



Control Number: 40909



Item Number: 2

Addendum StartPage: 0

**DOCKET NO. 40909**

2013 MAR 25 AM 9:37

**PETITION TO REVOKE C&C  
COMMUNICATIONS' SERVICE  
PROVIDER CERTIFICATE OF  
OPERATING AUTHORITY  
PURSUANT TO P.U.C. SUBST. R.  
26.111 AND PURA § 54.105** §  
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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**STAFF'S MOTION FOR ISSUANCE OF A DEFAULT ORDER OF REVOCATION**

NOW COMES, the Staff (Staff) of the Public Utility Commission of Texas (Commission) and files this Motion for Issuance of a Default Order of Revocation (Motion for Default Order).

**I. INTRODUCTION**

For each of the reasons discussed below, a Default Order should be issued granting all relief sought in Staff's Petition to Revoke C&C Communications' (C&C) Service Provider Certificate of Operating Authority (SPCOA) and Notice of Opportunity for a Hearing (Petition and Notice of Opportunity for a Hearing), filed on November 1, 2012. In support of this Petition for Default Order, the Staff respectfully shows the following:

**II. JURISDICTION AND LEGAL AUTHORITY**

The contested case provisions of the TEX. GOV'T. CODE ANN. § 2001.051 (Vernon 2000 & Supp. 2005) (APA), entitle a party to an opportunity for a hearing after reasonable notice of not less than 10 days, and to respond to and present evidence and argument on each issue involved in the case. Pursuant to P.U.C. PROC. R. 22.183, if a hearing is not requested within 30 days after service of notice of an opportunity for hearing a default occurs.<sup>1</sup> Upon default, the presiding officer may issue a default order, disposing of the proceeding without a hearing, on an

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<sup>1</sup> P.U.C. PROC. R. 22.183.

informal basis.<sup>2</sup> In addition, factual allegations in the Petition and Notice of Opportunity for a Hearing may be deemed admitted and the relief sought may be granted by default.<sup>3</sup>

A default order requires adequate proof that the notice of the opportunity for a hearing was sent by certified mail to the party's last known address in the Commission's records or the registered agent for process for the party on file with the Secretary of State. There must also be proof that the notice of the opportunity for a hearing included a disclosure in at least twelve-point bold face type that the factual allegations may be deemed admitted and relief sought granted if the party fails to timely request a hearing.

### III. FACTUAL ALLEGATIONS

On November 1, 2012, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of C&C's SPCOA. The Petition and Notice of Opportunity for Hearing included the required disclosure in fourteen point bolded and underlined font.<sup>4</sup> The Petition and Notice of Opportunity for Hearing was mailed by certified mail, return receipt requested, to C&C's last known address in the Commission's records<sup>5</sup>:

C&C Communications  
1968 CR3327  
Greenville, Texas 75402

C&C is not registered with the Secretary of State.

C&C has not requested a hearing on the merits and more than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.

### III. PRAYER

**WHEREFORE, PREMISES CONSIDERED,** the Staff respectfully requests that all relief sought in the Petition and Notice of Opportunity be granted and all facts alleged be

<sup>2</sup> Administrative Procedures Act, TEX. GOV'T. CODE ANN. § 2001.056 (4) (Vernon 2008 & Supp. 2009) and P.U.C. PROC. R. 22.183.

<sup>3</sup> Id.

<sup>4</sup> See attached Petition and Notice of Opportunity for Hearing (Attachment 1).

<sup>5</sup> See Affidavit for Isabel Herrera (Attachment 2) and return receipts from the certified mail label (Attachment 3).

deemed admitted by the issuance of a default final order, with no further notice to C&C,  
revoking C&C's SPCOA Certificate No. 60520.

Respectfully Submitted,

Robert M. Long  
Division Director  
Oversight and Enforcement Division  
State Bar No. 12525500



Kaitlin E. Van Zee  
Attorney-Oversight and Enforcement Division  
State Bar No. 24080099  
(512) 936-7065  
(512) 936-7208 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

# **Attachment 1**

## **Petition of Notice and Opportunity for a Hearing**

DOCKET NO. 40909

2012 NOV -1 AM 9:24  
PUBLIC UTILITY COMMISSION  
FILED  
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PETITION TO REVOKE C&C  
COMMUNICATIONS' SERVICE  
PROVIDER CERTIFICATE OF  
OPERATING AUTHORITY  
PURSUANT TO P.U.C. SUBST. R.  
26.111 AND PURA § 54.105

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**PETITION TO REVOKE C&C COMMUNICATIONS' SERVICE PROVIDER  
CERTIFICATE OF OPERATING AUTHORITY AND NOTICE OF OPPORTUNITY  
FOR A HEARING**

NOW COMES, the Staff (Staff) of the Public Utility Commission of Texas (Commission) and files this Petition to Revoke C&C Communications' (C&C) Service Provider Certificate of Operating Authority (SPCOA) and Notice of Opportunity for a Hearing (Petition and Notice of Opportunity for a Hearing) and hereby provides notice of the opportunity to request a hearing on the merits of this Petition.

**I. INTRODUCTION**

For each of the reasons discussed below, C&C's SPCOA should be revoked. In the event C&C fails to request a hearing within 30 days of service of this Petition and Notice of Opportunity for a Hearing, a default order should be issued, without additional notice to C&C, granting all relief sought in this Petition and Notice of a Hearing. In support of this Petition and Notice of Opportunity for a Hearing, the Staff respectfully shows the following:

**II. JURISDICTION AND LEGAL AUTHORITY**

A Certificated Telecommunications Provider (CTP) is "a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Commission to offer local exchange telephone service or a person who provides voice service."<sup>1</sup> An investigation that may result in the suspension or

<sup>1</sup> TEX. LOCAL GOV'T. CODE ANN. § 283.002. The statutory definition is restated in P.U.C. SUBST. R. 26.461(c)(2) and adopted by P.U.C. SUBST. R. 26.468(c)(1).

revocation of a CTP's SPCOA may be initiated for one or more of the reasons specified in P.U.C. SUBST. R. 26.111, including, but not limited to failure to meet commission reporting requirements.<sup>2</sup> The Commission may revoke a CTP's SPCOA if the certificate holder fails to comply with the SPCOA requirements set out in Public Utility Regulatory Act<sup>3</sup> (PURA) § 54.105 and P.U.C. SUBST. R. 26.111.<sup>4</sup>

Pursuant to the contested case provisions of the TEX. GOV'T. CODE ANN. § 2001.051 (Vernon 2000 & Supp. 2005) (APA)<sup>5</sup>, a party is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days, and to respond to and present evidence and argument on each issue involved in the case. If a hearing is not requested within 30 days after service of notice of an opportunity for hearing a default occurs.<sup>6</sup> Upon default, the presiding officer may issue a default order, disposing of the proceeding without a hearing, in an informal basis.<sup>7</sup>

### III. FACTUAL ALLEGATIONS

C&C is a CTP. The Commission approved C&C's application for a SPCOA in Docket No. 25893 through a final order issued on July 3, 2002, as SPCOA No. 60520. Pursuant to the provisions of its SPCOA, the Commission authorized C&C to provide telecommunications services in the State of Texas. When C&C failed to file its Quarterly Access Line Count Reports, Staff conducted an investigation of C&C that included a review of Commission records and other publicly available information. The findings of the investigation are discussed in the affidavit of Gordon Van Sickle, (Van Sickle Aff.) attached hereto and incorporated herein for all purposes. The Commission's investigation revealed that C&C has repeatedly failed to comply with one or more Commission rules.

C&C is in violation of Commission reporting requirements. Pursuant to LOCAL GOV'T. CODE ANN. § 283.055(j) and P.U.C. SUBST. R. 26.467(k)(3), each CTP must file a report with the Commission on a quarterly basis that shows the number of access lines the CTP has within each municipality at the end of each month of the quarter. Commission records demonstrate that C&C has repeatedly failed to submit its access line reports as required by state law and the

<sup>2</sup> P.U.C. SUBST. R. 26.111(n)(5)

<sup>3</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

<sup>4</sup> PURA § 54.105 and P.U.C. SUBST. R. 26.111(n)

<sup>5</sup> Administrative Procedure Act, TEX GOV'T CODE ANN. §§ 2001.001-902 (Vernon 2008 & Supp. 2009)(APA).

