

By: Nixon

H.B. No. 2352

A BILL TO BE ENTITLED

AN ACT

relating to powers and duties of a telecommunications utility.

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

SECTION 1. Section 51.002, Utilities Code, is amended by adding Subdivision (13) to read as follows:

(13) "Provider of last resort" means a certificated telecommunications utility that must offer basic local telecommunications service throughout a certificated geographic area to all customers who request that service and who comply with this title and the utility's tariffs and terms for obtaining that service.

SECTION 2. Section 54.251(b), Utilities Code, is amended to read as follows:

(b) Except as otherwise provided by this subchapter, the ~~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 3. Subchapter F, Chapter 54, Utilities Code, is amended by adding Section 54.2515 to read as follows:

Sec. 54.2515. CERTAIN ACTIONS NOT CESSATION OF OPERATIONS OR DISCONTINUATION OF SERVICE. For purposes of this title, a merger or an acquisition affecting a telecommunications utility, or a

1 transfer of a certificate under this title, does not constitute  
2 either a cessation of operations or the discontinuation of service  
3 by that utility.

4 SECTION 4. Section 54.252, Utilities Code, is amended to  
5 read as follows:

6 Sec. 54.252. GROUNDS FOR REDUCTION OF SERVICE BY HOLDER OF  
7 CERTIFICATE OF CONVENIENCE AND NECESSITY. (a) Except as provided by  
8 this subchapter [~~Unless the commission issues a certificate that~~  
9 ~~the present and future convenience and necessity will not be~~  
10 ~~adversely affected~~], the holder of a certificate of convenience and  
11 necessity may not discontinue, reduce, or impair service to any  
12 part of the holder's certificated service area except for:

- 13 (1) nonpayment of charges;  
14 (2) nonuse; or  
15 (3) another similar reason that occurs in the usual  
16 course of business.

17 (b) A discontinuance, reduction, or impairment of service  
18 must be in compliance with and in accordance with this subchapter  
19 [~~is subject to any condition or restriction the commission~~  
20 ~~prescribes~~].

21 SECTION 5. Section 54.253, Utilities Code, is amended to  
22 read as follows:

23 Sec. 54.253. DISCONTINUATION OF SERVICE BY [~~CERTAIN~~]  
24 CERTIFICATE HOLDERS. (a) A telecommunications utility that holds  
25 a certificate of convenience and necessity, a certificate of  
26 operating authority, or a service provider certificate of operating  
27 authority may, in accordance with this subchapter:

1 (1) cease operations in all or part of the utility's  
2 certificated area; or

3 (2) discontinue an optional service that is not  
4 essential to providing basic local telecommunications service.

5 (b) Before the telecommunications utility ceases operations  
6 as provided by Subsection (a) [~~or discontinues an optional~~  
7 ~~service~~], the utility, in the form and manner required by the  
8 commission, must give notice of the intended action to:

9 (1) the commission; [~~and~~]

10 (2) each affected customer, which notice must include  
11 a toll-free customer service telephone number maintained by the  
12 utility to facilitate continuous service and transition of the  
13 customer's service to an alternative provider; and

14 (3) each provider of wholesale services or facilities  
15 from whom the utility purchases services for resale or leases  
16 unbundled facilities to provide basic local telecommunications  
17 services in this state.

18 (c) The telecommunications utility may not cease operations  
19 in all or part of its certificated area unless:

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

23 (2) the commission authorizes the utility to cease  
24 operations.

25 (d) The commission shall authorize a telecommunications  
26 utility to cease operations in all or part of the utility's  
27 certificated area, and the [~~telecommunications~~] utility is

1 entitled to cease those operations [~~discontinue an optional~~  
2 ~~service~~] on or after the 100th [~~61st~~] day after the date the utility  
3 gives the notice, if:

4 (1) the utility provides for an adequate transition of  
5 service of the utility's customers to another holder of a  
6 certificate for that area; and

7 (2) the utility pays or agrees to pay:

8 (A) the costs affected customers incur in  
9 establishing new service with the other telecommunications  
10 utility, including tariffed or reasonable and customary  
11 installation charges;

12 (B) the actual costs incurred by the other  
13 telecommunications utility in accepting affected customers and  
14 establishing service to the affected area, including the costs of  
15 restoring or upgrading the other utility's facilities in the  
16 geographic area as necessary to make those facilities compatible  
17 with the facilities in the utility's other certificated areas and  
18 to comply with commission quality of service standards;

19 (C) the costs estimated to be necessary to  
20 maintain the operations of the telecommunications utility ceasing  
21 operations as necessary to provide service to customers until  
22 another utility can provide service; and

23 (D) the amounts the telecommunications utility  
24 owes to the utility's vendors and wholesale providers, including  
25 other utilities.

