

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING, AND REGISTRATION.

§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) **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) **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) **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) **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) **Permanent employee** -- An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.
 - (7) **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) **Principal** -- A person or member of a group of persons that controls the person in question.
 - (9) **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.

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- (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.
 - (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 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) **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.

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- (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) An applicant shall include the following in its initial application for COA or SPCOA certification:
 - (A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;
 - (i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.
 - (ii) The 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 the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.
 - (iii) The commission may also consider any complaint information on file at the commission.
 - (B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;
 - (C) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and
 - (D) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

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- (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) 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.
- (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) 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.
- (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 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.

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- (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.
 - (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 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.

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- (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) **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) 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, to the extent required by PURA and this title.
 - (2) The certification renewal shall be filed on or before June 1, 2014 and every ten years thereafter.
 - (3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1st of each reporting year to comply with paragraph (1) of this subsection. The commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1st. The first notice will be sent on or before July 1st, the second notice will be sent on or before August 1st, and the third notice will be sent on or before September 1st. Failure to send any of these notices by the commission or failure to receive any of these notices by a COA or SPCOA holder shall not affect the requirement to renew a certificate under this section by October 1st of the renewal period.
 - (4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1st of each reporting year will automatically render the certificate of the COA or SPCOA invalid.
 - (5) COA or SPCOA holders that are found to be invalid are no longer in compliance with PURA §54.001.
 - (6) 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.
 - (7) 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.

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(l) **Reporting Requirements.**

- (1) Each COA or SPCOA holder must provide and maintain accurate contact information using the annual report to the extent required by PURA and this title. 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 applicable annual report is due on or before April 30 of each calendar 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 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 Nondominant Carriers' Obligations Regarding Information on Rates and Services); §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) 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.

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- (B) The notification letter shall give customers a minimum of 61 days of 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) **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) 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 of notice of discontinuation of optional services.

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- (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 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) 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 to the extent required by PURA and this title;
 - (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.