<sup>6</sup> P.U.C. PROC. R. 22.183

<sup>7</sup> APA § 2001.056 (4) and P.U.C. PROC. R. 22.183

Commission.<sup>8</sup> Also, C&C has failed to meet the reporting requirements pursuant to P.U.C. SUBST. R. 26.465 (relating to Methodology for County Access lines and Reporting Requirements for Certified Telecommunications Providers) and 26.467 (relating to Rates, Allocation, Compensation, Adjustments and Reporting), which is a violation of P.U.C. SUBST. R. 26.111(k)(5).<sup>9</sup> Any violation of PURA or Commission rules is grounds for revocation under P.U.C. SUBST. R. 26.111(n).

#### IV. NOTICE OF HEARING

P.U.C. PROC. R. 22.54 and 22.55 require Staff to provide reasonable notice to persons affected by a proceeding in accordance with the APA. In license revocation proceedings, APA § 2001.054 requires that notice be given "by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action." In order to proceed on a default basis, P.U.C. PROC. R. 22.183 requires Staff to provide notice by certified mail, return receipt requested, to a certificate holder's last known address in the Commission's records or to the person's registered agent for process on file with the Secretary of State.

In accordance with these provisions, Staff will provide a copy of this petition by certified mail, return receipt requested, to C&C's last known address in the Commission's records:

C&C Communications  
1968 CR3327  
Greenville, Texas 75402

C&C is not registered with the Secretary of State.

Pursuant to P.U.C. PROC. R. 22.183, Staff hereby notifies C&C that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if C&C fails to request a hearing within 30 days after service of the Petition and Notice of Opportunity for Hearing. The purpose of a hearing on the merits is to consider revocation of C&C's SPCOA No. 60520. If C&C fails to request a hearing the presiding officer may issue a default order on an

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<sup>8</sup> Van Sickle Aff.

<sup>9</sup> Id.



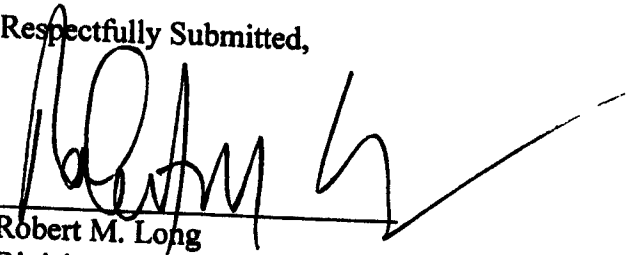
informal basis without a hearing on the merits pursuant to APA § 2001.056(4) and P.U.C. PROC. R. 22.183.

**The factual allegations listed in Staff's Petition to Revoke and Notice of Opportunity for a Hearing could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.**

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** the Staff respectfully requests that the Commission grant Staff's request to revoke C&C's SPCOA Certificate No. 60520. In the event C&C fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to C&C, revoking the certificate.

Respectfully Submitted,



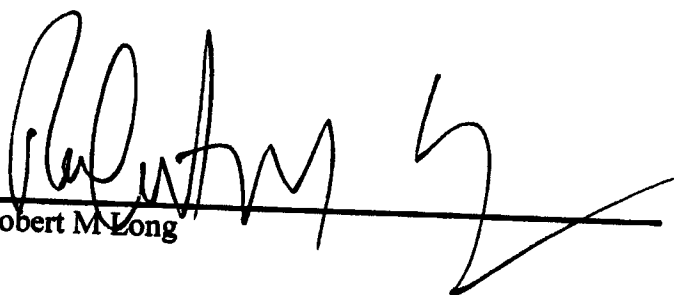
Robert M. Long  
Division Director  
Oversight and Enforcement Division  
State Bar No. 12525500  
(512) 936-7294  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**CERTIFICATE OF SERVICE**

I certify that on November 1, 2012, pursuant to P.U.C. PROC. R. 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of C&C Communications in the commission's records as follows:

Last Known Address in Commission Records:

