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PETITION TO REVOKE
PHONOSCOPE ENTERPRISES
GROUP, LLC'S SERVICE
PROVIDER CERTIFICATE OF
OPERATING AUTHORITY UNDER
PURA §§ 54.008 AND 54.105 AND 16
TAC § 26.111

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PUBLIC UTILITY COMMISSION
FILING CLERK
PUBLIC UTILITY COMMISSION
OF TEXAS

**PETITION TO REVOKE PHONOSCOPE ENTERPRISES GROUP, LLC'S SERVICE
PROVIDER CERTIFICATE OF OPERATING AUTHORITY AND NOTICE OF
OPPORTUNITY FOR A HEARING**

The Staff (Commission Staff) of the Public Utility Commission of Texas (Commission) files this Petition to Revoke Phonoscope Enterprises Group, LLC's (Phonoscope) 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

The Commission should revoke Phonoscope's SPCOA because Phonoscope has repeatedly failed to respond to Commission inquiries in a timely manner and to meet reporting requirements. In the event Phonoscope 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 Phonoscope, granting all relief sought in this Petition and Notice of Opportunity for a Hearing. In support of this Petition and Notice of Opportunity for a Hearing, Commission 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.”¹ Public Utility Regulatory Act² (PURA) § 54.001 and 16 Texas Administrative Code (TAC) § 26.111 require a Commission-authorized certificate of convenience and necessity or a certificate of operating authority to provide local exchange telephone service, basic local telecommunications service, and switched access service in Texas.

The Commission may revoke a CTP’s SPCOA if the certificate holder fails to comply with PURA³ or Commission rules.⁴ PURA authorizes the Commission to revoke or amend an SPCOA “after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.”⁵ The Commission may initiate an investigation that may result in the suspension or revocation of a CTP’s SPCOA for one or more of the reasons specified in 16 TAC § 26.111, including, but not limited to, non-use of the SPCOA,⁶ a pattern of not responding to Commission inquiries in a timely fashion,⁷ and failure to meet Commission reporting requirements.⁸

The contested case provisions in the Administrative Procedure Act⁹ (APA) provide each party an opportunity “(1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.”¹⁰ 16 TAC § 22.183 permits disposition by default if a party does not request a hearing within 30 days after service of notice of an opportunity for hearing. Upon default, the presiding officer may issue a default order to dispose of the proceeding without a hearing.¹¹

¹ Tex. Local Gov’t Code § 283.002(3). The statutory definition is restated in 16 TAC § 26.461(c)(2) and adopted by 16 TAC § 26.468(c)(1).

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.017 (PURA).

³ PURA § 54.105.

⁴ 16 TAC § 26.111(o).

⁵ PURA § 54.008(a).

⁶ 16 TAC § 26.111(o)(1).

⁷ 16 TAC § 26.111(o)(10).

⁸ 16 TAC § 26.111(o)(5).

⁹ Administrative Procedure Act, Tex. Gov’t Code §§ 2001.001-.902 (APA).

¹⁰ APA § 2001.051.

¹¹ APA § 2001.056(4) and 16 TAC § 22.183(b).

III. FACTUAL ALLEGATIONS

BACKGROUND

The Commission originally granted Phonoscope SPCOA No. 60361 on June 1, 2000, in Docket No. 22321.¹² On June 3, 2014, Phonoscope filed to renew its SPCOA in Docket No. 42291 as required by 16 TAC § 26.111(k).¹³ Phonoscope is a CPT for purposes of the Texas Local Government Code and Commission rules because the Commission has granted it an SPCOA to offer local exchange telephone service. Phonoscope's "entity status" on the Texas Secretary of State's website is listed as "forfeited existence" as of December 10, 2018.

PHONOSCOPE IS NOT USING ITS SPCOA

Under 16 TAC § 26.111(o)(1) the Commission may revoke an SPCOA for non-use. Commission records currently list Phonoscope's certificate as active. However, Commission Staff's review of the Texas Secretary of State's records indicates that the Texas Secretary of State forfeited Phonoscope's charter, certificate, or registration of the taxable entity on October 19, 2018.¹⁴ In addition, Commission Staff cannot verify that Phonoscope currently provides telecommunications services for which an SPCOA is required because it has not filed a quarterly access line report with the Commission since the first quarter of 2017. Absent any evidence that Phonoscope actively provides telecommunications services for which an SPCOA is required, the Commission should revoke SPCOA No. 60361 for non-use.

PHONOSCOPE FAILED TO RESPOND TO COMMISSION INQUIRIES

Under 16 TAC § 26.111(o)(10) the Commission may revoke an SPCOA if the SPCOA holder repeatedly fails to respond to Commission inquiries. On August 11, 2017, Commission Staff requested that Phonoscope provide its annual report as required by 16 TAC § 26.111(D)(2). Commission Staff received an email from Phonoscope dated August 20, 2017, indicating it would file the annual report by the end of that week. However, Phonoscope failed to file the annual report as promised. As a result, Commission Staff sent a Pre-Notice of Violation (PNOV) on December

¹² *Application of Phonoscope, Ltd. For a Service Provider Certification of Operating Authority*, Docket No. 22321, Order (June 1, 2000).

