

By: Nixon

H.B. No. 2352

Substitute the following for H.B. No. 2352:

By: Baxter

C.S.H.B. No. 2352

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the designation and obligations of a telecommunications  
3 provider of last resort and to the recovery of certain costs  
4 incurred in transitioning to a successor utility.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 54.251(b), Utilities Code, is amended to  
7 read as follows:

8 (b) Except as specifically determined otherwise by the  
9 commission under this subchapter or Subchapter G, the [The] holder  
10 of a certificate of convenience and necessity for an area has the  
11 obligations of a provider of last resort regardless of whether  
12 another provider has a certificate of operating authority or  
13 service provider certificate of operating authority for that area.

14 SECTION 2. Section 54.252(a), Utilities Code, is amended to  
15 read as follows:

16 (a) Except to the extent otherwise ordered by the commission  
17 in accordance with this subchapter [~~Unless the commission issues a~~  
18 ~~certificate that the present and future convenience and necessity~~  
19 ~~will not be adversely affected~~], the holder of a certificate of  
20 convenience and necessity may not discontinue, reduce, or impair  
21 service to any part of the holder's certificated service area  
22 except for:

23 (1) nonpayment of charges;

24 (2) nonuse; or

1 (3) another similar reason that occurs in the usual  
2 course of business.

3 SECTION 3. Sections 54.253(b) and (d), Utilities Code, are  
4 amended to read as follows:

5 (b) Before the telecommunications utility ceases operations  
6 or discontinues an optional service, the utility, in the manner  
7 required by the commission, must give notice of the intended action  
8 to:

- 9 (1) the commission; ~~and~~  
10 (2) each affected customer;  
11 (3) the Commission on State Emergency Communications;  
12 (4) the office; and  
13 (5) each wholesale provider of telecommunications  
14 facilities or services from which the utility has purchased  
15 facilities or services.

16 (d) The telecommunications utility may not cease operations  
17 in its certificated area unless the commission authorizes the  
18 utility to cease operations and:

19 (1) another provider of basic local  
20 telecommunications services has adequate facilities and capacity  
21 to serve the customers in the certificated area; or ~~and~~

22 (2) the utility is an "exiting utility," as that term  
23 is defined by Section 54.301, and the utility acts in good faith to  
24 provide for a transition of the utility's existing basic local  
25 telecommunications service customers to another holder of a  
26 certificate for that area ~~[the commission authorizes the utility to~~  
27 ~~cease operations]~~.

1 SECTION 4. Chapter 54, Utilities Code, is amended by adding  
2 Subchapter G to read as follows:

3 SUBCHAPTER G. PROVIDER OF LAST RESORT

4 Sec. 54.301. DEFINITIONS. In this subchapter:

5 (1) "Exiting utility" means a telecommunications  
6 utility that:

7 (A) holds a certificate of operating authority or  
8 a service provider certificate of operating authority;

9 (B) is the predominant provider of basic local  
10 telecommunications service in a defined geographic area and  
11 provides those services using the utility's own facilities; and

12 (C) ceases operations in all or part of the  
13 utility's certificated service area under Section 54.253 or 54.254.

14 (2) "Provider of last resort" means a certificated  
15 telecommunications utility that must offer basic local  
16 telecommunications service throughout a defined geographic area.

17 (3) "Successor utility" means a telecommunications  
18 utility that holds a certificate of convenience and necessity,  
19 certificate of operating authority, or service provider  
20 certificate of operating authority and that is or is designated to  
21 become the provider of last resort for the defined geographic area  
22 previously served by an exiting utility.

23 Sec. 54.302. PROVIDER OF LAST RESORT; FACILITIES-BASED  
24 PROVIDERS. (a) Notwithstanding any other provision of this title,  
25 if a telecommunications utility installs facilities to serve  
26 customers located in a defined geographic area to provide  
27 telecommunications services, including basic local

1 telecommunications service, before the holder of the certificate of  
2 convenience and necessity installs facilities to serve customers  
3 located in that defined geographic area, the holder of the  
4 certificate of convenience and necessity may petition the  
5 commission for an order relieving the utility of the utility's  
6 designation as the provider of last resort in that defined  
7 geographic area.

