

CHAPTER 25 CERTIFICATION OF LOCAL EXCHANGE SERVICE PROVIDERS

2500 APPLICABILITY

Pursuant to D.C. Code § 43-1451 *et seq.*, this Chapter shall apply to all parties seeking certification to provide local exchange service in the District of Columbia after the effective date of these regulations.

2501 CERTIFICATION REQUIRED PRIOR TO PROVIDING LOCAL EXCHANGE SERVICE

No party shall provide local exchange service to the public in the District of Columbia, regardless of the facilities used, without first receiving certification from the Commission to provide such service.

2502 FILING AN APPLICATION FOR CERTIFICATION

2502.1 A party seeking to provide local exchange service in the District of Columbia shall file with the Office of the Commission Secretary an original and fifteen (15) copies of an Application, which shall include a detailed Statement of Business Operations ("Statement"). A copy of the Application shall also be filed with the Office of the People's Counsel on the same date that the Application is filed.

2502.2 The Application shall be accompanied by a check in the amount of \$1,000 made payable to the Treasurer of the District of Columbia. This fee is non-refundable.

2503 CONTENT OF THE APPLICATION

2503.1 Each Application filed with the Commission shall: 1) state whether the applicant seeks authorization to provide local telecommunications services within the District pursuant to the automatic certification requirements of D.C. Code § 43-1452(d)(1) ("automatic certification requirements") or the certification by waiver requirements of § 43-1452(d)(3) ("certification by waiver requirements"); 2) provide a detailed statement of the facts the applicant relies upon to demonstrate that it satisfies the certification requirements set forth in sections 2504 or 2505; and 3) state whether the applicant plans to provide resold and/or facilities-based services within the District of Columbia.

The Statement of Business Operations section of the Application shall contain the specifically identified information, in the following order, either in the text of the Statement or in attached exhibits:

- (a) The complete name, address, telephone number, and fax number of the applicant, and the name under which telecommunications services will be provided in the District;
- (b) The type or form of business, the date the business was formed, and a copy of the applicant's articles of incorporation, articles of organization, or charter;
- (c) If the applicant is a corporation: the name, title, address, telephone number, fax number, and e-mail address, if available, of the corporation's corporate contact person, the regulatory contact person authorized to respond to Commission inquiries on behalf of the corporation, and the corporation's registered agent in the District of Columbia;
- (d) If the applicant is a partnership, a limited liability corporation, or any form of business organization other than a corporation: the name, address, telephone number, fax number, and e-mail address, if available, of the organization's contact person, the regulatory contact person authorized to respond to Commission inquiries on behalf of the business organization, and all principal owners and/or partners;
- (e) The local or toll free telephone number for customer service and a telephone number, address, fax number, and e-mail address, if available, for the employee(s) with overall responsibility for customer service and quality of service;
- (f) The name, title, address, telephone number, fax number, and e-mail address, if available, of the individual(s) with overall responsibility for repairs and maintenance, complaints, billing questions, and refunds;
- (g) A brief description of the type(s) of services to be offered, including the types of customers to be served;
- (h) If the applicant relies upon its affiliation with any other company(ies) to demonstrate its financial stability and experience in providing telecommunications services, a detailed description of the applicant's relationship with each affiliate;
- (i) A sworn and notarized tax attestation form signed by a corporate officer, partner, or an employee, who is authorized to act on behalf of the applicant, which attests that, as of the date the form is executed, the applicant: (1) has filed all tax returns required by

federal, state, and District law; and (2) has no outstanding tax liability to the District or federal governments or any state or local government. The tax attestation form shall affirmatively declare that the authority to execute the tax attestation has been properly granted;

- (j) If the applicant relies upon its affiliation with another company to demonstrate its financial stability and/or experience in providing telecommunications services, a sworn and notarized tax attestation form signed by a corporate officer, partner, or an employee, who is authorized to act on behalf of the affiliate, which attests that, as of the date the form is executed, the affiliate: (1) has filed all tax returns all taxes required by federal, state and District law; and (2) has no outstanding tax liability to the District or federal governments or any state or local government. The tax attestation form shall affirmatively declare that the authority to execute the tax attestation has been properly granted;
- (k) A copy of the master business license issued by the Department of Consumer and Regulatory Affairs showing evidence of authorization to operate a business in the District of Columbia;
- (l) Financial statements in accordance with Section 2506 of these Rules;
- (m) An affidavit, signed by a person with authority to bind the entity, who shall affirmatively declare that the authority to execute the affidavit has been properly granted, that the applicant is familiar with and intends to adhere to the laws of the District of Columbia and the Rules and Orders of the Commission, including any quality of service standards established by the Commission; and
- (n) An affidavit, signed by a person with authority to bind the applicant, stating that the contents of the Application are true, accurate and correct, and that the applicant understands that if the contents of the Application are found to be false or to contain misrepresentations, any authority granted may be suspended or revoked upon Commission Order. The affidavit shall affirmatively declare that the authority to submit the Application has been properly granted.

2503.2

For a party seeking authorization to provide telecommunications services pursuant to the certification by waiver, the Statement of Business Operations shall include all other information required by these Rules, and:

- (a) If available, projected financial statements (balance sheets, income statements, statements of cash flow) for the first three (3) years of the applicant's operations in the District showing anticipated capital requirements and how those requirements will be met, or alternative information showing capital requirements and how they will be met. If financial support is being provided by an affiliate, the projected financial information should be for the affiliate, if available;
- (b) Copies of the documents evidencing the existence and availability of the applicant's or its affiliate's financial resources, which may include, line-of-credit agreements, irrevocable letters of credit, sworn letters of guaranty, bank loan approval documents, recent bank statements, vendor financing commitments, or underwriting agreements;
- (c) Brief biographies of the individuals who will manage the applicant's operations in the District;
- (d) If the applicant is or plans to be a facilities-based carrier, a detailed description of the network architecture to be used in providing local exchange service in the District and the applicant's technical qualifications to design, construct, operate and maintain the proposed network;
- (e) A brief description of the applicant's experience providing the proposed local exchange service or other telecommunications services;
- (f) A statement identifying, by jurisdiction and docket number, any decision by the FCC, any state regulatory body, or court that imposed sanctions against the applicant, an affiliate, officer, director, partner, or owner of more than 10% of the applicant for failure to comply with laws, rules, regulations or orders relating to the applicant's provision of telecommunications services; and
- (g) Lists of states in which the applicant: (1) is providing local exchange service, (2) has been certified to offer local exchange service, (3) has withdrawn its application to provide local exchange service upon notification of the state regulatory body that the application is not likely to be approved, (4) or had its application for certification denied.

2504

AUTOMATIC CERTIFICATION REQUIREMENTS

2504.1

An applicant shall be exempt from any other certification requirements if

the applicant demonstrates in its Application that the applicant or its affiliate:

- (a) Has at least three (3) years of experience providing telecommunications services pursuant to authorization(s) by the FCC or a state regulatory body; and
- (b) Derived more than \$50 million in gross annual revenue from telecommunications services in the year immediately preceding the year in which the Application is filed.

2505

CERTIFICATION BY WAIVER REQUIREMENTS

2505.1

The Commission may waive the experience and annual gross revenue requirements of Section 2504 of these Rules, if an applicant demonstrates in its Application that:

- a) The applicant has sufficient experience to ensure the continued provision of local exchange services within the District;
- (b) The applicant has the financial stability to ensure the continued provision of local exchange services within the District; and
- (c) The public interest will be served by the applicant's entry into the local telecommunications marketplace within the District.

2505.2

An applicant will be deemed to have sufficient experience to ensure the continued provision of local exchange services within the District if:

- (a) The applicant or its affiliate has at least three (3) years of experience providing telecommunications services pursuant to authorization(s) by the FCC or a state regulatory body;
- (b) The applicant employs individuals with: 1) substantial managerial experience in the telecommunications industry, and 2) adequate technical expertise to provide the telecommunications services proposed in the Application; or
- (c) The Application otherwise demonstrates that the applicant has sufficient experience to ensure the continued provision of local exchange services within the District.

2505.3

An applicant will be deemed to have the financial stability to ensure the continued provision of local exchange services within the District if:

- (a) The applicant or its affiliate(s) derived at least \$50 million in gross

annual revenue from telecommunications services in any of the last three years preceding the Application;

- (b) The applicant has cash, a line of credit, or other resources sufficient to meet its anticipated capital requirements for operations in the District of Columbia for a minimum of three years;
- (c) The applicant demonstrates that: 1) an affiliate, in a notarized document, agrees to provide financial support sufficient to meet the applicant's anticipated capital requirements for a minimum of three years, and 2) the financial strength of that affiliate is sufficient to provide support; or
- (d) The Application otherwise demonstrates that the applicant has the financial stability to exercise staying power in the District of Columbia.

