be relevant to certification as a COA or SPCOA?

The repeals and new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2009) (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 and, specifically, PURA §52.001 which grants the commission the

authority to implement rules to protect the public interest and provide equal opportunity to each telecommunications utility in a competitive marketplace.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.101, 17.051, 17.052, 17.053, 51.002, 51.010, 52.001, 52.102, 52.103, 52.152, 52.207, 52.256, 54.001, 54.002, 54.003, 54.008, 54.051, 54.052, 54.053, 54.054, 54.101, 54.102, 54.103, 54.105, 54.151, 54.152, 54.153, 54.154, 54.155, 54.156, 54.201, 54.251, 54.253, 54.255, 54.258, and 55.171 - 55.180.

§26.101 – Repeal

§26.102 – Repeal

§26.103 – Repeal

§26.107 – Repeal

§26.109 – Repeal

§26.111 – Repeal

§26.113 – Repeal

§26.114 – Repeal

§26.101. Certificate of Convenience and Necessity Criteria.

- (a) **Scope and Purpose.** The commission may grant a certificate of convenience and necessity (CCN) to provide local exchange telephone service, basic local telecommunications service or switched access service pursuant to Public Utility Regulatory Act (PURA), Chapter 54, Subchapter B.
- (b) **Certificates of Convenience and Necessity for new service areas and facilities.**
- (1) The commission may issue a CCN only if it finds that the CCN is necessary for the service, accommodation, convenience, or safety of the public and complies with the requirements in PURA §54.054 (relating to Grant or Denial of Certificate).
- (2) The commission may grant a CCN as requested, refuse to grant it, or grant it for the construction of a portion of the requested system, facility, or extension, or for the partial exercise of the requested right or privilege.

- (c) **Non-exclusivity of CCN.** A CCN granted under this section shall not be construed to vest exclusive service or property rights in the area certificated. The commission may grant additional certification to another utility or utilities for all or any part of the area certificated under this section, upon a finding of public convenience and necessity.
- (d) **Name on Certification.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a CCN shall be provided in the name under which certification is granted by the commission.
- (1) The applicant must provide the following information from its registration with the Texas Secretary of State or from its corporate registration in another state or county, as applicable:
- (A) Form of business being registered (*e.g.*, corporation, limited liability company, partnership, sole proprietorship, etc.);
 - (B) Any assumed names;
 - (C) Certification/file number; and
 - (D) Date business was registered.
- (2) The requested certificate name shall not be deceptive, misleading, vague, inappropriate, confusing or duplicative of an existing Certificated Telecommunications Utility (CTU).
- (3) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name does not meet the requirements of paragraph (2) of this subsection, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be

required to amend its application to provide at least one suitable name in order to be certificated.

- (e) **Affiliate Guidelines for CCN Holders.** The following affiliate guidelines apply to persons and entities holding a CCN and their affiliates that either hold or are applying for a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) under PURA Chapter 54:
- (1) An affiliate of a CCN holder may hold a COA or SPCOA for all or any portion of a service area of the CCN holder.
 - (2) A COA that is an affiliate of a CCN holder shall comply with applicable federal law and Federal Communications Commission (FCC) rules governing affiliates and structural separation.
 - (3) If an affiliate of a CCN holder serves more than five million access lines in this state, the affiliate shall abide by the service restrictions and limitations set forth in PURA §54.102(e) (relating to Application for Certificate).
 - (4) An affiliate of a CCN holder may not directly or indirectly sell any regulated product or service that it purchased from the CCN holder to any non-affiliate at any rate or price less than the price that the affiliate paid to the CCN holder.
 - (5) If the CCN holder is not in compliance with applicable federal law and FCC rules governing affiliates and structural separation, the commission shall not grant a COA to the affiliate.
- (f) **Amending a CCN.** The commission may amend any certificate issued under this section if it finds that the public convenience and necessity requires such amendment.