C&C Communications  
1968 CR3327  
Greenville, Texas 75402

  
Robert M Long

## **Attachment 2**

**Affidavit for Isabel Herrera**

DOCKET NO. 40909

PETITION TO REVOKE C&C  
COMMUNICATIONS' SERVICE  
PROVIDER CERTIFICATE OF  
OPERATING AUTHORITY  
PURSUANT TO P.U.C. SUBST. R.  
26.111 AND PURA § 54.105

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PUBLIC UTILITY COMMISSION  
  
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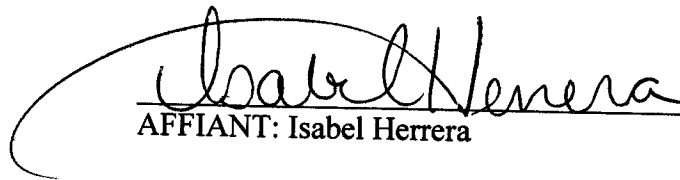
AFFIDAVIT OF ISABEL HERRERA, COMMISSION ADMINISTRATIVE ASSISTANT

STATE OF TEXAS §  
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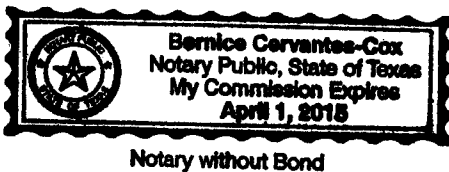
BEFORE ME, the undersigned authority, on this day personally appeared Isabel Herrera, and being by me duly sworn, upon oath declared that the statements and capacity acted in are true and correct.

“My name is Isabel Herrera. I am the administrative assistant in the Oversight & Enforcement Division of the Public Utility Commission of Texas. I am over the age of twenty-one and I am competent to make this Affidavit. In accordance with P.U.C. PROC. R. 22.183(b), I mailed, by certified mail, return receipt requested, a copy of Staff's Petition to Revoke C&C Communications' Service Provider Certificate of Operating Authority and Notice of Opportunity for a Hearing on November 2, 2012, to the last known address of C&C Communications in the Commission's records:

C&C Communications  
1968 CR3327  
Greenville, Texas 75402”

  
AFFIANT: Isabel Herrera

SWORN TO AND SUBSCRIBED BEFORE ME this 21<sup>st</sup> day of March 2013.



  
Notary Public for the State of Texas

## **Attachment 3**

### **Receipts from the Certified Mail Label**



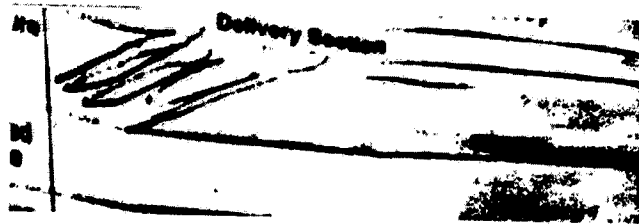
DKT 40909

Date Produced: 11/19/2012

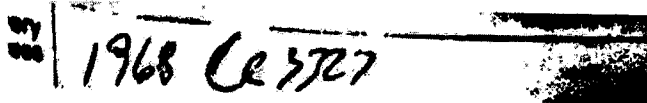
STATE OF TEXAS

The following is the delivery information for Certified Mail™ item number 7199 9991 7030 6235 3137. Our records indicate that this item was delivered on 11/14/2012 at 01:55 p.m. in GREENVILLE, TX, 75401. The scanned image of the recipient information is provided below

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: KV DKT 40909

# **Attachment 4**

## **Proposed Default Order**

**DOCKET NO. 40909**

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| <b>PETITION TO REVOKE C&amp;C<br/>COMMUNICATIONS' SERVICE<br/>PROVIDER CERTIFICATE OF<br/>OPERATING AUTHORITY<br/>PURSUANT TO P.U.C. SUBST. R.<br/>26.111 AND PURA § 54.105</b> | <b>§<br/>§<br/>§<br/>§<br/>§<br/>§<br/>§</b> | <b>PUBLIC UTILITY COMMISSION<br/><br/>OF TEXAS</b> |
|---|--|--|

**PROPOSED DEFAULT ORDER**

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke the Service Provider Certificate of Operating Authority (SPCOA) of C&C Communication's (C&C) regarding C&C's violations of PURA<sup>1</sup> and Commission rules. Commission Staff and C&C are the only parties to this proceeding. Commission Staff's petition is granted and C&C's SPCOA is revoked.

