

By: Averitt

S.B. No. 1829

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the designation and obligations of a telecommunications
3 provider of last resort for defined geographic areas, and recovery
4 of certain costs from the universal service fund incurred in
5 transitioning to a successor utility.

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

7 SECTION 1. Sections 54.251, 54.252, and 54.253 of Title II,
8 Subtitle C, Chapter 54, Subchapter F, Utilities Code, are amended
9 to read as follows:

10 Sec. 54.251. PROVISION OF SERVICE.

11 (a) Except as provided by this section, Section 54.252,
12 Section 54.253, and Section 54.254, a telecommunications utility
13 that holds a certificate of convenience and necessity or a
14 certificate of operating authority shall:

15 (1) offer all basic local telecommunications services
16 to each customer in the utility's certificated area; and

17 (2) provide continuous and adequate service in that
18 area.

19 (b) Unless specifically determined otherwise by the
20 commission pursuant to this subchapter, ~~the~~ the holder of a
21 certificate of convenience and necessity for an area has the
22 obligations of a provider of last resort regardless of whether
23 another provider has a certificate of operating authority or
24 service provider certificate of operating authority for that area.

1 Sec. 54.252. GROUNDS FOR REDUCTION OF SERVICE BY HOLDER OF
2 CERTIFICATE OF CONVENIENCE AND NECESSITY. (a) Except to the
3 extent otherwise ordered by the commission pursuant to this
4 subchapter, ~~Unless the commission issues a certificate of~~
5 ~~convenience that the present and future convenience and necessity~~
6 ~~will not be adversely affected,~~ the holder of a certificate of
7 convenience and necessity may not discontinue, reduce, or impair
8 service to any part of the holder's certificated service area
9 except for:

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

14 (b) A discontinuance, reduction, or impairment of service
15 must be in compliance with and is subject to any condition or
16 restriction the commission prescribes.

17 Sec. 54.253. DISCONTINUATION OF SERVICE BY CERTAIN
18 CERTIFICATE HOLDERS. (a) A telecommunications utility that holds
19 a certificate of operating authority or a service provider
20 certificate of operating authority may:

- 21 (1) cease operations in the utility's certificated
22 area; or
23 (2) discontinue an optional service that is not
24 essential to providing basic local telecommunications service.

25 (b) Before the telecommunications utility ceases operations
26 or discontinues an optional service, the utility, in the manner
27 required by the commission, must give notice of the intended action

1 to:

- 2 (1) the commission; ~~and~~
- 3 (2) each affected customer.;
- 4 (3) the Commission on State Emergency Communications;
- 5 (4) the Office of Public Utility Counsel; and
- 6 (5) each wholesale provider of telecommunications
- 7 facilities or services from which the utility has purchased
- 8 facilities or services.

9 (c) The telecommunications utility is entitled to
10 discontinue an optional service on or after the 61st day after the
11 date the utility gives the notice.

12 (d) The telecommunications utility may not cease operations
13 in its certificated area unless the commission authorizes the
14 utility to cease operations and:

15 (1) another provider of basic local
16 telecommunications services has adequate facilities and capacity
17 to serve the customers in the certificated area; or

18 (2) the utility is an exiting utility under Section
19 54.262, and it acts in good faith to provide for a transition of its
20 existing basic local telecommunications service customers to
21 another holder of a certificate for that area.~~the commission~~
22 ~~authorizes the utility to cease operations.~~

23 (e) The commission may not authorize the telecommunications
24 utility to cease operations under Subsection (d) before the 61st
25 day after the date the utility gives the notice required by
26 Subsection (b). Unless the commission receives a complaint from an
27 affected person, the commission may enter an order under this

1 subsection administratively.

2 SECTION 2. Title II, Subtitle C, Chapter 54, Utilities
3 Code, is amended to add a new Subchapter G to read as follows:

4 Chapter 54, SUBCHAPTER G. PROVIDER OF LAST RESORT

5 Sec. 54.262. DEFINITIONS.

6 For the purposes of this subchapter the following shall be given the
7 following definitions:

8 (a) "Exiting Utility" means a holder of either a certificate
9 of operating authority or a service provider certificate of
10 operating authority, which is the predominant provider of basic
11 local telecommunications service in a defined geographic area where
12 the holder provides such service using its own facilities and where
13 no other telecommunications utility has facilities sufficient to
14 provide basic local telecommunications service in that geographic
15 area, that ceases operations in all or part of the utility's
16 certificated area pursuant to sections 54.253 or 54.264.

