Amend **SB 21** as follows:

Strike all below the enacting clause and replace with the following:

SECTION 1. Section 33.001, Utilities Code, is amended to read as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by this title.

(b) Notwithstanding Subsection (a), the governing body of a municipality shall not have jurisdiction over the BPL system, BPL services, telecommunications using BPL services, or the rates, operations, or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, wholly or partly, to the construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

SECTION 2. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 43 to read as follows:

CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR ACCESS TO BROADBAND AND OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) The legislature finds that access to broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services. The legislature further finds that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

(c) Consistent with the goal of increasing options for telecommunications in this state, the legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities, to own or operate all or a portion of such BPL systems. The purpose of this chapter is to provide the appropriate framework to support the deployment of BPL.

(d) The legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this section, but is not required to do so. The electric utility shall have the right to decide, in its sole discretion, whether to implement BPL and may not be penalized for deciding to implement or not to implement BPL.

Sec. 43.002. APPLICABILITY. (a) This chapter applies to an electric utility whether or not the electric utility is offering customer choice under Chapter 39.

(b) If there is a conflict between the specific provisions of this chapter and any other provisions of this title, the provisions of this chapter control.

(c) No provision of this title shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.

Sec. 43.003. DEFINITIONS. In this chapter:

(1) "BPL," "broadband over power lines," and "BPL services" mean the provision of broadband services over electric power lines and related facilities, whether above ground or in underground conduit.

(2) "BPL access" means the ability to access broadband services via a BPL operator or BPL Internet service provider.

(3) "BPL operator" means an entity that owns or operates a BPL system on the electric power lines and related facilities of an electric utility.

(4) "BPL Internet service provider" and "BPL ISP" mean an entity that provides Internet services to others on a wholesale basis or to end-use customers on a retail basis.

(5) "BPL system" means the materials, equipment, and other facilities installed on electric utility property to facilitate the provision of BPL services.

(6) "BPL electric utility applications" means services and technologies that are used and useful and designed to improve the operational performance and service reliability of an electric utility including, but not limited to, automated meter reading, real time system monitoring and meter control, remote service control, outage detection and restoration, predictive maintenance and diagnostics, and monitoring and enhancement of power quality.

(7) "Electric delivery system" means the power lines and related transmission and distribution facilities used by an electric utility to deliver electric energy.

(8) "Electric utility" shall include an electric utility and a transmission and distribution utility as defined in Section 31.002(6) or (19).

[Sections 43.004-43.050 reserved for expansion]

SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. An affiliate of an electric utility or a person unaffiliated with an electric utility may own, construct, maintain, and operate a BPL system and provide BPL services on an electric utility's electric delivery system consistent with the requirements of this chapter. Nothing in this chapter shall prohibit an entity defined in Section 11.003(9) from providing BPL service or owning and operating a BPL system. Nothing in this chapter shall prohibit an electric utility from providing construction or maintenance services to a BPL operator or BPL ISP provided that the costs of these services are properly accounted for between the electric utility and the BPL operator or BPL ISP.

Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM. (a) An electric utility may elect to:

(1) allow an affiliate to own or operate a BPL system on the utility's electric delivery system;

(2) allow an unaffiliated entity to own or operate a BPL system on the electric utility's electric delivery system; or

(3) allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

(b) The BPL operator and the electric utility shall determine what BPL Internet service providers may have access to broadband capacity on the BPL system.

Sec. 43.053. FEES AND CHARGES. (a) An electric utility that allows an affiliate or an unaffiliated entity to own a BPL system on the electric utility's electric delivery system shall charge the owner of the BPL system for the use of the electric utility's electric delivery system.

(b) An electric utility may pay a BPL owner, a BPL operator, or a BPL ISP for the use of the BPL system required to operate BPL utility applications.

(c) If all or part of a BPL system is installed on poles or other structures of a telecommunications utility as that term is defined in Section 51.002, the owner of the BPL system shall be required to pay the telecommunications utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the BPL system so installed.

(d) Notwithstanding Subsections (a)-(c):

(1) an electric utility may not charge an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items;

(2) an electric utility may not pay an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items; and

(3) an electric utility or an affiliate of an electric utility may not discriminate against a retail electric provider that is not affiliated with the utility in the terms or availability of BPL services.

Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. Because BPL systems provide benefits to electric delivery systems, the installation of a BPL system on an electric delivery system shall not require the electric utility or the owner of the BPL system or an entity defined in Section 11.003(9) to obtain or expand easements or other rights-of-way for the BPL system or to give additional consideration as a result of the

installation or the operation of a BPL system. For purposes of this section, installation of a BPL system shall be deemed to be consistent with installation of an electric delivery system.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. An electric utility that allows the installation and operation of a BPL system on its electric delivery system shall employ all reasonable measures to ensure that the operation of the BPL system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery services.

[Sections 43.056-43.100 reserved for expansion]

SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An electric utility through an affiliate, or through an unaffiliated entity, may elect to install and operate a BPL system on some or all of its electric delivery system in any part or all of its certificated service area.

(b) The installation, operation, and use of a BPL system and the provision of BPL services shall not be regulated by the state, a municipality, or local government other than as provided for in this chapter.

(c) The commission or a state or local government or a regulatory or quasi-governmental or a quasi-regulatory authority may not:

(1) require an electric utility, either through an affiliate or an unaffiliated entity, to install a BPL system on its power lines or offer BPL services in all or any part of the electric utility's certificated service area;

(2) require an electric utility to allow others to install a BPL system on the utility's electric delivery system in any part or all of the electric utility's certificated service area; or

(3) prohibit an electric utility from having an affiliate or unaffiliated entity install a BPL system or offering BPL services in any part or all of the electric utility's certificated service area.

(d) If a municipality or local government is already collecting a charge or fee from the electric utility for the use of the public rights-of-way for the delivery of electricity to retail electric customers, the municipality or local government is prohibited from requiring a franchise or an amendment to a franchise or from requiring a charge, fee, or tax from any entity for use of the public rights-of-way for a BPL system.

(e) The state or a municipality may impose a charge on the provision of BPL services, but the charge may not be greater than the lowest charge that the state or municipality imposes on other providers of broadband services for use of the public rights-of-way in its respective jurisdiction.

Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a), the electric utility's investment in that BPL system to directly support the BPL electric utility applications and other BPL services consumed by the electric utility that are used and useful in providing electric utility service shall be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary shall be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. The invested capital and expenses described in this section must be allocated to the customer classes directly receiving the services.

(b) In any proceeding under Chapter 36, just and reasonable charges for the use of the electric utility's electric delivery system by a BPL owner or operator shall be limited to the usual and customary pole attachment charges paid to the electric utility for comparable space by cable television operators.

(c) The revenues of an affiliated BPL operator or an affiliated BPL ISP shall not be deemed the revenues of an electric utility for purposes of setting rates under Chapter 36.

[Sections 43.103-43.150 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. AFFILIATES OF ELECTRIC UTILITY. (a) Subject to the limitations of this chapter, an electric utility may have a full or partial ownership interest in a BPL operator or a BPL ISP. Whether a BPL operator or a BPL ISP is an affiliate of the electric utility shall be determined under Section 11.003(2) or Section 11.006.

(b) Neither a BPL operator nor a BPL ISP shall be considered a "competitive affiliate" of an electric utility as that term is defined in Section 39.157.

Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators shall comply with all applicable federal laws, including those protecting licensed spectrum users from interference by BPL systems. The operator of a radio frequency device shall be required to cease operating the device upon notification by a Federal Communications Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected.

SECTION 3. Section 52.155, Utilities Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority may not charge a higher amount for originating or terminating intrastate switched access than the prevailing rates charged by the holder of the certificate of convenience and necessity or the holder of a certificate of operating authority issued under Chapter 65 in whose territory the call originated or terminated unless:

(1) the commission specifically approves the higher rate; or

(2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and

necessity in this state.

(c) Notwithstanding Subsection (a), Chapter 65 governs the switched access rates of a company that holds a certificate of operating authority issued under Chapter 65.

SECTION 4. Subchapter D, Chapter 52, Utilities Code, is amended by adding Section 52.156 to read as follows:

Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS. A telecommunications utility may not:

(1) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory; or

(2) engage in predatory pricing or attempt to engage in predatory pricing.

