

PROJECT NO. 39623

RULEMAKING TO AMEND PUC	§	PUBLIC UTILITY COMMISSION
SUBST. R. §26.74, RELATING TO	§	
REPORTS ON SALE OF PROPERTY	§	OF TEXAS
AND MERGERS, AND SUBST. R.	§	
§26.101, RELATING TO	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY CRITERIA	§	

**ORDER ADOPTING AMENDMENTS TO §26.74 AND §26.101
AS APPROVED AT THE JANUARY 12, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.74, relating to Reports on Sale of Property and Mergers, with no changes, and §26.101, relating to Certificate of Convenience and Necessity Criteria, with no changes to the proposed text as published in the October 14, 2011 issue of the *Texas Register* (36 TexReg 6838). Pursuant to House Bill 1753 of the 82nd Legislature, Regular Session in 2011 (HB 1753), the amendments increase from \$100,000 to \$10 million the total amount of consideration exchanged in a sale, acquisition, or lease of an operating unit or system above which a public utility in the telephone industry is required to report the transaction to the commission. Project Number 39623 is assigned to this proceeding.

The commission received no comments on the proposed amendments.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, HB 1753 §1, which amended PURA §14.101(a), effective

September 1, 2011, to increase the threshold above which public utilities must report to the commission.

Cross Reference to Statutes: PURA §14.001 and HB 1753 §1 (which amended PURA 14.101(a)).

§26.74. Reports on Sale of Property and Mergers.

- (a) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of \$10 million unless the public utility reports such transaction to the commission while pending or within 30 days after closing.
- (b) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not merge or consolidate with another public utility or electric utility operating in the State of Texas unless the public utility reports such transaction to the commission while pending or within 30 days after closing.
- (c) Dominant carriers shall not purchase voting stock in another public utility or electric utility doing business in the State of Texas, unless the utility reports such purchase to the commission while pending or within 30 days after closing.
- (d) Dominant carriers shall not loan money, stocks, bonds, notes or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports such transaction to the commission while pending or within 30 days after closing.
- (e) Incumbent local exchange companies electing under the Public Utility Regulatory Act, Chapter 58, are exempt from the requirements of subsections (a) and (b) of this

section.

- (f) For dominant carriers, investigations by the commission, with or without public hearing, of the transactions described in subsection (a) and (b) of this section must be completed within 180 days after the date of notification by the dominant carrier. If an order is not entered within that time, the utility's action is considered consistent with the public interest.

§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 names or assumed names under which certification is granted by the commission.

- (1) The applicant must provide the following information from its registration with the Office of the 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 names shall not be deceptive, misleading, vague, inappropriate, confusing or duplicative of an existing Certificated Telecommunications Utility (CTU).
 - (3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer 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) **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. Customers being transferred from one utility to another shall be given notice in accordance with §26.130(k) of this title (relating to Selection of Telecommunications Utilities).
- (f) **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 \$10 million.
- (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.

(g) **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 five 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 Earnings 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).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.74, relating to Reports on Sale of Property and Mergers, and §26.101, relating to Certificate of Convenience and Necessity Criteria are hereby adopted with no changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the _____ day of JANUARY 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER