

CHAPTER 49-03.1
FRANCHISE FOR CERTAIN PUBLIC UTILITIES

49-03.1-01. Certificates of public convenience and necessity - Who to secure.

No public utility shall begin construction or operation of a public utility plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation.

49-03.1-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.

49-03.1-03. Certificate application.

Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility which is operating, or which has applied for a certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission. The commission shall impose an application fee of up to ten thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

49-03.1-04. Factors to be considered by commission in granting or denying a certificate.

Before granting a certificate of public convenience and necessity, the commission shall take into consideration:

1. Need for the service.
2. Fitness and ability of applicant to provide service.
3. Effect on other public utilities providing similar service.
4. Adequacy of proposed service.
5. The technical, financial, and managerial ability of the applicant to provide service.

49-03.1-05. Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.

Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation, charter, or organization of the public utility, if the applicant is a corporation or a limited liability company, shall be filed with the commission. At the hearing on the application as provided in section 49-03.1-03, the applicant shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The commission shall have the power, after notice and hearing, to do any of the following:

1. Issue the certificate.
2. Refuse to issue the certificate.
3. Issue the certificate for the construction or operation of only a portion of the contemplated facility, line, plant, or system.
4. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require.

Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party has requested a hearing on the application after receiving at least twenty days' notice of opportunity to request such hearing.

49-03.1-06. Franchise not to be exercised without certificate.

No public utility henceforth shall exercise any right or privilege under any franchise or certificate hereafter granted, or under any franchise or certificate heretofore granted, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of such right or privilege.

49-03.1-07. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.

No public utility need secure a renewal certificate of public convenience and necessity under this chapter in order to exercise rights under a franchise hereafter granted where it has not suspended operation of its plant and where such franchise merely replaces or renews an expiring or expired franchise.

49-03.1-08. Complaint upon violation of chapter.

Whenever a public utility engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by this chapter, any interested municipality, public authority, public utility, corporation, limited liability company, or person may file a complaint with the commission. The commission thereupon, or upon its own motion without complaint, with or without notice, may order the public utility complained of to cease and desist the construction, operation, or other prohibited activity until further order of the commission. Upon hearing, after due notice, the commission shall order enforcement of this section with respect to the offending public utility and prescribe just and reasonable terms and conditions.

49-03.1-09. Registration of telecommunications companies that are not incumbent telecommunications companies - Penalty.

1. Before providing service in this state or collecting payment for service in advance of providing the service for which payment was collected, a telecommunications company that is not an incumbent telecommunications company under chapter 49-21 shall register with the commission in a form satisfactory to the commission.
2. Registration must include, at a minimum, the following information, updated within fifteen days after any change:
 - a. The company's name, complete address, and telephone number;
 - b. All names under which the company does business;
 - c. All names under which the company has registered with the secretary of state;
 - d. The company's secretary of state system identification number;
 - e. The name, title, address, and telephone number of an authorized representative to whom the commission may make inquiries;
 - f. A toll-free telephone number to which consumer inquiries or complaints may be made; and

- g. Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation.
3. As part of the registration process, the commission may require by rule the posting of a surety bond in an amount determined by the commission. In addition to any other penalties provided by law, a violation of this subsection or any rule or order under this subsection is a class C felony if the accumulated customer loss resulting from a violation is greater than five thousand dollars.
4. The commission may revoke a company's registration, after notice and hearing under chapter 28-32, for violation of any law, rule, or order of the commission.
5. A company's registration is void if the company is voluntarily dissolved, involuntarily dissolved, or forfeits its authority to transact business under state law. The registration of a company that is involuntarily dissolved or that forfeits its authority to transact business is void effective with the effective date of involuntary dissolution under subsection 7 of section 10-19.1-146 or forfeiture under subsection 8 of section 10-19.1-146.
6. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe has not complied with this section and is requiring that customers pay for service in advance of receiving that service. The cease and desist order must be:
 - a. Directed against the telecommunications company's advance payment requirements, not the company's provision of service to current customers;
 - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
7. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.