SECTION 5. Section 54.202, Utilities Code, is amended by adding new Subsection (c) to read as follows:

(c) This section may not be construed to prevent a municipally owned utility from providing to its energy customers, either directly or indirectly, any energy related service involving the transfer or receipt of information or data concerning the use, measurement, monitoring, or management of energy utility services provided by the municipally owned utility, including services such as load management or automated meter reading.

SECTION 6. Sections 54.204 (a)-(c), Utilities Code, are amended to read as follows:

(a) Notwithstanding Section 14.008, a municipality or a municipally owned utility may not discriminate against a certificated telecommunications provider [~~telecommunications utility~~] regarding:

(1) the authorization or placement of a [~~telecommunications~~] facility in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment rate or term[~~, to the extent not addressed by federal law~~].

(b) In granting consent, a franchise, or a permit for the use of a public street, alley, or right-of-way within its municipal boundaries, a municipality or municipally owned utility may not discriminate in favor of or against a certificated

telecommunications provider [~~telecommunications utility that holds or has applied for a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority~~] regarding:

(1) municipal utility pole attachment or underground conduit rates or terms[~~, to the extent not addressed by federal law~~]; or

(2) the authorization, placement, replacement, or removal of a [~~telecommunications~~] facility in a public right-of-way and the reasonable compensation for the authorization, placement, replacement, or removal regardless of whether the compensation is in the form of:

(A) money;

(B) services;

(C) use of facilities; or

(D) another kind of consideration.

(c) A municipality or a municipally owned [~~Notwithstanding Subsection (b)(1), a municipal~~] utility may not charge any entity, regardless of the nature of the services provided by that entity, a pole attachment rate or underground conduit rate that exceeds the fee the municipality or municipally owned utility would be permitted to charge under rules adopted by the Federal Communications Commission under 47 U.S.C. Section 224(e) if the municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission. In addition, not later than September 1, 2006, a municipality or municipally owned utility shall charge a single, uniform pole attachment or underground conduit rate to all entities that are not affiliated with the municipality or municipally owned utility regardless of the services carried over the networks attached to the poles or underground conduit.

SECTION 7. Section 54.251, Utilities Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as specifically determined otherwise by the commission under this subchapter or Subchapter G, the holder of a certificate of convenience and necessity, or the holder of a

certificate of operating authority issued under Chapter 65, 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.

(c) A certificate holder may meet the holder's provider of last resort obligations using any available technology. Notwithstanding any provision of Chapter 56, the commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations. As determined by the commission, the certificate holder shall meet minimum quality of service standards comparable to those established for traditional wireline or landline technologies.

SECTION 8. Subchapter G, Chapter 54, Utilities Code, is amended by adding Section 54.3015 to read as follows:

Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a holder of a certificate of operating authority issued under Chapter 65 in the same manner and to the same extent this subchapter applies to a holder of a certificate of convenience and necessity.

SECTION 9. Subchapter H, Chapter 55, Utilities Code, is amended by adding Section 55.1735 to read as follows:

Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. The charge or surcharge a local exchange company imposes for an access line used to provide pay telephone service in an exchange may not exceed the amount of the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

SECTION 10. Section 56.021, Utilities Code, is amended to read as follows:

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

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

(2) reimburse the telecommunications carrier that

provides the statewide telecommunications relay access service under Subchapter D;

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

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

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

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

(7) reimburse a designated provider under Subchapter F; [~~and~~]

(8) reimburse a successor utility under Subchapter G; and

(9) finance the program established under Subchapter H.

SECTION 11. Section 56.025, Utilities Code, is amended by adding Subsection (g) to read as follows:

(g) This section expires August 31, 2007.

SECTION 12. Section 56.026, Utilities Code, is amended by adding Subsection (e) to read as follows:

(e) This subsection and Subsections (c) and (d) expire August 31, 2007.

SECTION 13. Subchapter B, Chapter 56, Utilities Code, is amended by adding Sections 56.029, 56.030, and 56.031 to read as follows:

Sec. 56.029. UNIVERSAL SERVICE FUND STUDY; ATTESTATION REQUIREMENT. (a) The commission shall contract with an independent person to conduct a review and evaluation of whether the universal service fund accomplishes the fund's purposes as prescribed by Section 56.021 and the commission's final orders issued in Docket No. 18515 and Docket No. 18516. The evaluation shall determine

whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether the entities receiving those funds are spending the money for its intended purposes. The evaluation must include a forward-looking, comprehensive assessment of the appropriate use of the money in the fund and the manner in which that money is collected and disbursed. The commission shall pay for the review and evaluation from the universal service fund.