8 (b) The commission shall relieve the holder of the  
9 certificate of convenience and necessity of the obligations of  
10 servicing as the provider of last resort for the defined geographic  
11 area, and the commission shall designate the facilities-based  
12 telecommunications utility as the provider of last resort if the  
13 commission determines that:

14 (1) the holder of the certificate of convenience and  
15 necessity does not have facilities in place to provide basic local  
16 telecommunications service to all customers within that defined  
17 geographic area;

18 (2) another certificated telecommunications utility  
19 has installed facilities adequate to provide that service  
20 throughout that area; and

21 (3) the public interest would be served by  
22 transferring the provider of last resort obligations for that area.

23 (c) The commission shall complete proceedings necessary to  
24 make the determinations prescribed by this section not later than  
25 the 91st day after the date the petition is filed under Subsection  
26 (a).

27 Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS UTILITY WHEN NO

1 SUFFICIENT FACILITIES EXIST. (a) When the commission obtains  
2 notice as required under Section 54.253 or otherwise that a utility  
3 intends to become an exiting utility and no other  
4 telecommunications utility has facilities sufficient to provide  
5 basic local telecommunications service in that defined geographic  
6 area, the commission shall open a contested case proceeding to  
7 determine:

8 (1) the identity of the successor utility under this  
9 section; and

10 (2) the amount of universal service funding under  
11 Subchapter G, Chapter 56, to be made available to the successor  
12 utility.

13 (b) On designation as the successor utility under this  
14 section, the commission, if applicable, shall provide to the  
15 successor utility:

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

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

27 (c) A customer within the defined geographic area to be

1 served by the successor utility is considered to have applied for  
2 service from the successor utility on the effective date of that  
3 designation by the commission. Each right, privilege, and  
4 obligation of being a customer of the successor utility applies to  
5 that customer and the customer is subject to the successor  
6 utility's applicable terms of service as specified in an applicable  
7 tariff or contract.

8 Sec. 54.304. ABANDONMENT OR CESSATION BY FACILITIES  
9 PROVIDER; EMERGENCY RESTORATION. (a) The commission, on its own  
10 motion or on the petition of an interested party, may institute an  
11 expedited proceeding under this section if the commission finds  
12 that:

13 (1) a holder of a certificate of operating authority  
14 or service provider certificate of operating authority is the  
15 predominant provider of basic local telecommunications service in a  
16 defined geographic area and the utility provides that service using  
17 the utility's own facilities;

18 (2) no other telecommunications utility has  
19 facilities sufficient to provide basic local telecommunications  
20 service in that defined geographic area; and

21 (3) the holder of the certificate of operating  
22 authority or service provider certificate of operating authority  
23 has:

24 (A) ceased providing basic local  
25 telecommunications service to the utility's customers in that  
26 defined geographic area; or

27 (B) abandoned the operation of the utility's

1 facilities in the defined geographic area that are used to provide  
2 basic local telecommunications service.

3 (b) In a proceeding under this section, the commission may  
4 declare that an emergency exists and issue any order necessary to  
5 protect the health, safety, and welfare of affected customers of  
6 the utility and to expedite the restoration and continuation of  
7 basic local telecommunications service to those customers. An  
8 order issued by the commission under this subsection may include an  
9 order to:

10 (1) provide for a temporary arrangement for operation  
11 of the utility's facilities by an uncertificated entity that agrees  
12 to provide service;

13 (2) authorize one or more third parties to enter the  
14 premises of the abandoned facilities; or

15 (3) grant temporary waivers from quality of service  
16 requirements.

17 (c) The commission may designate a successor utility in  
18 accordance with Section 54.303 during a proceeding under this  
19 section.

20 Sec. 54.305. COMMISSION PARTICIPATION IN BANKRUPTCY  
21 PROCEEDINGS. (a) The commission, on written notice that a  
22 certificated telecommunications utility has filed a petition in  
23 bankruptcy or is the subject of an involuntary petition in  
24 bankruptcy, may inform the appropriate court and parties of the  
25 commission's interest in obtaining notice of proceedings.