- (1) Pursuant to PURA Chapter 54 Subchapter B, CCNs holders must amend their certificates for:
 - (A) A change in the name of the holder of the CCN, including a change of the corporate name or assumed name of the certificate holder.
 - (B) A change in the boundary of a service area.
 - (C) CCNs for Non-Chapter 58 utilities are not transferable without approval of the commission and continue in force except as ordered by the commission. The CCN amendment must be filed jointly by the utilities involved and comply with the requirements set forth in PURA §§14.101 and 51.010 (relating to Report of Certain Transactions; Commission Consideration and Commission Investigation of Sale, Merger, or Certain Other Actions).
- (2) Minor service area boundary amendment applications are applications that involve less than 5% of the customers of an exchange. An application for an amendment for a minor service area boundary change must be jointly filed by the affected CCN holders and, at a minimum, contain the following information:
 - (A) Legal name and all assumed names under which the applicant conducts its business;
 - (B) Business office address, primary telephone number, fax number, website address and primary email address;
 - (C) Business regulatory contact(s), including business address, primary phone number and primary email address;
 - (D) Reason(s) for the proposed amendment;

- (E) Clear and concise written description of the geographic location of the proposed amendment;
- (F) Maps (minimum size of 8 1/2" x 11") of the proposed amendment identifying the existing and proposed boundaries clearly and conspicuously. At a minimum, the applicant must provide a county map and expanded view(s) that clearly and conspicuously identifies the boundary change. Each map must clearly and conspicuously illustrate the location of the area for which the amendment is being requested, including but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. The maps of the proposed amendment must be submitted in hard copy and, upon request by Staff, in compatible electronic format; and
- (G) Notice of the proceeding and notice to customers. Published notice must identify the assigned docket number and must comply with the requirements of §22.52(b) of this title (relating to Notice in Licensing Proceedings). Customers being transferred from one utility to another shall also be given notice in accordance with §26.130(k) of this title (relating to Selection of Telecommunications Utilities).

- (g) **Sale, transfer, merger.** A notice must be filed for the sale, transfer, or merger (STM) of at least 50% of the utility, or sale, acquisition or lease of facilities as an operating unit or system for a total consideration of more than \$100,000.
- (1) Chapter 58 electing utilities must file a written notification with the commission no later than 30 days after the STM has closed.
 - (2) Chapter 59 electing utilities must comply with the requirements set forth in PURA §§14.101 and 51.010.
- (h) **Reporting requirements.**
- (1) **Contact Information.** Each CCN holder must maintain accurate contact information with the commission. At a minimum, the CCN holder is required to report a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical address, primary business telephone number, toll-free customer service number, and primary email address. Additional information for tertiary emergency contact, separate mailing address, and additional company contact information is optional.
 - (A) After January 1st and before April 30th of each year, a CCN holder must electronically submit its current contact information to the commission, in the manner established by the commission.
 - (B) Contact information must be updated not later than the 30th day after the date of any change to the required information in paragraph (1) of this subsection, in the manner established by the commission.

- (2) **Termination/Disconnection Notice.** CCN holders must file a copy of the termination/disconnection notice sent to certified telecommunications providers (CTP) within two business days following the issuance of the notice. The service termination/disconnection notice must be filed in the project established for this purpose.
- (3) **Bankruptcy Notification.** CCN holders that have filed a petition of bankruptcy must file a notice of bankruptcy in a project established for this purpose. The notice must be filed not later than the fifth business day after the filing of a bankruptcy petition. The notice of bankruptcy must include, at a minimum, the following information:
 - (A) The name of the certificated company filing for bankruptcy, date and state in which the bankruptcy proceeding was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, 13), the bankruptcy case number; and
 - (B) The number of affected customers, the type of service being provided to the affected customers, and name of the provider(s) of last resort associated with the affected customers.
- (4) **Required Reports.** A certificate holder shall file all reports required by PURA and other sections in this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.73 of this title (relating to Annual Earning Report); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.81 of this title (relating to Service Quality Reports); §26.85 of this title (relating to Report of Workforce Diversity

and Other Business Practices); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

- (i) **Revocation or suspension.** The commission may revoke or amend, after notice and hearing, any certificate issued under this section if the certificate holder has never provided or is no longer providing service in all or any part of the certificated area, for significant violations of PURA, commission rules, or Federal Communications Commission rules, or for failure to meet the requirements under this section to operate as a CCN.

§26.102. Registration of Pay Telephone Service Providers (PTS).