(b) The commission shall adopt a process under which, not later than January 1, 2006:

(1) the commission:

(A) issues a request for proposals that specifically states the maximum amount to be paid under the contract, which may not be more than a commercially reasonable amount;

(B) evaluates the received proposals; and

(C) enters into a fixed price, lump-sum contract with a person under this section; and

(2) the person with whom the commission contracts is ready to require and receive information under this section and begin the review and evaluation.

(c) Not later than January 1, 2006, the contractor shall require telecommunications providers receiving disbursements under the universal service fund to provide to the contractor the information that the contractor determines is necessary to discharge the contractor's duties under this section, including information necessary to review and evaluate how money is collected for the universal service fund and expended.

(d) Information provided under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. The provisions of this title relating to failure by a telecommunications provider to comply with a commission order apply to the failure by a telecommunications provider to comply with a requirement from the contractor to provide information under this section.

(e) The contractor may classify telecommunications

providers as the contractor considers appropriate for efficiency and may permit providers to share the cost of developing information the contractor determines is necessary to discharge the contractor's responsibilities under this section.

(f) Not later than January 5, 2007, the contractor shall deliver to the legislature a report for the legislature's revision and approval on the results of the review and evaluation. The report must:

(1) include recommendations that are consistent with the policies provided by this title;

(2) include the contractor's assessment of the universal service fund, including:

(A) how the money in the fund should be collected;

(B) how the money in the fund should be disbursed and the purposes for which the money should be used by the telecommunications provider receiving the money; and

(C) any recommendations the contractor has in relation to accountability for use of the money, including the usefulness of the attestation required by Subsection (h); and

(3) include recommendations that ensure that a telecommunications provider's support from the universal service fund for a geographic area is consistent with Section 56.021 and the commission's final orders issued in Docket No. 18515 and Docket No. 18516.

(g) The evaluation shall determine whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether the entities receiving those funds are spending the money for its intended purposes.

(h) Not later than December 31, 2005, each telecommunications provider receiving universal service funds shall file with the commission an affidavit attesting that the money from the fund has been used in a manner that is consistent with the purposes provided by Section 56.021 and the commission's final orders issued in Docket No. 18515 and Docket No. 18516.

(i) In addition to the study required by this section, the

commission shall compile information necessary to determine whether the current funding mechanism for the universal service fund will be adequate in the future to sustain the purposes for which the fund was created considering the development of new technologies that are not subject to the existing funding mechanism and the shift in jurisdictional control from this state to the federal government. Not later than January 5, 2007, the commission shall deliver to the legislature a report on this issue. If the commission determines that the existing funding mechanism is not adequate, or proposes to change the manner or level of current funding, the commission must include recommendations for alternative funding and basic service pricing methods that will be adequate and are consistent with a policy of technology and competitive neutrality in the assessment of fees and other state-imposed economic burdens.

(j) This section expires September 1, 2007.

Sec. 56.030. AFFIDAVITS OF COMPLIANCE. On or before September 1 of each year, a telecommunications provider that receives disbursements from the universal service fund shall file with the commission an affidavit certifying that the telecommunications provider is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each universal service fund program for which the telecommunications provider receives disbursements.

Sec. 56.031. ADJUSTMENTS. The commission may revise the monthly per line support amounts to be made available from the Texas High Cost Universal Service Plan and from the Small and Rural Incumbent Local Exchange Company Universal Service Plan at any time after September 1, 2007, after notice and an opportunity for hearing. In determining appropriate monthly per line support amounts, the commission shall consider the adequacy of basic rates to support universal service.

SECTION 14. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.032 to read as follows:

Sec. 56.032. COMMISSION REVIEW AND EVALUATION OF DISTANCE LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN

ENTITIES. (a) On or before October 1, 2005, the commission shall initiate a study for the purpose of evaluating a new funding mechanism to provide financial support to all telecommunications utilities that provide discounts or private network services at prescribed rates to the entities identified in Subchapter B, Chapter 57, Subchapter G, Chapter 58, and Subchapter D, Chapter 59.