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

20 (c) "Successor Utility" means a telecommunications utility
21 holding a certificate of convenience and necessity, certificate of
22 operating authority, or a service provider certificate of operating
23 authority which becomes provider of last resort for the defined
24 geographic area served by an exiting utility.

25 Sec. 54.263. 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 for the provision of
2 telecommunications services including basic local
3 telecommunications service at a time before the holder of the
4 certificate of convenience and necessity installs facilities to
5 serve customers located in that geographic area, the holder of the
6 certificate of convenience and necessity may petition the
7 commission for an order relieving it of its provider of last resort
8 designation in that geographic area.

9 (b) The holder of the certificate of convenience and
10 necessity shall be relieved of the obligations of provider of last
11 resort for a defined geographic area, and another facilities-based
12 telecommunications utility shall be designated as provider of last
13 resort, upon the commission's determination that:

14 (1) the holder of a certificate of convenience and
15 necessity does not have facilities in place to provide basic local
16 telecommunications service to all customers within a defined
17 portion of its certificated area,

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

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

23 (c) The commission shall complete proceedings necessary to
24 make the determinations set forth in this section within 90 days of
25 the filing of the petition.

26 Sec. 54.264. SUCCESSOR TELECOMMUNICATIONS UTILITY WHERE NO
27 SUFFICIENT FACILITIES EXIST. (a) When the commission obtains

1 notice as required under Section 54.253 or otherwise that a utility
2 intends to become an exiting utility as defined in Section 54.262,
3 then the commission shall open a contested case proceeding for the
4 purpose of determining:

5 (1) the identity of the successor utility under this
6 section, and

7 (2) the amount of universal service funding pursuant
8 to Subchapter G, Chapter 56 to be made available to the successor
9 utility.

10 (b) Upon designation under this section, where applicable,
11 the commission shall provide the successor utility:

12 (1) a reasonable time in accordance with industry
13 practices to modify, construct, or obtain facilities necessary to
14 serve the customers of the telecommunications utility seeking to
15 cease operations in all or part of the utility's certificated area;
16 and

17 (2) an exemption on a transitional basis from any
18 obligation to unbundle its network elements or to provide service
19 for resale within that defined geographic area for a period of nine
20 months or such other reasonable period of time as may be authorized
21 by the commission to modify the network to provide such unbundling
22 or resale.

23 (c) A customer within the defined geographic area shall be
24 deemed to have applied for service from the successor utility upon
25 the effective date of the utility's designation as the successor
26 utility by the commission. Such customer shall enjoy all of the
27 rights, privileges and obligations of being a customer of the

1 successor utility, including but not limited to, being subject to
2 the successor utility's applicable terms and conditions of service
3 as specified in tariff or contract.

4 Sec. 54.265. ABANDONMENT OR CESSATION BY FACILITIES
5 PROVIDER - EMERGENCY RESTORATION. (a) The commission may, upon
6 its own motion or upon the petition of an interested party,
7 institute an expedited proceeding under this section upon a finding
8 that a holder of a certificate of operating authority or service
9 provider certificate of operating authority is the predominant
10 provider of basic local telecommunications service in a defined
11 geographic area where the holder provides such service using its
12 own facilities and where no other telecommunications utility has
13 facilities sufficient to provide basic local telecommunications
14 service in that geographic area, and the holder of the certificate
15 of operating authority or service provider certificate of operating
16 authority has:

17 (1) ceased providing basic local telecommunications
18 service to its customers in a defined geographic area; or

19 (2) abandoned the operation of its facilities in a
20 geographic area used to provide basic local telecommunications
21 service.

22 (b) In a proceeding under this section, the commission may
23 declare an emergency to exist and issue those orders necessary to
24 protect the health, safety and welfare of affected customers of the
25 utility in order to expedite the restoration and continuation of
26 basic local telecommunications service to affected customers. Such
27 orders may include:

1 (1) providing for a temporary arrangement for
2 operation of the facilities by an uncertificated entity that agrees
3 to provide service;

4 (2) authorizing third parties to enter the premises of
5 the abandoned facilities; or

6 (3) granting temporary waivers from quality of service
7 requirements.

8 (c) In a proceeding under this section, the commission may
9 designate a successor utility pursuant to Section 54.263.