2505.4

The public interest will be served by an applicant's entry into the local telecommunications marketplace within the District when the applicant and its affiliate (if the applicant relies upon an affiliate to demonstrate its financial stability and/or experience):

- (a) Are deemed by the Commission as technically and financially qualified to provide local exchange service in the District;
- (b) If at any time ever certificated by any other state regulatory body to provide local exchange service, had a satisfactory history of regulatory compliance; and
- (c) Provide, either directly or through arrangements with others, at a minimum, the following:
 - (1) Access to 911 and E911 services;
 - (2) Access to telecommunications relay services;
 - (3) Access to directory assistance;
 - (4) Access to operator services; and
 - (5) Interconnection on a non-discriminatory basis with other local exchange carriers.

2505.5

The Commission may waive the requirement that applicants provide all of the services listed in 2505.4(c) upon good cause shown.

2506 FINANCIAL STATEMENTS

2506.1 An applicant that has been in operation for three years (3) or more shall submit:

- (a)** If the company is publicly traded, a copy of its two most recent Securities and Exchange Commission Form 10-K reports; or
- (b)** If the company is not publicly traded, audited balance sheets, income statements, and statements of cash flow for each of the immediately preceding three (3) fiscal years and for the interim quarters between the end of the last audited fiscal year and the application date.

2506.2 An applicant that has been in operation for at least twelve (12) months but less than three (3) years shall submit:

- (a)** If the company is publicly traded, a copy of its most recent Securities and Exchange Commission Form 10-K; or
- (b)** If the company is not publicly traded, audited balance sheets, income statements, and statements of cash flow, for each of the fiscal years the company was in operation and for the interim quarters between the end of the last audited fiscal year and the application date.

2506.3 An applicant that has been in operation for less than twelve (12) months on the date the Application is filed may submit such financial statements as are kept in the regular course of the applicant's business operations.

2506.4 If, in response to Section 2503.1(h), an applicant identified an affiliate upon which the applicant is relying to demonstrate financial stability and/or expertise in providing telecommunications services, the applicant shall submit, in addition to its own financial statements, those of the affiliate. The applicant shall submit financial statements for the affiliate pursuant to Sections 2506.1, 2506.2, or 2506.3, depending on the length of time that the affiliate has been in operation.

2506.5 If audited financial statements are unavailable, an applicant may submit unaudited financial statements and a statement explaining why audited statements are not available.

2506.6 The Commission may waive the requirement for audited financial statements upon a showing of good cause.

**2507 COMMISSION REVIEW OF AN APPLICATION FOR
AUTOMATIC CERTIFICATION**

2507.1 Within fifteen (15) days of the date that an Application is filed, the Commission shall:

- (a) Issue an Order granting the applicant's request for certification to provide telecommunications services within the District of Columbia, if the Application demonstrates that the applicant satisfies the minimum experience and gross annual revenue requirements of D.C. Code § 43-1452(d)(1). Such certification shall permit an applicant to provide resold and facilities-based services in the District of Columbia;
- (b) Issue an Order denying, the applicant's request for certification to provide telecommunications services within the District of Columbia, if the Application fails to demonstrate that the applicant satisfies the minimum experience and gross annual revenue requirements of D.C. Code § 43-1452(d)(1). Any Order denying an applicant's request for certification shall identify the basis for the denial; or
- (c) Request, in writing, supplemental information if the Application does not contain all information required by law or these Rules.

2507.2 A denied Application may be re-filed with the Commission at any time, with the payment of an additional application fee.

**2508 COMMISSION REVIEW OF AN APPLICATION FOR
CERTIFICATION BY WAIVER**

2508.1 Within fifteen (15) days of the date that an Application is filed with the Commission, if the Application demonstrates that:

- (a) The applicant has sufficient experience to ensure the continued provision of local exchange services within the District;
- (b) The applicant has the financial stability to ensure the continued provision of local exchange services within the District; and
- (c) The public interest will be served by the applicant's entry into the local telecommunications marketplace within the District,

the Commission shall issue an Order waiving the minimum experience and gross annual revenue requirements of D.C. Code § 43-1452(d)(1) and granting the applicant's request for certification to provide

telecommunications services within the District of Columbia. The certification shall specify whether the applicant is authorized to provide resold services, facilities-based services, or both.

2508.2 If a telecommunications service provider granted certification by waiver desires to provide services other than those authorized by the certification, the telecommunications service provider shall file another Application, with an additional application fee, requesting certification to provide those additional services.

2508.3 Within fifteen (15) days of the date that an Application is filed with the Commission, if the Application fails to demonstrate that: (1) the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District; or (2) it is in the public interest to grant certification, the Commission shall:

- (a) Request, in writing, additional information pursuant to D.C. Code § 43-1452(d)(3) by letter or Order; or
- (b) Issue an Order denying the applicant's request for certification to provide telecommunications services within the District of Columbia.