**I. Background**

C&C is authorized by the Commission to provide telecommunications services in the State of Texas under SPCOA No. 60520.<sup>2</sup> On November 1, 2012, Staff filed a petition (Petition) to revoke C&C's SPCOA pursuant to Public Utility Regulatory Act (PURA) § 54.105 and P.U.C. SUBST. R. 26.111. Staff alleged that C&C was in violation of P.U.C. SUBST. R. 26.111(k)(5) for failing to meet the reporting requirements of LOCAL GOV'T CODE ANN § 283.055(j) and P.U.C. SUBST. R. 26.467 relating to rates, allocation, compensation, adjustments and reporting and P.U.C. SUBST. R. 26.465 relating to methodology for county access lines and reporting requirements for certified telecommunications providers.

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).  
<sup>2</sup> *Application of Charles Lynn Morrison Sr., &/a C&C Communications for a Service Provider Certificate of Operating Authority*, Docket No. 25893, Notice of Approval (July 3, 2002).



Commission Staff's Petition also included the Notice of Opportunity for a Hearing and, pursuant to P.U.C. PROC. R. 22.183, notified C&C in 14 point, bolded font that the factual allegations in the petition could be deemed admitted and the relief sought granted by default if C&C failed to request a hearing within 30 days after service of the Petition and Notice of Opportunity for a Hearing. C&C did not request a hearing on the merits and more than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing was provided.

The Commission adopts the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. C&C currently holds SPCOA Certificate No. 60520.
2. C&C obtained its certification on July 3, 2002.
3. C&C has repeatedly failed to submit its access line reports.
4. Specifically, C&C has failed to meet the reporting requirements pursuant to P.U.C. SUBST. R. 26.465 and P.U.C. SUBST. R. 26.467.
5. On November 1, 2012, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of C&C's SPCOA.
6. The Petition and Notice of Opportunity for Hearing included the required disclosure in at least twelve-point, bold-face type.
7. The Petition and Notice of Opportunity for Hearing was sent by certified mail to the party's last known address in the Commission's records.
8. More than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.
9. C&C has not requested a hearing on the merits.

## **III. Conclusions of Law**

1. TEX. LOCAL GOV'T. CODE ANN. § 283.002 and P.U.C. SUBST. R. 26.461(c)(2) and 26.468(c)(1) define a Certificated Telecommunications Provider (CTP) as "a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or [SPCOA] by the Commission to offer local exchange telephone service or a person who provides voice service."

2. PURA § 54.105 and P.U.C. SUBST. R. 26.111(n) authorizes the Commission to revoke a CTP's SPCOA if the certificate holder fails to comply with the SPCOA requirements set out in PURA § 54 and P.U.C. SUBST. R 26.111(n).
3. Any violation of PURA or Commission rules is grounds for revocation under P.U.C. SUBST. R 26.111(n).
4. Pursuant to TEX. LOCAL GOV'T. CODE ANN. § 283.055(j) and P.U.C. SUBST. R 26.467(k)(5), each CTP must file a report with the Commission on a quarterly basis that shows the number of access lines the CTP has within each municipality at the end of each month of the quarter.
5. C&C is not in compliance with P.U.C. SUBST. R 26.467(k)(5) because C&C has failed to meet the reporting requirements pursuant to P.U.C. SUBST. R. 26.465 and 26.467.
6. Violation of P.U.C. SUBST. R. 26.467(k)(5) is grounds for revocation under P.U.C. SUBST. R. 26.111(n).
7. A presiding officer may issue a default order on an informal basis without a hearing on the merits pursuant to APA § 2001.056(4) and P.U.C. PROC. R. 22.183 if the defaulting party fails to request a hearing within 30 days of the notice of an opportunity for a hearing.
8. Pursuant to P.U.C. PROC. R. 22.183, the requirements for disposition by default have been met in this proceeding.

#### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. Commission Staff's Petition for revocation of the SPCOA held by C&C is granted.
2. C&C's SPCOA No. 60520 is revoked.
3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_\_ day of March, 2013.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DOCKET MANAGEMENT**