10 Sec. 54.266. COMMISSION PARTICIPATION IN BANKRUPTCY
11 PROCEEDINGS. Upon written notice that a certificated
12 telecommunications utility has filed a petition in bankruptcy or is
13 the subject of an involuntary petition in bankruptcy, the
14 commission may inform the appropriate court and parties of its
15 interest in obtaining notice of proceedings. Within the time
16 prescribed by the applicable statutes, rules, and court orders, the
17 commission may intervene and participate in any bankruptcy
18 proceedings that may affect customers or providers of
19 telecommunications services in this State.

20 SECTION 3. Sections 56.021 and 56.023 of Title II, Subtitle
21 C, Chapter 56, Subchapter A, Utilities Code, are amended to read as
22 follows:

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

26 (1) assist telecommunications providers in providing
27 basic local telecommunications service at reasonable rates in high

1 cost rural areas;

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

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

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

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

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

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

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

21 Sec. 56.023. COMMISSION POWERS AND DUTIES. (a) The
22 commission shall:

23 (1) in a manner that assures reasonable rates for
24 basic local telecommunications service, adopt eligibility criteria
25 and review procedures, including a method for administrative
26 review, the commission finds necessary to fund the universal
27 service fund and make distributions from that fund;

1 (2) determine which telecommunications providers
2 companies meet the eligibility criteria;

3 (3) determine the amount of and approve a procedure
4 for reimbursement to telecommunications providers of revenue lost
5 in providing tel-assistance service under Subchapter C;

6 (4) establish and collect fees from the universal
7 service fund necessary to recover the costs the department and the
8 commission incur in administering this chapter and Chapter 57; and

9 (5) approve procedures for the collection and
10 disbursal of the revenue of the universal service fund.

11 (b) The eligibility criteria must require that a
12 telecommunications providers, in compliance with the commission's
13 quality of service requirements:

14 (1) offer service to each consumer within the
15 company's certificated area and to any permanent residential or
16 business premises to which the company is designated to provide
17 services under Subchapter F; and

18 (2) render continuous and adequate service within the
19 company's certificated area and to any permanent residential or
20 business premises to which the company is designated to provide
21 services under Subchapter F.

22 (c) A company designated under Subchapter F to provide
23 services to permanent residential or business premises within an
24 uncertificated area and that complies with Subsection (b) shall
25 receive universal service fund distributions to assist the provider
26 in providing those services. In addition, the commission shall
27 designate the provider as an eligible telecommunications carrier

1 under 47 U.S.C. Section 214(e)(2), as amended, for those permanent
2 residential or business premises.

3 (d) A successor utility under Section 54.264 which is or
4 becomes an eligible telecommunications carrier under 47 U.S.C.
5 Section 214(e)(2), as amended, shall be entitled to receive
6 universal service fund distributions for costs defined in Section
7 56.302.

8 (e) The commission shall adopt rules for the administration
9 of the universal service fund and this chapter and may act as
10 necessary and convenient to administer the fund and this chapter.

11 SECTION 4. Title II, Subtitle C, Chapter 56, Utilities
12 Code, is amended to add Subchapter G, as follows:

13 SUBCHAPTER G. FUNDING SUCCEEDING UTILITIES.

14 Sec. 56.301. PROVIDERS ELIGIBLE TO RECEIVE USF PURSUANT TO
15 THIS SUBCHAPTER. Only a provider eligible to receive universal
16 service funds under Section 56.023(b) and designated as the
17 successor utility pursuant to Sec. 54.263 may receive funds under
18 this subchapter.

19 Sec. 56.302. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO
20 BE RECOVERED. At the time the commission designates the successor
21 utility pursuant to Section 54.264, the commission shall determine
22 the extent to which the successor utility should recover its costs
23 that will be incurred by the successor utility in accepting and
24 establishing service to the affected service area. In making this
25 determination, the commission shall consider, among other things,
26 the costs of acquiring and restoring or upgrading the facilities in
27 the geographic area necessary to make the facilities both

1 compatible with those of the successor utility in its other
2 certificated areas, and comply with commission quality of service
3 standards.

4 Sec. 56.303. RECOVERY OF COSTS. The commission order
5 designating the successor utility pursuant to Section 54.264 shall
6 authorize the successor utility to recover those costs determined
7 pursuant to Section 56.302. These costs may be amortized and
8 recovered from the state universal service fund, together with
9 interest at the prevailing commercial lending rate:

10 (1) not later than the first anniversary of the date of
11 the order for costs of \$1 million or less;

12 (2) not later than the second anniversary of the date
13 of the order for costs of more than \$1 million, but not more than \$2
14 million; and

15 (3) not later than the third anniversary of the date of
16 the order for costs of more than \$2 million.

17 SECTION 5. This Act takes effect September 1, 2003.