

**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO
TELECOMMUNICATIONS SERVICE PROVIDERS.**

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§26.109. Standards for Granting Certificates of Operating Authority (COAs).

- (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 established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapter C. Through this section, the commission strives to protect the public interest against entities that are not qualified to provide local exchange telephone service, basic local telecommunications service, and switched access service. The commission's overall goal is to encourage the development of a competitive marketplace for local exchange telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.
- (b) **Automatic disqualification.** This section contains reasons an applicant would be prohibited from acquiring a COA. An applicant is automatically disqualified from obtaining a COA:
- (1) if the applicant is a municipality; or
 - (2) if the applicant has not created a proper separation of business between itself and an affiliate holder of a certificate of convenience and necessity as required by PURA §54.102.
- (c) **Standards for granting certification to COA applicants.**
- (1) The commission shall consider the factors listed in subparagraphs (A) - (F) of this paragraph in deciding whether to grant a COA to an applicant proposing to serve an exchange.
 - (A) Whether the applicant has satisfactorily provided all of the information required in the Application for a Certificate of Operating Authority.
 - (B) Whether the applicant is financially qualified to be a facilities-based local service provider. To prove financial qualification as a facilities-based utility, an applicant shall provide evidence sufficient to establish that:
 - (i) Applicant possesses the greater of \$100,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first two years of its Texas operations; or
 - (ii) Applicant is an established business entity and is able to demonstrate evidence of profitability in existing operations for two years preceding the date of application by submitting a balance sheet and income statement audited or reviewed by a certified public accountant establishing all of the following:
 - (I) A long-term debt to capitalization ratio of less than 60%;
 - (II) A return-on-assets ratio of at least 10%; and,
 - (III) The greater of \$50,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for a minimum of the first two years of its Texas operations.
 - (C) Whether the applicant is technically qualified. The commission shall determine whether an applicant possesses sufficient technical qualifications to be awarded a COA based upon a review of the following information.
 - (i) Prior experience by the applicant or one or more of the applicant's principals or employees in the telecommunications industry or a related industry.

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- (ii) Any complaint and/or compliance history regarding the applicant, applicant's telecommunications or public utility affiliates, predecessors in interest, shareholders, and principals at the Public Utility Commission of Texas, the Office of the attorney general, the Attorney General in other states, and any other relevant regulatory agency for the previous two calendar years. If available, relevant information shall include, but not be limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occur.
 - (iii) If available, an affirmation that the applicant, its telecommunications or public utility affiliates, predecessors in interest, shareholders, and principals are in good standing at the Texas Comptroller's Office, active in the Texas Secretary of State files, and current in its Texas Universal Service Fund assessment.
 - (iv) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest in the two calendar years immediately preceding the application.
 - (v) A statement indicating whether the applicant has been notified that it is currently under investigation, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection law or regulation, and whether the applicant has been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation.
- (D) Whether the applicant is able to meet the commission's quality of service standards. Quality of service standards shall include, but not be limited to, 911 compliance and local number portability capability.
- (E) The applicant will be required to meet the customer protection rules and disclosure requirements applicable to certificate holders set forth in Chapter 26, Subchapter B of this title (relating to Customer Service and Protection).
- (F) Whether certification of the applicant is in the public interest.
- (2) If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may limit the geographic scope of the COA.
- (3) If the applicant is an affiliate of a certificate of convenience and necessity (CCN) holder, the applicant must show that the affiliated CCN holder is in compliance with federal law and Federal Communications Commission rules governing affiliates and structural separation. The applicant shall file an affidavit from the affiliated CCN holder attesting to this compliance, and provide reference to the Federal Cost Allocation Manual (CAM) filed with the commission.
- (d) **Financial instruments that will meet the cash requirements established in this section.**
- (1) Applicants for COAs shall be permitted to use any of the financial instruments set out in subparagraphs (A)-(F) of this paragraph to satisfy the cash requirements established in this rule to prove financial qualification.
 - (A) Cash or cash equivalent, including cashier's check or sight draft.
 - (B) A certificate of deposit with a bank or other financial institution.
 - (C) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission.