26 [~~(d) The telecommunications utility may not cease operations~~  
27 ~~in its certificated area unless:~~

1           ~~[(1) another provider of basic local~~  
2 ~~telecommunications services has adequate facilities and capacity~~  
3 ~~to serve the customers in the certificated area; and~~

4           ~~[(2) the commission authorizes the utility to cease~~  
5 ~~operations.]~~

6           (e) The commission may not authorize the telecommunications  
7 utility to cease operations under Subsection (d) before the 100th  
8 ~~[61st]~~ day after the date the utility gives the notice required by  
9 Subsection (b) unless the utility shows that good cause exists for  
10 ceasing operations before that date and ceasing operations before  
11 that date will not prejudice the utility's customers, suppliers, or  
12 vendors. Unless the commission receives a complaint from an  
13 affected person, the commission may enter an order under this  
14 subsection administratively.

15           (f) To secure payment of the obligations prescribed by  
16 Subsection (d), the telecommunications utility shall, not later  
17 than the 30th day after providing notice under Subsection (b),  
18 establish a bond or security in an amount equal to \$250 for each  
19 access line the utility serves in the affected certificated area.  
20 The commission, on motion of an affected party and on notice and  
21 hearing, shall determine the adequacy of the bond or security and  
22 require an increase in the bond or security if the sum of the  
23 estimated costs payable under this section is more than an amount  
24 equal to \$250 for each access line. If the utility defaults in the  
25 payment of the utility's obligations under this section, the  
26 commission shall determine the costs under this section and the  
27 bond or security shall be apportioned among obligees in accordance

1 with the commission's determination of costs.

2 (g) A telecommunications utility is entitled to discontinue  
3 an optional service that is not essential to providing basic local  
4 telecommunications service by providing the commission with notice  
5 of that discontinuation not later than the 30th day before the date  
6 on which the utility intends to discontinue that service.

7 SECTION 6. Section 54.260(a), Utilities Code, is amended to  
8 read as follows:

9 (a) Notwithstanding Section 54.259, if a telecommunications  
10 utility holds a [~~municipal consent, franchise, or permit as~~  
11 ~~determined to be the appropriate grant of authority by the~~  
12 ~~municipality and holds a~~] certificate [~~if~~] required by this title,  
13 a public or private property owner may:

14 (1) impose a condition on the utility that is  
15 reasonably necessary to protect:

16 (A) the safety, security, appearance, and  
17 condition of the property; and

18 (B) the safety and convenience of other persons;

19 (2) impose a reasonable limitation on the time at  
20 which the utility may have access to the property to install a  
21 telecommunications service facility;

22 (3) impose a reasonable limitation on the number of  
23 such utilities that have access to the owner's property, if the  
24 owner can demonstrate a space constraint that requires the  
25 limitation;

26 (4) require the utility to agree to indemnify the  
27 owner for damage caused installing, operating, or removing a

1 facility;

2 (5) require the tenant or the utility to bear the  
3 entire cost of installing, operating, or removing a facility; and

4 (6) require the utility to pay compensation that is  
5 reasonable and nondiscriminatory among such telecommunications  
6 utilities.

7 SECTION 7. Subchapter F, Chapter 54, Utilities Code, is  
8 amended by adding Sections 54.262-54.266 to read as follows:

9 Sec. 54.262. PROVIDER OF LAST RESORT WHERE FACILITIES-BASED  
10 PROVIDER PRECEDES HOLDER OF CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY. (a) Notwithstanding any other provision of this title,  
12 if a telecommunications utility installs facilities to serve  
13 customers located in a geographic area to provide  
14 telecommunications services, including basic local  
15 telecommunications service, before the holder of the certificate of  
16 convenience and necessity installs facilities to serve customers  
17 located in that geographic area, the holder of the certificate of  
18 convenience and necessity may provide notice to the commission that  
19 the utility no longer wants to be the provider of last resort in  
20 that geographic area.

21 (b) On the date the commission receives notice under  
22 Subsection (a), the holder of the certificate of convenience and  
23 necessity is relieved of the obligations of serving as the provider  
24 of last resort, and the commission shall designate the  
25 facilities-based telecommunications utility as the provider of  
26 last resort.

