

PROJECT NO. 42477

RULEMAKING TO AMEND P.U.C.	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE 26.111, AND	§	
CHAPTER 26 AS NEEDED, TO	§	OF TEXAS
IMPLEMENT SECTIONS OF S.B. 259,	§	
83RD LEGISLATIVE REGULAR	§	
SESSION	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.111
AS APPROVED AT THE AUGUST 7, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria. The proposed amendment will clarify the applicability of requirements in the rule to deregulated companies holding a COA or to an Exempt Carrier as defined in §26.5(89). In addition, the amendment will further amend §26.111 to conform to 2013 legislation, specifically the implementation of Senate Bill 259 of the 83rd Legislature, Regular Session. Project Number 42477 is assigned to this proceeding.

Meena Thomas, Senior Market Economist in the Competitive Markets Division, has 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 section.

Ms. Thomas has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as result of enforcing the section will be improved clarity and applicability of §26.111. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is

required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Thomas has 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 amendment 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 10 days after publication. Reply comments may be submitted within 18 days after publication. Sixteen copies of comments to the proposed amendment 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. 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 No. 42477.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (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 §52.154, which precludes the commission from adopting a rule or regulatory practice that would impose a greater burden on a nondominant

telecommunications utility than is imposed on a holder of a certificate of convenience and necessity serving the same area or on certain deregulated incumbent local exchange carriers (ILECs), and PURA §65.102, which specifies the requirements applicable to a deregulated ILEC that holds a COA.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.154, and 65.102.

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

(a) - (d) (No change.)

(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 [to the extent required by PURA and this title](#), 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) (No change.)

(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)-(3) (No change.)

(4) Quality of service and customer protection.

- (A) The applicant must affirm that it will meet the commission's [applicable](#) 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 [applicable](#) customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) (No change.)

(h) (No change.)

(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)-(D) (No change.)

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services.

[\(i\) A deregulated company holding a certificate of operating authority or an Exempt Carrier shall provide the information in subclauses](#)

(I)-(III) of this clause for the discontinuation of its service and relinquishment of its certificate. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or an Exempt Carrier.

(I) Certification that the carrier will send customers whose service is being discontinued a notification letter providing a minimum of 61 days of notice of termination of service and clearly stating the date of termination of service;

(II) A statement regarding the disposition of customer credits and deposits; and

(III) Certification that the carrier will comply with §26.24 of this title (relating to Credit Requirements and Deposits).

(ii) For all other carriers, ~~such~~ such an application is subject to subsections (m) and (n) of this section.

(2)-(5) (No change.)

(j) (No change.)

(k) Renewal of certificates. Each COA and SPCOA holder is required to file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file, the following year, a renewal of its certification.

(1) The certification renewal will consist of:

(A)-(B) (No change.)

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (1)(1) of this section, [to the extent required by PURA and this title.](#)

(2)-(7) (No change.)

(l) Reporting Requirements.

(1)-(4) (No change.)

(5) A certificate holder shall file all reports [to the extent](#) 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 of this title (relating to 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).

(m) 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). [This section does not apply to a deregulated company holding a certificate of operating authority or to an Exempt Carrier.](#)

(1)-(5) (No change.)

- (n) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253. [This section does not apply to a deregulated company holding a certificate of operating authority or to an Exempt Carrier.](#)

(1)-(5) (No change.)

- (o) 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 the extent required by PURA and this title](#) 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)-(4) (No change.)

(5) Failure to meet commission reporting requirements [to the extent required by PURA and this title](#);

(6)-(16) (No change.)

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 7th DAY OF AUGUST 2014 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**