

1-1 By: Averitt S.B. No. 1829  
1-2 (In the Senate - Filed March 14, 2003; March 24, 2003, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 14, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 14, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1829 By: Averitt

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the designation and obligations of a telecommunications  
1-11 provider of last resort and to the recovery of certain costs  
1-12 incurred in transitioning to a successor utility.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsection (b), Section 54.251, Utilities Code,  
1-15 is amended to read as follows:

1-16 (b) Except as specifically determined otherwise by the  
1-17 commission under this subchapter or Subchapter G, the [The] holder  
1-18 of a certificate of convenience and necessity for an area has the  
1-19 obligations of a provider of last resort regardless of whether  
1-20 another provider has a certificate of operating authority or  
1-21 service provider certificate of operating authority for that area.

1-22 SECTION 2. Subsection (a), Section 54.252, Utilities Code,  
1-23 is amended to read as follows:

1-24 (a) Except to the extent otherwise ordered by the commission  
1-25 in accordance with this subchapter [Unless the commission issues a  
1-26 certificate that the present and future convenience and necessity  
1-27 will not be adversely affected], the holder of a certificate of  
1-28 convenience and necessity may not discontinue, reduce, or impair  
1-29 service to any part of the holder's certificated service area  
1-30 except for:

1-31 (1) nonpayment of charges;  
1-32 (2) nonuse; or  
1-33 (3) another similar reason that occurs in the usual  
1-34 course of business.

1-35 SECTION 3. Subsections (b) and (d), Section 54.253,  
1-36 Utilities Code, are amended to read as follows:

1-37 (b) Before the telecommunications utility ceases operations  
1-38 or discontinues an optional service, the utility, in the manner  
1-39 required by the commission, must give notice of the intended action  
1-40 to:

1-41 (1) the commission; ~~and~~  
1-42 (2) each affected customer;  
1-43 (3) the Commission on State Emergency Communications;  
1-44 (4) the office; and  
1-45 (5) each wholesale provider of telecommunications  
1-46 facilities or services from which the utility has purchased  
1-47 facilities or services.

1-48 (d) The telecommunications utility may not cease operations  
1-49 in its certificated area unless the commission authorizes the  
1-50 utility to cease operations and:

1-51 (1) another provider of basic local  
1-52 telecommunications services has adequate facilities and capacity  
1-53 to serve the customers in the certificated area; or ~~and~~

1-54 (2) the utility is an "exiting utility," as that term  
1-55 is defined by Section 54.301, no other telecommunications utility  
1-56 has facilities sufficient to provide basic local  
1-57 telecommunications service in the defined geographic area, and the  
1-58 utility acts in good faith to provide for a transition of the  
1-59 utility's existing basic local telecommunications service  
1-60 customers to another holder of a certificate for that area [the  
1-61 commission authorizes the utility to cease operations].

1-62 SECTION 4. Chapter 54, Utilities Code, is amended by adding  
1-63 Subchapter G to read as follows:

SUBCHAPTER G. PROVIDER OF LAST RESORT

Sec. 54.301. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

Sec. 54.302. PROVIDER OF LAST RESORT; FACILITIES-BASED PROVIDERS. (a) Notwithstanding any other provision of this title,

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

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

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

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

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

(c) The commission shall complete proceedings necessary to make the determinations prescribed by 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) When the commission 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 local telecommunications service in that defined geographic area, the commission shall open a contested case proceeding to determine:

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

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

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

(1) a reasonable time, in accordance with industry practices and not subject to otherwise applicable commission

3-1 service quality rules or standards, to modify, construct, or obtain  
3-2 facilities necessary to serve the customers of the exiting  
3-3 telecommunications utility; and

3-4 (2) an exemption on a transitional basis from any  
3-5 obligation to unbundle the utility's network elements or to provide  
3-6 service for resale within that defined geographic area for nine  
3-7 months or another reasonable period the commission may authorize as  
3-8 necessary to modify the utility's network to provide that  
3-9 unbundling or resale.

3-10 (c) A customer within the defined geographic area to be  
3-11 served by the successor utility is considered to have applied for  
3-12 service from the successor utility on the effective date of that  
3-13 designation by the commission. Each right, privilege, and  
3-14 obligation of being a customer of the successor utility applies to  
3-15 that customer and the customer is subject to the successor  
3-16 utility's applicable terms of service as specified in an applicable  
3-17 tariff or contract.

3-18 Sec. 54.304. ABANDONMENT OR CESSATION BY FACILITIES-BASED  
3-19 PROVIDER; EMERGENCY RESTORATION. (a) The commission, on its own  
3-20 motion or on the petition of an interested party, may institute an  
3-21 expedited proceeding under this section if the commission finds  
3-22 that:

3-23 (1) a holder of a certificate of operating authority  
3-24 or service provider certificate of operating authority is the  
3-25 predominant provider of basic local telecommunications service in a  
3-26 defined geographic area and the utility provides that service using  
3-27 the utility's own facilities;

3-28 (2) no other telecommunications utility has  
3-29 facilities sufficient to provide basic local telecommunications  
3-30 service in that defined geographic area; and

3-31 (3) the holder of the certificate of operating  
3-32 authority or service provider certificate of operating authority  
3-33 has:

3-34 (A) ceased providing basic local  
3-35 telecommunications service to the utility's customers in that  
3-36 defined geographic area; or

3-37 (B) abandoned the operation of the utility's  
3-38 facilities in the defined geographic area that are used to provide  
3-39 basic local telecommunications service.