- (a) **Scope and Purpose.** This section applies to the registration of pay telephone service (PTS) providers pursuant to Public Utility Regulatory Act (PURA) Chapter 55, Subchapter H, §§55.171 - 55.180 (Relating to Pay Telephones) and Chapter 26, Subchapter N, §§26.341 - 26.347 of this title (relating to Pay Telephone Services).
- (b) **Registration Requirement.** All PTS providers (except CCN holders) must submit a PTS registration before providing pay telephone services in the State of Texas. If the PTS registration holder has any change to the information provided in the registration, then the PTS registration holder must update its registration information within 30 days of the change.
- (c) **Re-registration.** PTS registrations expire on August 1st of each year. Each PTS provider must renew its registration with the commission by electronically submitting the required form in the manner established by the commission. A registration that is renewed during the period from January 1 to July 31 is extended one year. A registration that is not renewed is no longer valid.
- (d) **Disclosure of location.** Registration requires disclosure of the location of each of the registrant's pay telephones by county. If a registrant asserts confidentiality of information related to the physical location of pay telephones, it must file this information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Material).

- (e) **Network access.** Certificated Telecommunications Utilities (CTUs) shall provide pay telephone access service (PTAS) to a PTS provider that provides its commission-issued PTS registration number to the CTU.

- (f) **Revocation or suspension.** If the commission finds that a PTS provider is in violation of PURA, commission rules, or rules of the Federal Communications Commission, the commission may suspend or revoke the PTS registration and may direct all CTUs to discontinue provision of pay telephone access service to the PTS provider.

- (g) **Reporting requirements.** Each PTS provider must maintain accurate contact information.

§26.107. Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

- (a) **Scope and Purpose.** This section applies to the registration of providers of intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), and other telecommunications services that do not require certification pursuant to the Public Utility Regulatory Act (PURA) Chapter 54, Subchapter C (relating to Certificate of Operating Authority); except as noted in PURA §51.002(10) (relating to Definitions).
- (b) **Registration Requirement.** Each nondominant carrier not holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) shall file with the commission the information set forth in paragraphs (1) - (5) of this subsection no later than the 30th day after commencing service in the State of Texas. A registered nondominant carrier must report to the commission any changes to the information provided in its registration within 30 days of the change.
- (1) **Registered Name.** A nondominant carrier may register in only one name;
- (A) The applicant shall provide the date the requested name was accepted, the certification/file number assigned to the applicant and any assumed names registered with the Texas Secretary of State or the register of assumed names in another state or county, as applicable.
- (B) The requested name shall not be deceptive, misleading, vague, or duplicative of an existing certificated telecommunications provider (CTP) or other existing registrants.

- (C) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be registered.
- (2) **Registration Number.** The commission will assign a PUC registration number to each new registrant upon completion of the registration process;
- (3) **Contact Information.** Contact information must include, but not be limited to: business office information (contact's name, contact's title, business and mailing address, primary phone number, fax number and primary email address), complaint contact, regulatory contact, primary and secondary emergency contacts and a toll-free customer service number;
- (4) **Federal Carrier Identification.** Registrant must provide the FCC Carrier Identification Code (CIC) or National Exchange Carriers Association (NECA) Operating Carrier Numbers (OCNs), if available; and
- (5) **Telecommunications Affiliates.** Registrant must provide a list of all telecommunications affiliates that operate in Texas with a description of the relationship to the registrant, and an organizational chart, if available.
- (c) **Re-Registration.** Nondominant registrations subject to this section expire on May 1st of each odd-numbered year. Each nondominant carrier subject to this section must re-register with the commission between January 1st and April 30th of each odd-numbered year by electronically submitting the required form in the manner established by the

commission. A registration that is renewed during the period from January 1 to April 30 of an odd-numbered year is extended for another two years. A registration that is not renewed is no longer valid.

(d) **Amendments to Registration.**

(1) **Name change.** If a registrant proposes to change its name, it must file a written notification and provide at a minimum: its current registered name and registration number, the new registered name, and an explanation for the requested name change.

(2) **Cancellation of a Registration.** If a registrant proposes to cancel its registration it must file a written notification and provide at a minimum: its current registered name, registration number, and explanation of the requested cancellation. The explanation of the cancellation must include the disposition of all affected customers, whether notice was provided to customers, a copy of the notice provided to customers, whether any credits or deposits are outstanding, and the disposition of credits or deposits.

(e) **Required Reports.**

(1) Updates to contact information. All nondominant carriers subject to this section shall annually submit updated contact information in the manner established by the commission. All nondominant carriers subject to this section shall annually submit a registration form in the manner established by the commission.