(b) The study must include an evaluation of alternative sources of funding such support, including utilizing federal E-rate funding, and an evaluation of alternative funding mechanisms that would result in support being made available to all telecommunications utilities on a nondiscriminatory basis and on a technology neutral basis in exchange for providing services at rates comparable to those preferred rates being paid by the entities identified under Subchapter B, Chapter 57, Subchapter G, Chapter 58, and Subchapter D, Chapter 59, provisions.

(c) The commission shall conduct necessary proceedings to evaluate the appropriate funding mechanism and the appropriate method for determining the amount of support to be made available to telecommunications utilities that provide discounts to entities listed in Subsection (b).

(d) On or before November 15, 2006, the commission shall issue a report to the speaker of the house of representatives and the lieutenant governor on the viability of establishing a new program or funding mechanism through which support shall be funded and disbursed in exchange for providing discounts to the entities listed in Subsection (b). The commission shall include in the report its findings regarding the cost of any new funding mechanism, the benefit of establishing a new program or funding mechanism, and any other relevant information the commission deems appropriate to assist the legislature in its review of discounts for distance learning and private network services.

(e) This section expires September 1, 2007.

SECTION 15. Chapter 56, Utilities Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The commission by rule shall establish a program to provide from the

universal service fund financial assistance for a free telephone service for blind and visually impaired persons that offers the text of newspapers using synthetic speech. The commission may adopt rules to implement the program.

SECTION 16. Section 58.051, Utilities Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Unless reclassified under Section 58.024, the following services are basic network services:

(1) flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(2) residential tone dialing service;

(3) lifeline and tel-assistance service;

(4) service connection for basic residential services;

(5) direct inward dialing service for basic residential services;

(6) private pay telephone access service;

(7) call trap and trace service;

(8) access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service;

(9) mandatory residential extended area service arrangements; and

(10) mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements[~~; and~~

~~(11) residential call waiting service~~].

(c) At the election of the affected incumbent local exchange company, the price for basic network service shall also include the fees and charges for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

(d) A non-permanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service:

(1) is considered a part of basic network service;

(2) may not be aggregated under Subsection (c); and

(3) continues to be transitioned in accordance with commission orders and substantive rules.

SECTION 17. Section 58.151, Utilities Code, is amended by to read as follows:

Sec. 58.151. SERVICES INCLUDED. The following services are classified as nonbasic services:

(1) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone charges, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(2) business tone dialing service, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(3) service connection for all business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(4) direct inward dialing for basic business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(5) "1-plus" intraLATA message toll services;

(6) 0+ and 0- operator services;

(7) call waiting, call forwarding, and custom calling, except that:

(A) residential call waiting service shall be classified as a basic network service until July 1, 2006; and

(B) for an electing company subject to Section 58.301, prices for residential call forwarding and other custom calling services shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(8) call return, caller identification, and call control options, except that, for an electing company subject to Section 58.301, prices for residential call return, caller identification, and call control options shall be capped at the

prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(9) central office based PBX-type services;

(10) billing and collection services, including installment billing and late payment charges for customers of the electing company;

(11) integrated services digital network (ISDN) services, except that prices for Basic Rate Interface (BRI) ISDN services, which comprise up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(12) new services;

(13) directory assistance services, except that an electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at no charge until July 1, 2006;

(14) services described in the WATS tariff as the tariff existed on January 1, 1995;

(15) 800 and foreign exchange services;

(16) private line service;

(17) special access service;

(18) services from public pay telephones;

(19) paging services and mobile services (IMTS);

(20) 911 services provided to a local authority that are available from another provider;

(21) speed dialing;

(22) three-way calling; and

(23) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in Section 58.051, except that nothing in this section shall preclude a customer from subscribing to a local flat rate residential or business line for a computer modem or a facsimile machine.

SECTION 18. Section 58.258(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding the pricing flexibility authorized by

this subtitle, an electing company's rates for private network services may not be increased [~~on or~~] before January 1, 2012 [~~the sixth anniversary of the company's date of election~~]. However, an electing company may increase a rate in accordance with the provisions of a customer specific contract.