¹³ *SPCOA and COA Certification Renewal-Pursuant to PUC Subst. R. 26.111(k)*, Project No. 42291, Phonoscope Enterprises Group, LLC Application for Renewal (June 3, 2014).

¹⁴ Texas Secretary of State filing number 800836354, document no. 844754281280.

6, 2017 to Phonoscope's address on file. As of December 10, 2018, Phonoscope has not responded to the allegations in the PNOV.

Phonoscope filed its annual report on May 10, 2018. However, Phonoscope has not responded to Commission Staff's request to discuss the PNOV and other compliance matters. Commission Staff attempted to contact Phonoscope by telephone and email on August 10, 2018 and again on October 10, 2018. In the October 10, 2018 email, Commission Staff gave Phonoscope until October 16, 2018 to reply to Commission Staff's inquiries. As of December 10, 2018, Phonoscope has not responded. The Commission should revoke Phonoscope's SPCOA No. 60361 for failure to respond to Commission inquiries.

PHONOSCOPE HAS FAILED TO MEET COMMISSION REPORTING REQUIREMENTS

16 TAC § 26.111(D)(5) requires a certificate holder to file all reports required by PURA and Commission rules. Texas Local Government Code § 283.055(j) and 16 TAC § 26.468(d) require a CTP to file a quarterly report with the Commission verifying the number of access lines the CTP has within each municipality for each month of that quarter. Commission records indicate that Phonoscope has not submitted its quarterly access line reports as required since the first quarter of fiscal year 2017. The Commission should revoke Phonoscope's SPCOA No. 60361 for noncompliance with reporting requirements.

IV. NOTICE OF HEARING

16 TAC §§ 22.54 and 22.55 require Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the APA. In license revocation proceedings, Texas Government Code § 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." To proceed on a default basis, 16 TAC § 22.183 requires Commission 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, Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to Phonoscope's last known address in the Commission's records.

Nicole Horton
Phonoscope Enterprises Group, LLC
6105 Westline Drive
Houston, TX 77036

Additionally, Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to Phonoscope's registered agent in the Texas Secretary of State's records:

Lee Cook
Phonoscope Enterprises Group, LLC
6105 Westline Dr.
Houston, TX 77036

16 TAC § 22.183 requires Commission Staff to notify Phonoscope that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Phonoscope 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 Phonoscope's SPCOA No. 60361. If Phonoscope fails to request a hearing, the presiding officer may issue a default order on an informal basis without a hearing on the merits as permitted by Texas Government Code § 2001.056(4) and 16 TAC § 22.183.

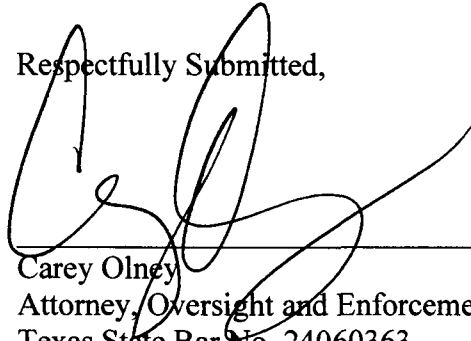
The factual allegations listed in Commission Staff's Petition to Revoke and Notice of Opportunity for a Hearing could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.

V. PRAYER

Commission Staff respectfully requests that the Commission grant Commission Staff's request to revoke Phonoscope's SPCOA Certificate No. 60631. In the event Phonoscope fails to

request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to Phonoscope, revoking the certificate.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Carey Olney', is written over a horizontal line. The signature is stylized and cursive.

Carey Olney
Attorney, Oversight and Enforcement Division
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CERTIFICATE OF SERVICE

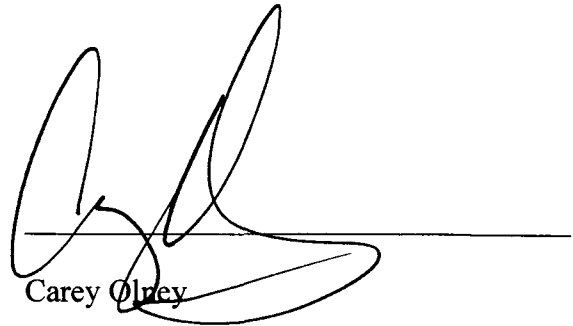
I certify that on December 11, 2018, as required by 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Phonoscope in the Commission's records. The address on file for Phonoscope in the Commission's records match the Texas Secretary of State's records.

Phonoscope's last known address in Commission records:

Nicole Horton
Phonoscope Enterprises Group, LLC
6105 Westline Drive
Houston, TX 77036

As well as to Phonoscope's registered agent in the Texas Secretary of State's records:

Lee Cook
CEO
Phonoscope Enterprises Group, LLC
6105 Westline Dr.
Houston, TX 77036



Carey Olrey