(2) All nondominant carriers subject to this section shall comply with the reporting requirements in PURA and other sections of this title, including but not limited to:

§26.76 of this title (relating to Gross Receipts Assessment Report); §26.81 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); and §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

- (f) **Revocation or suspension.** The commission may suspend or revoke the registration pursuant to PURA Chapter 17, if the commission finds that a registrant is in violation of PURA, commission rules, or rules of the Federal Communications Commission.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

- (a) **Scope and purpose.** This section applies to the certification of persons and entities to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.
- (b) **Definitions.**
- (1) Affiliate -- an affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with, the person specified.
 - (2) Control -- the term control (including the terms controlling, controlled by and under common control with) means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.
 - (3) Executive officer -- when used with reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.
 - (4) Facilities-based certification -- certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

- (5) Felony -- an offense defined as a felony, or for an offense that is not defined as either a felony or a misdemeanor, an offense punishable by a sentence of at least one year imprisonment or a fine of at least \$1,000. The term also includes a general court martial.
 - (6) Misdemeanor -- an offense defined as a misdemeanor or, for an offense that is not defined as either a felony or a misdemeanor, an offense punishable by a sentence of less than one year and a fine of less than \$1,000. The term also includes a special court martial.
 - (7) Permanent employee -- an individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.
 - (8) Person -- includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.
 - (9) Principal -- a person or member of a group of persons that controls the person in question.
 - (10) Shareholder -- the term shareholder means the legal or beneficial owner of any of the equity in any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.
- (c) **Ineligibility for certification.**
- (1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

- (2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity as required by PURA §54.102 (relating to Application for Certificate).
 - (3) An applicant is ineligible for a SPCOA if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.
 - (4) The commission will not grant an SPCOA to a holder of a:
 - (A) CCN for the same territory; or
 - (B) COA for the same territory.
- (d) **Application for COA or SPCOA certification.**
- (1) A person applying for COA or SPCOA certification must demonstrate its capability of complying with this section. A person who operates as a COA or SPCOA or who receives a certificate under this section shall maintain compliance with this section.
 - (2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant. The commission may require that an applicant for COA or SPCOA certification or certification amendment provide the commission the results of an independent background investigation from a firm chosen by the commission.
 - (3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without

necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.

- (4) While an application for a certificate or certification amendment is pending, an applicant shall inform the commission of any material change in the information provided in the application within five working days of any such change.
 - (5) Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications, a new or amendment application within 60 days of the filing of the application.
 - (6) While an application for COA or SPCOA certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.
- (e) **Standards for granting certification to COA and SPCOA applicants.** The commission may grant a COA or SPCOA to an applicant that demonstrates that it is eligible under subsection (c) of this section, has the technical and financial qualifications specified in this section, has the ability to meet the commission's quality of service requirements, and it and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission shall consider whether the applicant satisfactorily provided all of the information required in the application for a COA or SPCOA.
- (f) **Financial requirements.** To obtain COA or SPCOA certification, an applicant must demonstrate the shareholders' equity required by this subsection.

- (1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than \$100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than \$25,000.
 - (2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans or loan repayments to shareholders or affiliates.
 - (3) Shareholders' equity shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet shall include the independent auditor's report. The unaudited balance sheet shall include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.
- (g) **Technical and managerial requirements.** To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

- (1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.
- (2) To support technical qualification, applicants must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.
- (3) In determining whether an applicant has the necessary technical and managerial resources and ability, the commission may also consider the following:
 - (A) the information required to be disclosed by paragraph (4) of this subsection;
 - (B) any complaint information on file at the commission;
 - (C) other information discovered by staff during its review of an application;
 - (D) the results of an independent background investigation; and
 - (E) any other information found by the commission to be relevant.
- (4) An applicant shall disclose the following information in an application for COA or SPCOA certification or certification amendment. An applicant shall construe these categories of information broadly and shall err on the side of disclosure. An applicant may request to limit the inclusion of this information if it would be

unduly burdensome to provide, so long as the information provided is adequate for the commission to assess whether the applicant meets the requirements for COA or SPCOA certification.