26 (b) Within the time prescribed by the applicable statutes,  
27 rules, and court orders, the commission may intervene and

1 participate in any bankruptcy proceedings that affect customers or  
2 providers of telecommunications services in this state.

3 SECTION 5. Section 56.021, Utilities Code, as amended by  
4 Chapters 651 and 1451, Acts of the 77th Legislature, Regular  
5 Session, 2001, is reenacted and amended to read as follows:

6 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The  
7 commission shall adopt and enforce rules requiring local exchange  
8 companies to establish a universal service fund to:

9 (1) assist telecommunications providers in providing  
10 basic local telecommunications service at reasonable rates in high  
11 cost rural areas;

12 (2) reimburse the telecommunications carrier that  
13 provides the statewide telecommunications relay access service  
14 under Subchapter D;

15 (3) finance the specialized telecommunications  
16 assistance program established under Subchapter E;

17 (4) reimburse the department, the Texas Commission for  
18 the Deaf and Hard of Hearing, and the commission for costs incurred  
19 in implementing this chapter and Chapter 57;

20 (5) reimburse a telecommunications carrier providing  
21 lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as  
22 amended;

23 (6) finance the implementation and administration of  
24 an integrated eligibility process created under Section 17.007 for  
25 customer service discounts relating to telecommunications  
26 services, including outreach expenses the commission determines  
27 are reasonable and necessary; [~~and~~]



1 (7) reimburse a designated provider under Subchapter  
2 F; and

3 (8) reimburse a successor utility under Subchapter G.

4 SECTION 6. Section 56.023, Utilities Code, is amended by  
5 adding Subsection (e) to read as follows:

6 (e) A successor utility, as that term is defined by Section  
7 54.301, that is or becomes an eligible telecommunications carrier  
8 under 47 U.S.C. Section 214(e)(2), as amended, is entitled to  
9 receive universal service fund distributions for costs in  
10 accordance with Subchapter G.

11 SECTION 7. Chapter 56, Utilities Code, is amended by adding  
12 Subchapter G to read as follows:

13 SUBCHAPTER G. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES

14 Sec. 56.251. DEFINITION. In this subchapter, "successor  
15 utility" has the meaning assigned by Section 54.301.

16 Sec. 56.252. TELECOMMUNICATIONS UTILITIES ELIGIBLE TO  
17 RECEIVE FUNDING UNDER THIS SUBCHAPTER. A telecommunications  
18 utility may receive funding under this subchapter only if:

19 (1) the telecommunications utility is eligible to  
20 receive universal service funding under Section 56.023(b); and

21 (2) the telecommunications utility is designated as a  
22 successor utility under Section 54.303.

23 Sec. 56.253. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO  
24 BE RECOVERED. (a) At the time the commission designates the  
25 successor utility under Section 54.303, the commission shall  
26 determine the extent to which the utility should recover the costs  
27 the utility will incur in accepting and establishing service to the

1 affected service area.

2 (b) In making the determination under Subsection (a), the  
3 commission shall consider relevant information, including the  
4 costs of acquiring and restoring or upgrading the utility's  
5 facilities in the geographic area as necessary to make those  
6 facilities compatible with the facilities in the utility's other  
7 certificated service areas and to comply with commission quality of  
8 service standards.

9 Sec. 56.254. RECOVERY OF COSTS. The commission order  
10 designating the succeeding utility under Section 54.303 shall  
11 authorize the utility to recover the costs determined under Section  
12 56.253. The costs may be amortized and recovered from the state  
13 universal service fund, together with interest at the prevailing  
14 commercial lending rate:

15 (1) not later than the first anniversary of the date of  
16 the order if the costs are not more than \$1 million;

17 (2) not later than the second anniversary of the date  
18 of the order if the costs are more than \$1 million but not more than  
19 \$2 million; and

20 (3) not later than the third anniversary of the date of  
21 the order if the costs are more than \$2 million.

22 SECTION 8. This Act takes effect September 1, 2003.