2508.4 If the Commission requests additional information pursuant to Section 2509 of these Rules, either: (1) within fifteen (15) days of the date that the additional information is received by the Commission; or (2) if additional information is not received by the deadline established by the Commission, within fifteen (15) days of that deadline; the Commission shall, in its discretion:

- (a) Issue an Order granting the applicant's request for certification by waiver to provide telecommunications services within the District of Columbia. Such certification shall specify whether the applicant is authorized to provide resold services, facilities-based services, or both. If a telecommunications service provider granted certification by waiver desires to provide services other than those permitted by the certification, the telecommunications service provider shall file another Application, with an additional application fee, requesting certification to provide those additional services;
- (b) Issue an Order denying the applicant's request for certification to provide telecommunications services within the District of Columbia; or
- (c) Return the Application to the applicant without issuing an Order

granting or denying the certification. The applicant may re-file the Application, but an additional application fee shall be required. The re-filed Application shall include the information requested by the Commission.

2508.5 Any decision denying an Application shall identify the basis for the denial.

2509 REQUESTS BY THE COMMISSION FOR ADDITIONAL INFORMATION

2509.1 Pursuant to D.C. Code § 43-1452(d)(3), the Commission may request that an applicant file additional information relevant to the Commission's determination of whether the applicant's experience and financial stability are sufficient to ensure the continued provision of local exchange services.

2509.2 The Commission's request for additional information pursuant to D.C. Code § 43-1452(d)(3) shall be in writing and shall set forth with particularity the information sought by the Commission.

2509.3 Any information requested pursuant to this Section shall be filed with the Commission within fifteen (15) days of the date the request is sent to the applicant. The Commission may grant an extension of time for the filing of additional information upon a showing of good cause.

2509.4 If the applicant fails to submit the requested information by the 15-day or extended deadline, the Commission may deny the Application or return the Application to the applicant without approving or rejecting the Application. The applicant may re-file the Application, with an additional application fee. The re-filed Application shall include the information requested by the Commission.

2510 TARIFFS MUST BE FILED AND MAINTAINED WITH THE PUBLIC SERVICE COMMISSION

Prior to commencing service, all certificated local exchange carriers shall file tariffs with the Commission for each service offered within the District. The tariffs shall describe the service being offered and all terms and conditions, and specify the rate or rates charged for the service pursuant to D.C. Code § 43-1452(f). Tariffs shall be maintained and updated as necessary.

2511 CHANGE OF CERTIFICATED PROVIDER INFORMATION

All certificated local exchange carriers shall file any change of name, address, telephone number, fax number, ownership/control, registered agent, corporate contact, and customer service and/or maintenance contact

information with the Commission within 30 days of the change.

2512 **Assignment or Transfer of Certification to Provide Local Exchange Service**

- 2512.1 See addendum, Notice of Final Rulemaking, dated October 29, 2004
- 2512.2 See addendum, Notice of Final Rulemaking, dated October 29, 2004
- 2512.3 See addendum, Notice of Final Rulemaking, dated October 29, 2004
- 2512.4 See addendum, Notice of Final Rulemaking, dated October 29, 2004
- 2512.5 See addendum, Notice of Final Rulemaking, dated October 29, 2004
- 2512.6 See addendum, Notice of Final Rulemaking, dated October 29, 2004

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2513 WAIVER

2513.1 The Commission may, for good cause, waive any rule under Chapter 25 unless the rule contains a provision that is expressly required by statute.

2599 DEFINITIONS

2599.1 The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. As used in this paragraph, the term "owns" means to own an equity interest (or the equivalent thereof) of 10 percent or more.

"Application" means an application for certification.

"Capital requirements" means financing needed for the normal operations of the applicant as well as that required to acquire or improve capital assets.

"Commission" means the Public Service Commission of the District of Columbia.

"Days" means business days.

"Facilities-based carrier" means a carrier that owns any plant, wire or poles located in the District of Columbia and used to provide telecommunications services for a fee directly to the public or to such classes of users as to be effectively available to the public.

"FCC" means the Federal Communications Commission.

"Joint Application" means an application submitted to transfer or assign the certification.

"Local Exchange Service" means a telecommunications service provided within an exchange area.

"Party" means an individual, corporation, partnership, or association.

"Statement" means Statement of Business Operations.

"Tariff" means a written schedule that describes the service being offered, lists all terms and conditions, and specifies the rate or rates charged for the service.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of

the information as sent and received.