- (A) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest or any entity for which the applicant's principals were principals that occurred during the 60 months immediately preceding the application;
- (B) A description of each instance in the last ten years in which the applicant or a principal or affiliate of the applicant has been:
 - (i) convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony;
 - (ii) charged with any felony;
 - (iii) convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any misdemeanor involving the provision of telecommunications, electric, gas, water, or cable service; fraud, false statements, or omissions; theft; larceny; deceit; securities laws; customer protection laws; or deceptive trade laws;
or
 - (iv) charged with a misdemeanor specified in clause (iii) of this subparagraph;
- (C) A description of each instance in the last ten years in which the applicant or a principal or affiliate of the applicant has been subject to any domestic or foreign civil court proceeding in which:

- (i) the court found that the applicant or a principal or affiliate of the applicant violated any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;
 - (ii) a person filed a suit against the applicant or a principal or affiliate of the applicant alleging a violation of any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;
 - (iii) the court entered a judgment for monetary damages or an injunction against the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service; or
 - (iv) it was alleged that the court should enter a judgment for monetary damages or an injunction against the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service.
- (D) A description of each instance in the last five years in which the applicant or a principal or affiliate of the applicant has been subject to an administrative proceeding before any governmental regulatory body or any self-regulatory organization in which:
- (i) the governmental regulatory body or self-regulatory organization found that the applicant or a principal or affiliate of the applicant violated any laws or rules, including those related to fraud, securities, customer protection, or deceptive trade practices;

- (ii) it was alleged that the applicant or a principal or affiliate of the applicant violated any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;
 - (iii) the governmental regulatory body or self-regulatory organization revoked or suspended a license, certification, or other approval of the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service;
 - (iv) a person requested that the governmental regulatory body or self-regulatory organization revoke or suspend a license, certification, or other approval of the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service;
 - (v) the applicant or a principal or affiliate of the applicant was fined, sanctioned, or penalized for violation of any laws or rules.
- (E) An applicant shall disclose whether it is in good standing with the Texas Comptroller's Office, active in the Texas Secretary of State files, and current in its Texas Universal Service Fund assessment;
- (F) Disclosure of all principals of the applicant;
- (G) Disclosure of all persons that directly or indirectly own at least 5% of the voting securities or other ownership interests of the applicant and their respective ownership percentages;

- (H) Disclosure of all executive officers and other senior managers of the applicant; and
 - (I) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements of this subsection.
- (5) **Quality of service and customer protection.**
- (A) The applicant must affirm that it will meet the commission's quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.
 - (B) The applicant must affirm that it is aware of and will comply with the customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).
- (6) **Limited scope of COAs and SPCOAs.** If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:
- (A) Limit the geographic scope of the COA.
 - (B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.
- (7) **Material changes while application is pending.** While an application for a certificate is pending, an applicant shall inform the commission of any material

change in the information provided in the application within five business days of any such change.

- (8) **Timeline for action on application.** Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications a new or amendment application for a COA or SPCOA not later than the 60th day after the date the application for the certificate is filed. The commission may extend the deadline for good cause.
- (h) **Certificate Name.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission shall grant the COA or SPCOA certificate in only one name.
- (1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:
- (A) Form of business being registered (*e.g.*, corporation, company, partnership, sole proprietorship, etc.);
 - (B) Any assumed names;
 - (C) Certification/file number; and
 - (D) Date business was registered.
- (2) Business names shall not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a Certificated Telecommunications Provider (CTP).

- (3) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name does not meet the requirements of paragraph (2) of this subsection, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(i) **Amendment of a COA or SPCOA Certificate.**

- (1) A person or entity granted a COA or SPCOA by the commission shall file an application to amend the COA or an SPCOA in a commission approved format in order to:

(A) Change the corporate name or assumed name of the certificate holder.

- (i) Name change amendments may be granted on an administrative basis, if the holder is in compliance with subsections (d)(2)(f) and (g) of this section, is in compliance with applicable commission rules, and no hearing is requested.

- (ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name or the amendment may be denied.

(B) Change the geographic scope of the COA and SPCOA.