SECTION 19. Subchapter G, Chapter 58, Utilities Code, is amended by adding Section 58.268 to read as follows:

Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2012, regardless of:

(1) the date the company elected under this chapter; or

(2) any action taken in relation to that company under Chapter 65.

SECTION 20. Section 59.077(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased [~~on or~~] before January 1, 2012 [~~the sixth anniversary of the company's election date~~].

SECTION 21. Subchapter D, Chapter 59, Utilities Code, is amended by adding Section 59.083 to read as follows:

Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2012, regardless of:

(1) the date the company elected under this chapter; or

(2) any action taken in relation to that company under Chapter 65.

SECTION 22. Chapter 60, Utilities Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

Sec. 60.201. STATEMENT OF POLICY. It is the policy of this state that providers of telecommunications services operate in a manner that is consistent with minimum standards to provide

customers with continued competitive choices.

Sec. 60.202. APPLICABILITY OF SUBCHAPTER. A provision of this subchapter applies only to the extent the provision has not been preempted by federal law or a rule, regulation, or order of the Federal Communications Commission.

Sec. 60.203. MINIMUM SERVICE REQUIREMENTS. A telecommunications provider may not unreasonably:

(1) discriminate against another provider by refusing access to an exchange;

(2) refuse or delay an interconnection to another provider;

(3) degrade the quality of access the telecommunications provider provides to another provider;

(4) impair the speed, quality, or efficiency of a line used by another provider;

(5) fail to fully disclose in a timely manner on request all available information necessary to design equipment that will meet the specifications of the network; or

(6) refuse or delay access by a person to another provider.

Sec. 60.204. INTERCONNECTION. A telecommunications provider shall provide interconnection with other telecommunications providers' networks for the transmission and routing of telephone exchange service and exchange access.

Sec. 60.205. NUMBER PORTABILITY. A telecommunications provider shall provide number portability in accordance with federal requirements.

Sec. 60.206. DUTY TO NEGOTIATE. A telecommunications provider shall negotiate in good faith the terms and conditions of any agreement.

Sec. 60.207. DIALING PARITY. (a) A telecommunications provider shall provide dialing parity to competing telecommunications providers of telephone exchange service and telephone toll service.

(b) A telecommunications provider shall provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings and may not delay that

access unreasonably.

Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. A telecommunications provider shall provide access to poles, ducts, conduits, and rights-of-way to competing providers of telecommunications service on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Sec. 60.209. RECIPROCAL COMPENSATION. A telecommunications provider shall establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 60.210. ACCESS TO SERVICES. A telecommunications provider shall provide access to:

(1) 911 and E-911 service;

(2) directory assistance service to allow other telecommunications providers' customers to obtain telephone numbers; and

(3) operator call completion service.

SECTION 23. Subchapter A, Chapter 62, Utilities Code, is amended by adding Section 62.003 to read as follows:

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO PROGRAMMING. (a) This section applies only to a provider of advanced services or local exchange telephone service that has more than 500,000 access lines in service in this state and that delivers audio programming with localized content or video programming to its subscribers.

(b) Notwithstanding any other provision of this title, a provider of advanced services or local exchange telephone service shall provide subscribers access to the signals of the local broadcast television and radio stations licensed by the Federal Communications Commission to serve those subscribers over the air; provided with respect to low power television stations, this Section shall only apply to those low power television stations that are "qualified low power stations" as defined in 47 U.S.C. §534(h)(2).

(c) To facilitate access by subscribers of a provider of advanced services or local exchange telephone service to the signals of local broadcast stations, a station either shall be

granted mandatory carriage or may request retransmission consent with the provider.

(d) This title does not require a provider of advanced services or local exchange telephone service to provide a television or radio station valuable consideration in exchange for carriage.

(e) A provider of advanced services or local exchange telephone service shall transmit without degradation the signals a local broadcast station delivers to the provider. The transmission quality offered a broadcast station may not be lower than the quality made available to another broadcast station or video or audio programming source.

(f) A provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers may not:

(1) discriminate among broadcast stations or between broadcast stations on the one hand and programming providers on the other with respect to transmission of their signals, taking into account any consideration afforded a provider of advanced services or local exchange telephone service by any such programming provider or broadcast station; or

(2) delete, change, or alter a copyright identification transmitted as part of a broadcast station's signal.

