

PROJECT NO. 41612

RULEMAKING TO AMEND P.U.C.	§	PUBLIC UTILITY COMMISSION
SUBST. R § 26.111 RELATING TO	§	
CERTIFICATE OF OPERATING	§	OF TEXAS
AUTHORITY (COA) AND SERVICE	§	
PROVIDER CERTIFICATE OF	§	
OPERATING AUTHORITY (SPCOA)	§	
CRITERIA	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.111
AS APPROVED AT THE OCTOBER 3, 2013 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 implement an annual renewal process for each holder of a COA and each holder of a SPCOA as required by Public Utility Regulatory Act (PURA) §52.1035 (Relating to the Renewal of Certain Certificates). Failure to comply with the renewal process for a COA or SPCOA will result in the COA or SPCOA being invalidated after the end of the automatic extension period. Project Number 41612 is assigned to this proceeding.

Gordon H. Van Sickle, Senior Utilities Specialist 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.

Mr. Van Sickle has 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 an accurate list of active COA and SPCOA holders with updated contact information. This will better allow

consumers to understand which COA and SPCOA holders are still active and how to contact them. 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.

Mr. Van Sickle 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.

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 Friday, December 6, 2013. The request for a public hearing must be received within 30 days after publication.

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 30 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 Number 41612.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2012) (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 §52.1035 which grants the commission the authority to create and maintain an annual renewal process for COAs and SPCOAs.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §52.1035.

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

(a) (No change.)

(b) **Definitions.**

(1) (No change.)

(2) Annual Report -- A report that includes but is not limited to the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, emergency contacts (primary and secondary) and migration contacts (operation and policy) which is submitted to the commission on an annual basis. Each provided contact shall include the contact's company title.

(3)~~(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.

(4)~~(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.

(5)~~(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.

~~(6)~~⁽⁵⁾ Permanent employee -- An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

~~(7)~~⁽⁶⁾ 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.

~~(8)~~⁽⁷⁾ Principal -- A person or member of a group of persons that controls the person in question.

~~(9)~~⁽⁸⁾ 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)-(j) (No change.)

(k) **Renewal of certificates.** Each COA and SPCOA holder is required to file with the commission a renewal of its certification on an annual basis.

(1) The annual renewal will consist of:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section.

(2) The annual renewal shall be filed on or before April 30 of each calendar year.

- (3) COA or SPCOA holders will have an automatic extension of the filing deadline until May 31 (31 days after the initial filing deadline of April 30) to comply with paragraph (1) of this subsection.
- (4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before May 31 of each calendar year will automatically render the certificate of the COA or SPCOA invalid.
- (5) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.
- (6) A certificate holder whose COA or SPCOA certificate is no longer valid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(1)(k) **Reporting Requirements.**

- (1) Each COA or SPCOA holder must provide and maintain accurate contact information using the annual report. 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 submit the required information in the manner established by the commission.
- (2) The annual report is due on or before April 30 of each calendar~~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 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).

- (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.

(n)~~(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.

(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 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 (f)(1) 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 3rd DAY OF OCTOBER 2013 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**