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- (D) A line of credit or other loan, issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission and payable on an interest-only basis for the same period.
 - (E) A loan issued by a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission, and payable on an interest-only basis for the same period.
 - (F) A guaranty issued by a shareholder or principal of applicant, a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond the certification of the applicant by the commission.
- (2) To the extent that the applicant relies upon a loan or guaranty provided in paragraph (1)(E) or (F) of this subsection, the applicant shall provide evidence sufficient to establish that the lender or guarantor possesses sufficient cash or cash equivalent to fund the loan or guaranty.
 - (3) All cash and instruments listed in paragraph (1) (A) - (F) of this subsection shall be unencumbered by pledges as collateral and shall be subject to verification and review by the commission prior to certification of the applicant and for a period of 12 months beyond the date of certification of the applicant by the commission. Failure to comply with this requirement may void an applicant's certification or result in such other action as the commission deems in the public interest, including, but not limited to, assessment of reasonable penalties and all other available remedies under the Public Utility Regulatory Act.
- (e) **Name on certificates.**
- (1) All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA shall be provided in the name under which certification was granted by the commission. The commission shall grant the certificate in only one name.
 - (A) If the applicant is a corporation, the commission shall issue the certificate in the corporate or assumed name of the applicant.
 - (B) If the applicant is an unincorporated business entity or an individual, the commission shall issue the certificate in the assumed name of the entity or the individual.
 - (C) The commission shall review the requested name to determine if the name is deceptive, misleading, vague, inappropriate, or duplicative of an existing certificated telecommunications utility. If the commission determines that the requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant and the applicant shall modify the name to alleviate the commission's concerns. If the name is not adequately modified, the application may be denied.
 - (2) The holder of a COA may request commission approval to change the name on the certificate by filing an application to amend its certificate with the commission.
- (f) **Non-use of certificates.** Applicants will use their COA certificates expeditiously.
- (1) A COA certificate holder that has not provided service for a period of 12 consecutive months must provide a sworn affidavit to the commission on an annual basis attesting that they continue to possess the technical and financial resources necessary to provide the level of service proposed in their initial application.

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- (2) A COA certificate holder that has not provided service within 48 months of being granted the certificate by the commission, may have its certificate suspended or revoked, as defined by §26.114 of this title (relating to Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs)), after due process or undergo certification re-qualification.
 - (A) Certification re-qualification shall consist of an entirely new filing certifying that the certificate holder possesses the technical and financial resources necessary to provide the proposed level of service.
 - (B) Any certification re-qualification must be filed at the commission before the expiration of the 48-month period.

- (g) **Reporting requirements.**
 - (1) All COA holders shall file an annual report with the commission by June 30 of each year using the commission-prescribed form Annual Information Reporting Requirements for a Service Provider Certificate of Operating Authority and/or a Certificate of Operating Authority. This form may be obtained from the commission's Central Records and the commission's website.
 - (2) If the certificate holder has any change during the year in the information requested in Section One of the annual report form, then the certificate holder shall file an updated form correcting the information in Section One within 30 days of the change.
 - (3) The completed annual report form shall be filed in the commission's Central Records in a project number designated annually by the Filing Clerk.
 - (4) A certificate holder shall also file annual reports as required by §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).
 - (5) A certificate holder shall also file monthly reports as required by §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers) and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting.)

- (h) **Compliance enforcement.**
 - (1) **Administrative penalties.** If the commission finds that a certificate holder has violated any provision of this section, the commission shall order the certificate holder to take corrective action, as necessary, and the certificate holder may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.
 - (2) **Revocation or suspension.** If the commission finds that a certificate holder is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a COA certificate pursuant to PURA Chapter 17.
 - (3) **Enforcement.** The commission shall coordinate its enforcement efforts of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the attorney general in order to ensure consistent treatment of specific alleged violations.