27 Sec. 54.263. CERTIFICATE HOLDERS' OBLIGATIONS. (a)

1 Notwithstanding Section 54.252, if a telecommunications utility  
2 attempting to cease operations in all or part of the utility's  
3 certificated area fails to establish a bond or security as provided  
4 by Section 54.253, a telecommunications utility that does not own  
5 facilities adequate to serve customers in that area may not  
6 automatically be required to serve as the provider of last resort  
7 for that area.

8 (b) If a telecommunications utility does not elect to serve  
9 as the provider of last resort for an area described by Subsection  
10 (a), the commission may establish a proceeding under Subchapter G  
11 to designate one or more utilities as the provider of last resort  
12 for that area.

13 (c) A telecommunications utility designated as the provider  
14 of last resort for an area described by Subsection (a):

15 (1) shall have a reasonable time in accordance with  
16 industry practices to modify, construct, or obtain facilities  
17 necessary to serve the customers in that area; and

18 (2) is exempt on a transitional basis from any  
19 obligation to unbundle the utility's network elements or to provide  
20 services for resale for not less than 18 months or the time  
21 necessary for the utility to modify the network to provide that  
22 unbundling or resale.

23 Sec. 54.264. RESPONSIBILITIES AND RIGHTS OF MIGRATING  
24 CUSTOMERS. (a) If a customer of basic local telecommunications  
25 services provided by a telecommunications utility is migrated to  
26 another telecommunications utility, the customer is responsible  
27 for all applicable rates and is subject to all applicable terms and



1 conditions of the succeeding utility.

2 (b) This section does not require a customer to accept the  
3 provision of services from any telecommunications utility.  
4 However, if the commission designates a telecommunications utility  
5 to serve as the provider of last resort in the area in which the  
6 customer is located, another certificated utility may not be  
7 required to offer service to that customer.

8 Sec. 54.265. BONDING AS CONDITION OF OBTAINING CERTIFICATE  
9 FOR CERTAIN PROVIDERS. (a) A person that wants to obtain a  
10 certificate of operating authority or a service provider  
11 certificate of authority and to purchase services for resale or to  
12 lease unbundled network elements from a telecommunications utility  
13 shall establish a cash deposit or other equivalent security for the  
14 benefit of each utility that will provide services for resale and  
15 unbundled facilities to the person applying for the certificate.  
16 The cash deposit or other equivalent security must be conditioned  
17 on the person timely and fully paying to each utility the charges  
18 for resold services or unbundled facilities.

19 (b) The commission shall establish the initial amount of the  
20 cash deposit or other equivalent security at the time the person is  
21 granted a certificate of operating authority or service provider  
22 certificate of operating authority. The commission shall determine  
23 the amount of the cash deposit or other equivalent security based on  
24 the person's representation of the wholesale charges of the  
25 underlying utility or utilities it anticipates using to provide  
26 services to customers. The amount of the initial cash deposit or  
27 other equivalent security may be not less than an amount equal to

1 three months anticipated use.

2 (c) The commission, on petition of one or more underlying  
3 telecommunications utilities, shall require the certificate holder  
4 to increase the cash deposit or other equivalent security to an  
5 amount equal to the certificate holder's actual use for the three  
6 months preceding the date the petition is filed or an amount that  
7 the petitioning utility or utilities can demonstrate, by a  
8 preponderance of the evidence, that the certificate holder is  
9 likely to use during any future three-month period.

10 Sec. 54.266. COMMISSION INTERVENTION OR PARTICIPATION IN  
11 BANKRUPTCY PROCEEDINGS. (a) The commission, on notice that a  
12 certificated telecommunications utility has filed a petition in  
13 bankruptcy or is the subject of an involuntary petition in  
14 bankruptcy, shall inform the appropriate court and parties of the  
15 commission's interest in obtaining notice of proceedings.

16 (b) Within the time prescribed by the applicable statutes,  
17 rules, and court orders, the commission may intervene and  
18 participate in any bankruptcy proceedings that affect customers or  
19 providers of telecommunications services in this state.

