

## **BILL ANALYSIS**

C.S.H.B. 2352  
By: Nixon  
Regulated Industries  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Provider of last resort (POLR) is a regulatory theory established in 1995, when competition was introduced into the Texas local telephone market, and the original incumbent local exchange companies' (ILECs) exclusive franchises were taken away. If competitive local exchange companies (CLECs) in the area go bankrupt or decide to no longer serve the development, the ILEC is still the POLR and therefore required to provide service in an area the company was denied access to place facilities.

The purpose of CSHB 2352 is to protect customers and incumbent local exchange carriers by allowing the Public Utility Commission of Texas (PUC) to oversee an orderly transfer of customers in an area where a CLEC with an exclusive service arrangement is discontinuing service. In addition, the bill allows the new provider to recover start up costs from the Texas Universal Service Fund (TUSF). The bill also gives the PUC emergency powers to ensure that customers continue to receive basic local service in situations where a CLEC ceases to provide service and no other provider has facilities in the area. The bill also allows the PUC to participate in bankruptcy proceedings of phone companies in Texas on behalf of the company's customers.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 5 (Section 56.021, Utilities Code) of this bill.

### **ANALYSIS**

This bill clarifies that the PUC can assign "provider of last resort" obligations not just to a certificate of convenience and necessity (CCN) or certificate of operating authority (COA) holder, but to a service provider certificate of operating authority (SPCOA) holder as well. This bill also allows the PUC to shift "provider of last resort" obligation for a given area pursuant to other modified sections.

This bill amends Section 54.253 to add three additional recipients to those who would receive notice of discontinuation of operations or optional service: the Commission on State Emergency Communications, the Office of Public Utility Counsel, and the wholesale telecommunications provider. This section also allows the PUC to authorize the cessation of operations of a COA or SPCOA if it is an "exiting utility" defined later, and if that utility acts in good faith to transition its basic phone customers to another phone company.

This bill also adds a new subchapter G, entitled "Provider of Last Resort," to Chapter 54 of the Utilities Code. This new subchapter includes relevant definitions, as well as an allowance for the orderly transition of the "provider of last resort" obligation from the CCN holder for a given area to a new provider for a given area, and the conditions under which that transition can take place.

Subchapter G also adds Section 54.303, which requires the PUC to open a contested case proceeding if it receives notice from a COA or SPCOA that it intends to cease operations to determine which successor utility should take over the area and the amount that successor utility should be paid from the Texas Universal Service Fund for its costs of taking over this new area.

Once the PUC makes these two determinations, it must provide, where applicable, a reasonable time for the successor utility to make the transition to take over the new area free from commission quality rules and the successor utility to be exempted from offering its network in that area for wholesale use for that area for a period of 9 months or other reasonable time. Section 54.303 also prescribes the rights and obligations of customers in a transition. Section 54.304 deals with procedures for restoring service in an emergency or abandonment or cessation by the facilities provider. Section 54.305 describes the scope of the PUC's involvement in bankruptcy proceedings, and authorizes the PUC to participate in such proceedings.

Additional rulemaking authority is given to the PUC in SECTION 5 of the bill, allowing the PUC to reimburse a successor utility under Subchapter G. SECTION 6 also entitles a successor utility that is or becomes an eligible telecommunications carrier to receive universal service fund distributions for costs in accordance with Subchapter G.

SECTION 7 amends Chapter 56 of the Utilities Code, adding a new Subchapter G, entitled "Funding for Certain Telecommunications Utilities." Subchapter G describes which telecommunications utilities are eligible for funding under this subchapter, how the PUC is required to make determinations regarding the extent to which the utility should recover costs, and what criteria the PUC is required to consider when making determinations. Lastly, the bill specifies how the costs can be recovered.

#### **EFFECTIVE DATE**

September 1, 2003.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The committee substitute for HB 2352 does not add Section 54.2515 dealing with certain actions not cessation of operations or discontinuation of service, modifies the amendments to Section 54.253 reducing the obligations on the existing utility, removes SECTION 6 of the bill as filed (the amendments to Sec. 54.260), removes SECTION 7 of the bill as filed (addition of Sections 54.262-54.266 to the Utilities Code), and removes SECTION 10 of the bill as filed (amending Section 56.023 of the Utilities Code) and SECTION 11 (b) of the bill as filed.

The committee substitute modifies the language in SECTION 4 of the bill as filed (SECTION 2 of the committee substitute), which amends Section 54.252 of the Utilities Code.

The committee substitute simplifies the changes to Section 54.253, Utilities Code, amending only subsections (b) and (d), and does not add subsection (f) as the original bill did, which dealt with securing payment of the obligations prescribed by subsection (d). The bill as filed amended subsections (a) through (e), and added (f) and (g).

SECTION 8 of the original bill, amending Chapter 54 of the Utilities Code to add Subchapter G dealing with funding for certain telecommunications utilities, is changed and becomes SECTION 4 of the committee substitute, amending Chapter 54 of the Utilities Code to add Subchapter G. In the committee substitute, language relating to funding for certain telecommunications utilities is modified and moved to SECTION 7, where it amends Chapter 56 of the Utilities Code, instead of Chapter 54 as in the filed version of the bill. The definition of "provider of last resort," included in SECTION 1 of the bill as filed, is modified and moved to SECTION 4 of the committee substitute.