"Telecommunications industry" means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer data transmission, software, programming, advanced messaging and electronics.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.

Addendum

DISTRICT OF COLUMBIA REGISTER

OCT 29 2004

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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WEST TOWER, SUITE 200
WASHINGTON, DC 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 990, IN THE MATTER OF DEVELOPMENT OF LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT

The Public Service Commission of the District of Columbia, pursuant to its authority under D.C. Code, 2001 Ed. § 34-802 and § 34-2002(d), hereby gives notice of the amendment of Chapters 25 and 27 of Title 15 DCMR. The Notice of Proposed Rulemaking to amend these rules was published in the *D.C. Register* on June 25, 2004, at 51 *D.C. Reg.* 6480. These amendments modify procedural rules for the transfer or assignment of competitive local exchange carrier certification and for the exit of competitive local exchange carriers from all or a portion of the District of Columbia telecommunications market. The final version of these rules contains technical modifications that were not present in the Notice of Proposed Rulemaking. Final action adopting these rules was taken October 21, 2004 by Commission Order No. 13410. The final rules will become effective upon publication of this notice in the *D.C. Register*. Additional copies of the final rules may be obtained by writing Sanford M. Speight, Acting Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, DC 20005.

- 2512** **Assignment or Transfer of Certification to Provide Local Exchange Service**
- 2512.1 The certification to provide local exchange service within the District of Columbia granted to an applicant shall not be assignable or transferable, except in circumstances in which the assignor or transferor and assignee and transferee share the same or substantially similar corporate structures, affiliates, or financial, managerial, administrative, or technical personnel, equipment, and other resources. No certificated provider shall assign or transfer the certification to another party without written approval of the Commission.
- 2512.2 At least sixty days prior to the date of a proposed assignment or transfer, a certificated provider shall notify all affected customers of the proposed transfer or assignment by separate direct mailing or by bill insert. The notice shall describe any and all changes in terms, conditions, rates, and charges that will affect customers if the transfer or assignment is approved by the Commission and shall advise the customer of the right to terminate service prior to the effective date of the assignment or transfer.

- 2512.3 A request to transfer or assign a certification to provide local exchange service within the District shall be made by a joint application of the assignor and assignee or transferor and transferee.
- 2512.4 The joint applicants shall file with the Office of the Commission Secretary an original and fifteen (15) copies of the joint application not less than thirty days prior to the proposed effective date of the assignment or transfer.
- 2512.5 The joint application shall include, at a minimum, the following information, in the following order and specifically identified, either in the joint application or in attached exhibits:
- (a) For each joint applicant, the complete name, address, telephone number, fax number, registered agent, corporate contact, and the name of the person authorized to respond to Commission inquiries on behalf of the joint applicant;
 - (b) The name under which local exchange services are currently provided by the assignor or transferor in the District;
 - (c) The name under which local exchange services will be provided if the assignment or transfer is approved;

- (d) A description of the facilities, if any, currently owned or operated in the District by each applicant;
- (e) A description of the services currently provided by each applicant in the District;
- (f) A description of the transaction that will result in the transfer or assignment of the certification to provide local exchange service within the District;
- (g) A detailed plan for the transfer of customers to the transferee or assignee;
- (h) A demonstration that the assignor or transferor and the assignee or transferee share the same or substantially similar corporate structures, affiliates, or financial, managerial, administrative, or technical personnel, equipment, and other resources;
- (i) A statement that all District of Columbia customers purchasing local exchange service from the assignor or transferor were notified of the provider's intent to transfer or assign its certification at least sixty days before the proposed effective date of the assignment or transfer;
- (j) A statement that the applicants understand that the filing of a joint application does not, by itself, constitute authorization to assign or transfer the certification; and
- (k) An affidavit signed by a person with authority to bind each of the joint applicants, affirmatively declaring that the authority to execute the affidavit has been properly granted, that the contents of the joint application are true, accurate and correct, and that the joint applicants understand that if the contents of the joint application are found to be false or to contain misrepresentations, any authority granted may be suspended or revoked upon Commission Order.

2512.6

Upon a determination that the joint application complies with the standards in 2512.1 and that the assignor or transferor and assignee or transferee have complied with the other provisions of Section 2512, and all other applicable Commission rules and requirements of applicable law, the Commission shall issue an Order transferring or assigning the automatic certification or certification by waiver to provide local exchange service to the transferee or assignee. The certification shall specify whether the assignee or transferee is authorized to provide facilities-based services, resold services, or both.