20 SECTION 8. Chapter 54, Utilities Code, is amended by adding  
21 Subchapter G to read as follows:

22 SUBCHAPTER G. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES

23 Sec. 54.301. DETERMINATION OF PROVIDER OF LAST RESORT WHEN  
24 NO PROVIDER HAS ADEQUATE FACILITIES. (a) When a certificated  
25 utility provides notice under Section 54.253 that the utility  
26 intends to cease operations in all or part of the utility's  
27 certificated area, the commission shall open a contested case

1 proceeding to determine:

2 (1) the amount of the bond or security to be provided  
3 under Section 54.253;

4 (2) the identity of the telecommunications utility  
5 that will be required to serve as the provider of last resort for  
6 the area under this section; and

7 (3) if necessary, the amount of universal service  
8 funding to be made available to benefit customers of two utilities.

9 (b) The commission may designate a telecommunications  
10 utility as the provider of last resort only if the utility is  
11 otherwise eligible to receive universal service funds under Section  
12 56.023(b).

13 Sec. 54.302. HEARING FOR DESIGNATION OF SUCCEEDING  
14 TELECOMMUNICATIONS UTILITY. (a) If no telecommunications  
15 utilities have facilities adequate to serve the customers of an  
16 area in which a telecommunications utility is ceasing operations  
17 and no utility offers to provide service with funding provided  
18 under the bond or security established under Section 54.253, the  
19 commission shall designate a holder of a certificate of convenience  
20 and necessity as the provider of last resort for the area.

21 (b) At the time the commission designates the holder of a  
22 certificate of convenience and necessity as the provider of last  
23 resort, the commission shall determine and provide for that utility  
24 to recover the actual costs the utility will incur in accepting and  
25 establishing service to the affected certificated area, including  
26 the costs of acquiring and restoring or upgrading the utility's  
27 facilities in the geographic area as necessary to make those

1 facilities compatible with the facilities in the utility's other  
2 certificated areas and to comply with commission quality of service  
3 standards.

4 Sec. 54.303. RECOVERY OF ACTUAL COSTS. The commission  
5 order designating the telecommunications utility that will serve as  
6 the provider of last resort shall ensure that the utility will  
7 recover all of the actual costs that the utility will incur in  
8 accepting and establishing service to the affected certificated  
9 area as determined under Section 54.302. Actual costs shall be  
10 amortized and recovered from the state universal service fund,  
11 together with interest at the prevailing commercial lending rate:

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

14 (2) not later than the second anniversary of the date  
15 of the order if the costs are more than \$1 million but not more than  
16 \$2 million; and

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

19 SECTION 9. Section 56.021, Utilities Code, as amended by  
20 Chapters 651 and 1451, Acts of the 77th Legislature, Regular  
21 Session, 2001, is reenacted and amended to read as follows:

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

25 (1) assist telecommunications providers in providing  
26 basic local telecommunications service at reasonable rates in high  
27 cost rural areas;

1           (2) reimburse the telecommunications carrier that  
2 provides the statewide telecommunications relay access service  
3 under Subchapter D;

4           (3) finance the specialized telecommunications  
5 assistance program established under Subchapter E;

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

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

12           (6) finance the implementation and administration of  
13 an integrated eligibility process created under Section 17.007 for  
14 customer service discounts relating to telecommunications  
15 services, including outreach expenses the commission determines  
16 are reasonable and necessary; ~~and~~

17           (7) reimburse a designated provider under Subchapter  
18 F; and

19           (8) reimburse a succeeding utility under Subchapter G,  
20 Chapter 54.

21           SECTION 10. Section 56.023, Utilities Code, is amended by  
22 adding Subsection (e) to read as follows:

23           (e) A telecommunications utility designated as a provider  
24 of last resort under Subchapter G, Chapter 54, that does not have  
25 adequate facilities in place to provide service to the customers in  
26 that area is entitled to receive universal service fund  
27 distributions for the actual costs incurred by the utility in

1 providing those services under Subchapter G, Chapter 54, if the  
2 utility ceasing operations in that area fails to provide a bond or  
3 security in accordance with Section 54.253. The commission shall  
4 also designate the new provider of last resort as an eligible  
5 telecommunications carrier under 47 U.S.C. Section 214(e)(2), as  
6 amended, for the geographic area in which that utility is to provide  
7 service under Subchapter G, Chapter 54.

8 SECTION 11. (a) This Act takes effect September 1, 2003.

9 (b) Not later than December 1, 2003, a telecommunications  
10 utility that holds a certificate of operating authority or service  
11 provider certificate of operating authority on the effective date  
12 of this Act shall establish a cash deposit or other equivalent  
13 security in the amount determined by the Public Utility Commission  
14 of Texas as required by Section 54.265, Utilities Code, as added by  
15 this Act.