3-40 (b) In a proceeding under this section, the commission may  
3-41 declare that an emergency exists and issue any order necessary to  
3-42 protect the health, safety, and welfare of affected customers of  
3-43 the utility and to expedite the restoration and continuation of  
3-44 basic local telecommunications service to those customers. An  
3-45 order issued by the commission under this subsection may include an  
3-46 order to:

3-47 (1) provide for a temporary arrangement for operation  
3-48 of the utility's facilities by an uncertificated entity that agrees  
3-49 to provide service;

3-50 (2) authorize one or more third parties to enter the  
3-51 premises of the abandoned facilities; or

3-52 (3) grant temporary waivers from quality of service  
3-53 requirements.

3-54 (c) The commission may designate a successor utility in  
3-55 accordance with Section 54.303 during a proceeding under this  
3-56 section.

3-57 Sec. 54.305. COMMISSION PARTICIPATION IN BANKRUPTCY  
3-58 PROCEEDINGS. (a) The commission, on written notice that a  
3-59 certificated telecommunications utility has filed a petition in  
3-60 bankruptcy or is the subject of an involuntary petition in  
3-61 bankruptcy, may inform the appropriate court and parties of the  
3-62 commission's interest in obtaining notice of proceedings.

3-63 (b) Within the time prescribed by the applicable statutes,  
3-64 rules, and court orders, the commission may intervene and  
3-65 participate in any bankruptcy proceedings that affect customers or  
3-66 providers of telecommunications services in this state.

3-67 (c) The office may inform the appropriate court and parties  
3-68 of the office's interest in obtaining notice of the proceedings.  
3-69 Within the time prescribed by the applicable statutes, rules, and

4-1 court orders, the office may intervene and participate in any  
4-2 bankruptcy proceeding on behalf of residential and small commercial  
4-3 customers.

4-4 SECTION 5. Section 56.021, Utilities Code, as amended by  
4-5 Chapters 651 and 1451, Acts of the 77th Legislature, Regular  
4-6 Session, 2001, is reenacted and amended to read as follows:

4-7 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The  
4-8 commission shall adopt and enforce rules requiring local exchange  
4-9 companies to establish a universal service fund to:

4-10 (1) assist telecommunications providers in providing  
4-11 basic local telecommunications service at reasonable rates in high  
4-12 cost rural areas;

4-13 (2) reimburse the telecommunications carrier that  
4-14 provides the statewide telecommunications relay access service  
4-15 under Subchapter D;

4-16 (3) finance the specialized telecommunications  
4-17 assistance program established under Subchapter E;

4-18 (4) reimburse the department, the Texas Commission for  
4-19 the Deaf and Hard of Hearing, and the commission for costs incurred  
4-20 in implementing this chapter and Chapter 57;

4-21 (5) reimburse a telecommunications carrier providing  
4-22 lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as  
4-23 amended;

4-24 (6) finance the implementation and administration of  
4-25 an integrated eligibility process created under Section 17.007 for  
4-26 customer service discounts relating to telecommunications  
4-27 services, including outreach expenses the commission determines  
4-28 are reasonable and necessary; ~~and~~

4-29 (7) reimburse a designated provider under Subchapter  
4-30 F; and

4-31 (8) reimburse a successor utility under Subchapter G.

4-32 SECTION 6. Section 56.023, Utilities Code, is amended by  
4-33 adding Subsection (e) to read as follows:

4-34 (e) A successor utility, as that term is defined by Section  
4-35 54.301, that is or becomes an eligible telecommunications carrier  
4-36 under 47 U.S.C. Section 214(e)(2), as amended, is entitled to  
4-37 receive universal service fund distributions for costs in  
4-38 accordance with Subchapter G.

4-39 SECTION 7. Chapter 56, Utilities Code, is amended by adding  
4-40 Subchapter G to read as follows:

4-41 SUBCHAPTER G. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES

4-42 Sec. 56.251. DEFINITION. In this subchapter, "successor  
4-43 utility" has the meaning assigned by Section 54.301.

4-44 Sec. 56.252. TELECOMMUNICATIONS UTILITIES ELIGIBLE TO  
4-45 RECEIVE FUNDING UNDER THIS SUBCHAPTER. A telecommunications  
4-46 utility may receive funding under this subchapter only if:

4-47 (1) the telecommunications utility is eligible to  
4-48 receive universal service funding under Section 56.023(b); and

4-49 (2) the telecommunications utility is designated as a  
4-50 successor utility under Section 54.303.

4-51 Sec. 56.253. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO  
4-52 BE RECOVERED. (a) At the time the commission designates the  
4-53 successor utility under Section 54.303, the commission shall  
4-54 determine the extent to which the utility should recover the costs  
4-55 the utility will incur in accepting and establishing service to the  
4-56 affected service area.

4-57 (b) In making the determination under Subsection (a), the  
4-58 commission shall consider relevant information, including the  
4-59 costs of acquiring and restoring or upgrading the utility's  
4-60 facilities in the geographic area as necessary to make those  
4-61 facilities compatible with the facilities in the utility's other  
4-62 certificated service areas and to comply with commission quality of  
4-63 service standards.

4-64 Sec. 56.254. RECOVERY OF COSTS. The commission order  
4-65 designating the successor utility under Section 54.303 shall  
4-66 authorize the utility to recover the costs determined under Section  
4-67 56.253. The costs may be amortized and recovered from the state  
4-68 universal service fund, together with interest at the prevailing  
4-69 commercial lending rate:

5-1 (1) not later than the first anniversary of the date of  
5-2 the order if the costs are not more than \$1 million;

5-3 (2) not later than the second anniversary of the date  
5-4 of the order if the costs are more than \$1 million but no more than  
5-5 \$2 million; and

5-6 (3) not later than the third anniversary of the date of  
5-7 the order if the costs are more than \$2 million.

5-8 SECTION 8. This Act takes effect September 1, 2003.

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