- (C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:
 - (i) be filed at least 60 days prior to the occurrence of the transaction;
 - (ii) be jointly filed by the transferor and transferee;
 - (iii) comply with the requirements for certification; and
 - (iv) comply with applicable commission rules.
 - (D) Change Type of Provider from resale-only, facilities-based only or data-only restrictions on a SPCOA certificate.
 - (E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services. Such an application is subject to subsections (m) and (n) of this section.
- (2) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules from the information provided on the abbreviated amendment application, then a full amendment application shall be filed.
- (3) When a certificate holder acquires or merges with another certificate holder (other than a CCN holder), the acquiring entity must file a notice within 30 days of the

closing of the acquisition or merger in a project established by staff. Staff shall have 10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission shall include but not be limited to:

- (A) A joint filing statement;
 - (B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and
 - (C) An affidavit from each certificated entity attesting to compliance of COA or SPCOA certification requirements.
- (4) No later than five working days after filing an amendment application or amendment notice with the commission, the applicant must provide a copy of the amendment application or notice to all affected 9-1-1 entities and the Commission on State Emergency Communications.
- (5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.
- (j) **Non-use of certificates.** Applicants shall use their COA or SPCOA certificates expeditiously.
- (1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun

providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

- (2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) **Reporting Requirements.**

- (1) Each COA or SPCOA holder must provide and maintain accurate contact information. At a minimum, the COA or SPCOA holder shall maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder shall the required information in the manner established by the commission.
- (2) Contact information must be updated between January 1st and April 30th of each year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.
- (3) When terminating or disconnecting service to another CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number established for that purpose.

- (4) COA and SPCOA holders shall file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than the fifth business day after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:
- (A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, or 13, and whether it is voluntary or not), the bankruptcy case number; and
 - (B) The number of affected customers, the type of service being provided to the affected customers, and the name of the provider(s) of last resort associated with the affected customers.
- (5) A certificate holder shall file all reports required by PURA and this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 (Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).
- (1) **Standards for discontinuation of service and relinquishment of certification.** A COA or SPCOA holder may cease operations in the state only if commission authorization to

cease operations has been obtained. A COA or SPCOA holder that ceases operations and relinquishes its certification shall comply with PURA §54.253 (relating to Discontinuation of Service by Certain Certificate Holders).

- (1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications, each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Universal Service Fund, and the Office of Public Utility Counsel (OPC).
 - (A) The notification letter shall clearly state the intent of the certificate holder to cease providing service.
 - (B) The notification letter shall give customers a minimum of 61 days notice of termination of service, and the date of termination of service shall be clearly stated in the notification letter.
 - (C) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.
- (2) A COA or SPCOA holder that intends to cease operations shall file with the commission an application to cease operations and relinquish its certificate, which shall provide the following information:
 - (A) Name, address, and phone number of certificate holder;
 - (B) COA or SPCOA certificate number being relinquished;
 - (C) The commission docket number in which the COA or SPCOA was granted;

- (D) A description of the areas in which service will be discontinued and whether basic service is available from other certificate holders in these areas;
 - (E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and
 - (F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.
- (3) All customer deposits and credits shall be returned within 60 days of notification to cease operations and relinquish certification.
 - (4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations shall be paid by the certificate holder relinquishing the certificate.
 - (5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or law.
- (m) **Standards for discontinuing optional services.** A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253.
- (1) The COA or SPCOA holder shall file an application with the commission to discontinue optional services, which shall provide the following information:
 - (A) Name, address, and phone number of certificate holder;
 - (B) COA or SPCOA certificate number being amended;

- (C) The commission docket number in which the COA or SPCOA was granted;
 - (D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;
 - (E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and
 - (F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.
- (2) Notification to each customer receiving optional services is required, consisting of the following information:
- (A) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and OPC.
 - (B) The notification letter shall give customers a minimum of 61 days notice of discontinuation of optional services.
- (3) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.
- (4) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.

- (5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.
- (n) **Revocation or suspension.** A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the holder of the certificate does not meet the requirements under this section to operate as a COA or SPCOA. A suspension of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities associated with obtaining new customers in the state of Texas. A revocation of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for violations of law within its jurisdiction. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or SPCOA's certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:
- (1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;
 - (2) Providing false or misleading information to the commission;
 - (3) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;
 - (4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;
 - (5) Failure to meet commission reporting requirements;

- (6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;
- (7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;
- (8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;
- (9) Failure to maintain financial resources in accordance with subsection (d)(1)(B) of this section;
- (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
- (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;
- (13) Failure to serve as a provider of last resort if required to do so by the commission;
- (14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;
- (15) Failure to comply with the rules of the federal or Texas Universal Service Fund;
and
- (16) Violations of PURA or any commission rule or order applicable to the certificate holder.

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 27th DAY OF MAY 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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