

PROJECT NO. 32171

**RULEMAKING REGARDING THE § PUBLIC UTILITY COMMISSION
STATE-ISSUED CERTIFICATE OF §
FRANCHISE AUTHORITY § OF TEXAS**

**ORDER ADOPTING NEW CHAPTER 28 AND §28.6
AS APPROVED AT THE MAY 10, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-issued Certificate of Franchise Authority (CFA) Certification Criteria with changes to the proposed text as published in the March 24, 2006 issue of the *Texas Register* (31 TexReg 2353). This rule is necessary to implement the provisions of the Public Utility Regulatory Act (PURA), Chapter 66, §§66.001-66.004. The proposed new §28.6 establishes the certification criteria for a state-issued CFA to provide cable and/or video services in the state and sets forth certain reporting requirements of CFA holders as well. Sections 28.1-28.5 will be proposed at a later date. This new section is adopted under Project Number 32171.

The commission received comments on the proposed new rule from the Texas Cable and Telecommunications Association (TCTA), AT&T Texas (AT&T), and Verizon Southwest (Verizon).

Description of the Service Area Footprint

TCTA stated that that in order to give effect to the legislature's intent to prohibit discrimination by a provider of cable or video services, the service area description submitted by a CFA applicant should be sufficiently detailed so that the anti-discrimination prohibition in the statute

can be properly interpreted and enforced. TCTA suggested that the “Description of the Service Area Footprint to be served” as proposed in §28.6 be revised to specifically require a map of the proposed service area footprint, which it suggests will be a more precise description of a service area.

Commission response

The commission notes that the rule as proposed requires that the description of the franchise area be clear and complete, which may include a map. However, the commission does not agree with TCTA’s suggestion that only maps will make the description of a service area footprint sufficiently clear and complete. Such a requirement could unintentionally limit the service area footprint. While the maps provide a description of a city boundary as a snapshot at the time of the application, any future expansion of the city boundary might not be covered in the certification. However, if an applicant requests the city limits of a certain city in the description of its service area, any expansion to the city limits would also be included.

The commission concludes that requiring maps as the only means for a clear and complete description of the franchise area may in fact result in a limitation of service coverage in those instances where a city expands its boundary at a future date. Therefore, the commission declines to adopt TCTA’s suggestion to modify the proposed subsection of the rule and adopts the subsection as published.

Records Requirement

AT&T and Verizon contended that subsection (i), which requires records retention for 24 months may conflict with the retention periods mandated by federal law in 47 CFR §76.1703, and §76.1713, both of which require a retention period of one year. Both parties also objected that the proposed 10-day turnaround time for the production of records requested by staff could be unreasonably short. Verizon contended that that the commission lacks the authority under PURA Chapter 66 to establish such requirement. It stated that if the intention of this subsection is to help ensure the Companies' compliance with laws governing cable and video service, that courts of competent jurisdiction rather than the commission enforce the rules under PURA. Both parties requested that subsection (i) be omitted.

Commission response

The commission in part concurs but in part disagrees with both AT&T and Verizon. The commission agrees that two years for record retention purposes and 10 business days for records production are not necessary in the circumstances presented here for the reasons described below. The two-year record retention requirement has been changed to 12 months, consistent with federal regulations. The 10-day production requirement has been changed to 21 days, consistent with other commission record production rules. However, the commission does not agree that subsection (i) be omitted, as requested by AT&T and Verizon.

The commission is charged with certain enforcement responsibilities in Chapter 66 of PURA (e.g., §66.014) and could well find it necessary to make a request of a service

provider for various records. Moreover, the commission, in §66.017, has been directed to conduct a joint interim study with the telecommunications competitiveness legislative oversight committee regarding, *inter alia*, “the transition from local franchise authority to state-issued authority, including methods to maintain current municipal revenue streams, including franchise fees and in-kind contributions; continuation of public, educational, and government access channels; and build-out requirements; and ... other relevant issues.” (§66.017(a)(3),(4).) The commission, again, might well find it necessary to make a request of service providers for assorted records. Another factor militating in favor of retaining subsection (i) is the requirement that applicants for a CFA provide an affidavit affirming various elements set forth in §66.003. The commission might be constrained to request records of the applicant in certain circumstances. For these reasons, the commission has not deleted subsection (i) from the rule as adopted.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-issued Certificate of Franchise Authority Certification Criteria is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (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, PURA Chapter 66, §§66.001-66.004 which requires that the commission establish

the criteria for granting the state-issued Certificate of Franchise Authority to an entity to provide cable and/or video services in the state of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052, and Chapter 66, §§66.001- 66.004.

