

BILL ANALYSIS

Senate Research Center

S.B. 1829
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Business & Commerce
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Enrolled

DIGEST AND PURPOSE

Currently, when a telecommunications provider goes out of business there is no provision for the Public Utility Commission (PUC) to name a company to take over service in the area. This may create safety and reliability concerns for the customers of the outgoing telecommunications provider if they no longer have a provider of local phone service. S.B. 1829 authorizes PUC to name a provider of last resort to provide telecommunications service to customers whose telecommunications provider has gone out of business.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 54.251(b), Utilities Code, to provide that, except as specifically determined otherwise by the Public Utility Commission of Texas (PUC) under this subchapter or Subchapter G, the holder of a certificate of convenience and necessity for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area.

SECTION 2. Amends Section 54.252.(a), Utilities Code, by replacing the phrase “unless the commission issues a certificate that the present and future convenience and necessity will not be adversely affected” with “except to the extent otherwise ordered by the commission in accordance with this subchapter.”

SECTION 3. Amends Section 54.253(b) and (d), Utilities Code, as follows:

(b) Requires a telecommunications utility, before the utility ceases operations or discontinues an optional service, in the manner required by PUC, to give notice of the intended action to certain individuals and entities.

(d) Prohibits the telecommunications utility from ceasing operations in its certificated area unless PUC authorizes the utility to cease operations and another provider of basic local telecommunications services has adequate facilities and capacity to serve the customers in the certificated area or the utility is an “exiting utility,” as that term is defined by Section 54.301, no other telecommunications utility has facilities sufficient to provide basic local telecommunications services in the defined geographic area, and the utility acts in good faith to provide for a transition of the utility’s existing basic local telecommunications service customers to another holder of a certificate for that area. Deletes language authorizing PUC to authorize a utility to cease operations.

SECTION 4. Amends Chapter 54, Utilities Code, by adding Subchapter G, as follows:

SUBCHAPTER G. PROVIDER OF LAST RESORT

Sec. 54.301. DEFINITIONS. Defines "exiting utility," "provider of last resort," and "successor utility."

Sec. 54.302. PROVIDER OF LAST RESORT; FACILITIES-BASED PROVIDERS. (a) Authorizes the holder of a certificate of convenience and necessity to petition PUC for an order relieving the utility of the utility's designation as the provider of last resort in a defined geographic area, notwithstanding any other provision of this title, if a telecommunications utility installs facilities to serve customers located in that defined geographic area to provide telecommunications services before the holder of the certificate of convenience and necessity installs facilities to serve customers located in that defined geographic area.

(b) Requires PUC to relieve the holder of the certificate of convenience and necessity of the obligations of service as the provider of last resort for a defined geographic area, and requires PUC to designate the facilities-based telecommunications utility as the provider of last resort, if PUC makes certain determinations.

(c) Requires PUC to complete proceedings necessary to make the determinations set forth in this section not later than the 91st day after the date the petition is filed under Subsection (a).

Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS UTILITY WHEN NO SUFFICIENT FACILITIES EXIST. (a) Provides that when PUC obtains notice as required under Section 54.253 or otherwise that a utility intends to become an exiting utility and no other telecommunications utility has facilities sufficient to provide basic telecommunications service in that defined geographic area, PUC is required to open a contested case proceeding for the purpose of determining certain information.

(b) Requires PUC, if applicable, on designation as the successor utility under this section, to provide to the successor utility:

(1) a reasonable time, in accordance with industry practices and not subject to otherwise applicable PUC service quality rules or standards, to modify, construct, or obtain facilities necessary to serve the customers of the exiting telecommunications utility; and

(2) an exemption on a transitional basis from any obligation to unbundle the utility's network elements or to provide service for resale within that defined geographic area for nine months or another reasonable period PUC may authorize as necessary to modify the utility's network to provide that unbundling or resale.

(c) Provides that a customer within the defined geographic area to be served by the successor utility is considered to have applied for service from the successor utility on the effective date of that designation by PUC. Provides that each right, privilege, and obligation of being a customer of the successor utility applies to that customer and the customer is subject to the successor utility's applicable terms of service as specified in an applicable tariff or contract.

Sec. 54.304. ABANDONMENT OR CESSATION BY FACILITIES-BASED PROVIDER; EMERGENCY RESTORATION. (a) Authorizes PUC, on its own motion or on the petition of an interested party, to institute an expedited proceeding under this section upon a finding by PUC that a holder of a certificate of operating authority or service provider certificate of operating authority is the predominant provider of basic local telecommunications service in a defined geographic area and the holder provides such service using its own facilities and where no other telecommunications utility has facilities sufficient to provide basic local telecommunications service in that defined geographic area, and the holder of the certificate of operating authority or service provider certificate of operating authority has ceased providing basic local telecommunications service to its customers in a defined geographic area or abandoned

the operation of its facilities in a geographic area that are used to provide basic local telecommunications service.

(b) Authorizes PUC, in a proceeding under this section, to declare an emergency to exist and issue any orders necessary to protect the health, safety and welfare of affected customers of the utility and to expedite the restoration and continuation of basic local telecommunications service to affected customers. Authorizes such orders to include an order to take certain actions.

(c) Authorizes PUC, in a proceeding under this section, to designate a successor utility in accordance with Section 54.303.

Sec. 54.305. COMMISSION PARTICIPATION IN BANKRUPTCY PROCEEDINGS.

(a) Authorizes PUC, upon written notice that a certificated telecommunications utility has filed a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy, to inform the appropriate court and parties of PUC's interest in obtaining notice of proceedings.

(b) Authorizes PUC, within the time prescribed by the applicable statutes, rules, and court orders, to intervene and participate in any bankruptcy proceedings that affect customers or providers of telecommunications services in this state.

(c) Authorizes the Office of the Public Utility Counsel (OPUC) to inform the appropriate court and parties of OPUC's interest in obtaining notice of proceedings. Authorizes OPUC to intervene and participate in any bankruptcy proceeding on behalf of residential and small commercial customers, within the time prescribed by the applicable statutes, rules, and court orders.

SECTION 5. Amends and reenacts Section 56.021, Utilities Code, as amended by Chapters 651 and 1451, Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 56.021. Requires PUC to adopt and enforce rules requiring local exchange companies to establish a universal service fund to perform certain functions, including reimburse a successor utility under Subchapter G.

SECTION 6. Amends Section 56.023, Utilities Code, by adding Subsection (e) to require a successor utility that is or becomes an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, to be entitled to receive universal service fund distributions for costs in accordance with Subchapter G.

SECTION 7. Amends Chapter 56, Utilities Code, by adding Subchapter G, as follows:

SUBCHAPTER G. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES

Sec. 56.251. DEFINITION. Defines "successor utility."

Sec. 56.252. TELECOMMUNICATIONS UTILITIES ELIGIBLE TO RECEIVE FUNDING UNDER THIS SUBCHAPTER. Authorizes a telecommunications utility to receive funding under this subchapter only under certain conditions.

Sec. 56.253. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO BE RECOVERED. (a) Requires PUC, at the time PUC designates the successor utility pursuant to Section 54.303, to determine the extent to which the successor utility should recover the costs the utility will incur in accepting and establishing service to the affected service area.

(b) Requires PUC, in making the determination under Subsection (a), to consider relevant information, including the costs of acquiring and restoring or upgrading

the utility facilities in the geographic area as necessary to make the facilities compatible with those of the successor utility in its other certificated areas, and comply with PUC quality of service standards.

Sec. 56.254. RECOVERY OF COSTS. Requires the PUC order designating the successor utility under Section 54.303 to authorize the successor utility to recover those costs determined under Section 56.253. Authorizes these costs to be amortized and recovered from the state universal service fund, together with interest at the prevailing commercial lending rate by a certain date.

SECTION 8. Effective date: September 1, 2003.