

By: Averitt

S.B. No. 1829

A BILL TO BE ENTITLED

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AN ACT

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

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

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

(b) Except as specifically determined otherwise by the commission under this subchapter or Subchapter G, 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 2. Subsection (a), Section 54.252, Utilities Code, is amended to read as follows:

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

- (1) nonpayment of charges;
- (2) nonuse; or

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

3 SECTION 3. Subsections (b) and (d), Section 54.253,
4 Utilities Code, are 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, no other telecommunications utility
24 has facilities sufficient to provide basic local
25 telecommunications service in the defined geographic area, and the
26 utility acts in good faith to provide for a transition of the
27 utility's existing basic local telecommunications service

1 customers to another holder of a certificate for that area [~~the~~
2 ~~commission authorizes the utility to cease operations~~].

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

5 SUBCHAPTER G. PROVIDER OF LAST RESORT

6 Sec. 54.301. DEFINITIONS. In this subchapter:

7 (1) "Exiting utility" means a telecommunications
8 utility that:

9 (A) holds a certificate of operating authority or
10 a service provider certificate of operating authority;

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

14 (C) ceases operations in all or part of the
15 utility's certificated service area under Section 54.253 or 54.303.

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

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

25 Sec. 54.302. PROVIDER OF LAST RESORT; FACILITIES-BASED
26 PROVIDERS. (a) Notwithstanding any other provision of this title,
27 if a telecommunications utility installs facilities to serve

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

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

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

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

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

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

1 (a).

2 Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS UTILITY WHEN NO
3 SUFFICIENT FACILITIES EXIST. (a) When the commission obtains
4 notice as required under Section 54.253 or otherwise that a utility
5 intends to become an exiting utility and no other
6 telecommunications utility has facilities sufficient to provide
7 basic local telecommunications service in that defined geographic
8 area, the commission shall open a contested case proceeding to
9 determine:

10 (1) the identity of the successor utility under this
11 section; and

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

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

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

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

1 unbundling or resale.

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

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

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

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

23 (3) the holder of the certificate of operating
24 authority or service provider certificate of operating authority
25 has:

26 (A) ceased providing basic local
27 telecommunications service to the utility's customers in that

1 defined geographic area; or

2 (B) abandoned the operation of the utility's
3 facilities in the defined geographic area that are used to provide
4 basic local telecommunications service.

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

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

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

17 (3) grant temporary waivers from quality of service
18 requirements.

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

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

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

5 (c) The office may inform the appropriate court and parties
6 of the office's interest in obtaining notice of the proceedings.
7 Within the time prescribed by the applicable statutes, rules, and
8 court orders, the office may intervene and participate in any
9 bankruptcy proceeding on behalf of residential and small commercial
10 customers.

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

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

17 (1) assist telecommunications providers in providing
18 basic local telecommunications service at reasonable rates in high
19 cost rural areas;

20 (2) reimburse the telecommunications carrier that
21 provides the statewide telecommunications relay access service
22 under Subchapter D;

23 (3) finance the specialized telecommunications
24 assistance program established under Subchapter E;

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

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

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

9 (7) reimburse a designated provider under Subchapter
10 F; and

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

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

14 (e) A successor utility, as that term is defined by Section
15 54.301, that is or becomes an eligible telecommunications carrier
16 under 47 U.S.C. Section 214(e)(2), as amended, is entitled to
17 receive universal service fund distributions for costs in
18 accordance with Subchapter G.

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

21 SUBCHAPTER G. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES

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

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

27 (1) the telecommunications utility is eligible to

1 receive universal service funding under Section 56.023(b); and

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

4 Sec. 56.253. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO
5 BE RECOVERED. (a) At the time the commission designates the
6 successor utility under Section 54.303, the commission shall
7 determine the extent to which the utility should recover the costs
8 the utility will incur in accepting and establishing service to the
9 affected service area.

10 (b) In making the determination under Subsection (a), the
11 commission shall consider relevant information, including the
12 costs of acquiring and restoring or upgrading the utility's
13 facilities in the geographic area as necessary to make those
14 facilities compatible with the facilities in the utility's other
15 certificated service areas and to comply with commission quality of
16 service standards.

17 Sec. 56.254. RECOVERY OF COSTS. The commission order
18 designating the successor utility under Section 54.303 shall
19 authorize the utility to recover the costs determined under Section
20 56.253. The costs may be amortized and recovered from the state
21 universal service fund, together with interest at the prevailing
22 commercial lending rate:

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

25 (2) not later than the second anniversary of the date
26 of the order if the costs are more than \$1 million but no more than
27 \$2 million; and

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

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