CHAPTER 28. SUBSTANTIVE RULES APPLICABLE TO CABLE AND VIDEO SERVICE PROVIDERS.**Subchapter B. PROVISIONS RELATING TO APPLICATION FOR A STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY****§28.6. State-Issued Certificate of Franchise Authority (CFA) Certification Criteria.**

- (a) **Scope and purpose.** This section applies to the commission's certification of persons and entities to provide cable and/or video service as holders of a state-issued certificate of franchise authority (CFA), as established in the Public Utility Regulatory Act (PURA), Chapter 66, §§66.001-66.004.
- (b) **Application for CFA.** An entity or person seeking to provide cable and/or video service in this state shall file an application for a CFA with the commission as provided in subsection (e) of this section.
- (c) **Eligibility to file application.**
 - (1) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service is not eligible to seek a CFA to provide service in that municipality until the expiration date of the existing franchise agreement for such municipality.
 - (2) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service may file an application for a CFA to provide service in such municipality no earlier than 17 business days before the expiration of the municipal franchise

provided that the application requests issuance of the CFA after the expiration of the municipal franchise.

- (3) For purposes of this subsection a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality. The terms “affiliates or successor entity” in this subsection include but are not limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

(d) **Procedure for reviewing CFA applications.**

- (1) The commission shall notify an applicant for CFA whether the application is complete before the 15th business day after the application was submitted.
- (2) The commission shall issue a CFA before the 17th business day after the application, including the requisite affidavit, has been filed if the commission finds the application to be complete and sufficient.

(e) **Standards for granting franchise authority to CFA applicants.** An applicant for a CFA shall submit a completed Application for State Issued Certificate of Franchise Authority, which shall include the following items:

- (1) An affidavit signed by an officer or general partner of the applicant affirming the following:

- (A) the applicant has filed or will timely file with the Federal Communications Commissions (FCC) all forms that the FCC requires from entities seeking to provide cable or video services in Texas;
 - (B) the applicant agrees to comply with all applicable federal and state statutes and regulations;
 - (C) the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable and/or video service, including the police powers of the municipalities in which the service is delivered;
 - (D) all statements made in the Application for State Issued Certificate of Franchise Authority are true and correct.
- (2) A description of the service area footprint to be served. Service areas may be an entire municipality or a portion thereof and may include incorporated areas as well as unincorporated areas. Acceptable service area descriptions include properly labeled maps that clearly define the service area using city/municipality limits, county boundaries, metes and bounds, subdivisions, and/or other geographic areas with distinct boundaries.
- (3) The street address and telephone number of the applicant's principal place of business.
- (4) The name, addresses, and telephone numbers of an authorized representative, a regulatory contact, and an emergency contact.
- (5) The names of the applicant's principal executive officers.

(f) **Name(s) on CFA.**

- (1) All cable and/or video services provided under a CFA shall be provided in the name under which certification was granted by the commission. The requested name(s) must be registered with the proper authorities to conduct business in Texas (*i.e.*, the Texas Secretary of State with the exception of sole proprietorships that are registered with the county in the requested service area), and may not be deceptive, misleading, vague, inappropriate, or duplicative of an existing CFA holder.
- (2) The holder of the CFA may request commission approval to add, delete or change the name(s) on the franchise authority in accordance with subsection (g)(4) of this section.

(g) **Amendments, terminations and transfers of a CFA.**

- (1) **Termination of CFA.** A CFA may be terminated by the certificate holder by submitting written notice to the commission. The CFA Termination Notice shall be filed with the commission in the project number established by staff for that purpose.
- (2) **Transfer of ownership/control.** A CFA is fully transferable to any successor in interest to the entity to which the CFA was originally granted. The successor in interest shall file a written notice of transfer with the commission and the relevant municipality within 14 business days of the completion of such transfer. The notice to the commission shall be in the form of an application to amend the

existing CFA and shall contain the information described in subsection (e) of this section

- (3) **Expansion of service area footprint.** Changes to the description of the existing service area footprint shall be accomplished by filing an application to amend the existing CFA with the commission prior to any such change.
 - (4) **Name changes.** The holder of the CFA may request commission approval to add, delete, or change the name(s) on the CFA by filing with the commission an application to amend its CFA.
- (h) **Reporting requirements.**
- (1) All CFA holders shall notify the commission of changes in company contact information within 14 business days of any such change.
 - (2) Every CFA holder shall file with this commission a copy of any order or ruling issued by a court of competent jurisdiction that either modifies or revokes its CFA or makes it ineligible to hold a CFA within 14 business days of the issuance of such order or ruling.
- (i) **Records requirements.**
- A franchise holder shall maintain a copy of records required by applicable federal or state laws and regulations for a period of not less than 12 months. Upon commission staff request, the franchise holder shall provide an accurate and complete copy of any such records no later than 21 business days after the date of such request.

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 new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-issued Certificate of Franchise Authority (CFA) Certification Criteria are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 16th DAY OF MAY 2006.

PUBLIC UTILITY COMMISSION OF TEXAS

PAUL HUDSON, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

BARRY T. SMITHERMAN, COMMISSIONER