(g) A provider of advanced services or local exchange telephone service that delivers audio or video programming shall be subject to any applicable network non-duplication or syndicated exclusivity rules promulgated by the Federal Communications Commission to the extent applicable to cable systems as defined by the commission.

(h) A provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers shall include all programming providers in a subscriber programming guide, if any, that lists program schedules.

SECTION 24. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 65 to read as follows:

CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE COMPANY MARKETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. STATEMENT OF POLICY. It is the policy of this state to provide for full rate and service competition in the telecommunications market of this state so that customers may benefit from innovations in service quality and market-based pricing.

Sec. 65.002. DEFINITIONS. In this chapter:

(1) "Deregulated company" means an incumbent local exchange company for which all of the company's markets have been deregulated.

(2) "Market" means an exchange in which an incumbent local exchange company provides residential local exchange telephone service.

(3) "Regulated company" means an incumbent local exchange company for which none of the company's markets have been deregulated.

(4) "Stand-alone residential local exchange voice service" means:

(A) residential tone dialing service;

(B) services and functionalities supported under the lifeline program;

(C) access for all residential end users to 911 service provided by a local authority and access to dual party relay service;

(D) at the election of the incumbent local exchange company, mandatory residential extended area service arrangements, mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements, mandatory expanded local calling service arrangements, or another service that a company is required under a tariff to provide to a customer who subscribes or may subscribe to basic network services; and

(E) flat rate residential local exchange telephone service delivered by landline, but only if the service is ordered and received independent of:

(i) a service classified as a nonbasic service under Section 58.151 or residential call waiting service;

(ii) a package of services that includes a service classified as a nonbasic service under Section 58.151; or

(iii) another flat rate residential local exchange service delivered by landline.

(5) "Transitioning company" means an incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.

Sec. 65.003. COMMISSION AUTHORITY. (a) Notwithstanding any other provisions of this title, the commission has authority to implement and enforce this chapter.

(b) The commission may adopt rules and conduct proceedings necessary to administer and enforce this chapter, including rules to determine whether a market should remain regulated, should be deregulated, or should be reregulated.

Sec. 65.004. INFORMATION. (a) The commission may collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter.

(b) The commission shall maintain the confidentiality of information collected under this chapter that is claimed to be confidential for competitive purposes. Information that is claimed to be confidential is exempt from disclosure under Chapter 552, Government Code.

Sec. 65.005. CUSTOMER PROTECTION. This chapter does not affect a customer's right to complain to the commission regarding a telecommunications provider.

[Sections 65.006-65.050 reserved for expansion]

SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

Sec. 65.051. MARKETS DEREGULATED. (a) Except as provided by Subsection (b), all markets of all incumbent local exchange companies are deregulated on January 1, 2006, unless the commission determines under Section 65.052(a) that a market or markets should remain regulated.

(b) A market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 is deregulated on January 1, 2007, unless the commission determines under Section 65.052(f) that the market should remain

regulated.

Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD REMAIN REGULATED. (a) Except as provided by Subsection (f), the commission shall:

(1) determine whether each market of an incumbent local exchange company should remain regulated on and after January 1, 2006; and

(2) issue a final order classifying the company in accordance with this section effective January 1, 2006.

(b) In making a determination under Subsection (a), the commission may not determine that a market should remain regulated if:

(1) the population in the area included in the market is at least 100,000; or

(2) the population in the area included in the market is at least 30,000 but less than 100,000 and, in addition to the incumbent local exchange company, there are at least three competitors of which:

(A) at least one is a telecommunications provider that holds a certificate of operating authority or service provider certificate of operating authority and provides residential local exchange telephone service in the market;

(B) at least one is an entity providing residential telephone service in the market using facilities that the entity or its affiliate owns; and

(C) at least one is a provider in that market of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not affiliated with the incumbent local exchange company.

(c) The commission shall issue an order classifying an incumbent local exchange company as a deregulated company that is subject to Subchapter C if:

(1) the company does not have any markets in which the population in the area included in the market is less than 30,000; and

(2) the commission does not determine that a market of the company should remain regulated on and after January 1, 2006.

(d) Regardless of the population in the area included in an incumbent local exchange company's markets, the commission shall issue an order classifying the company as a transitioning company that is subject to Subchapter D if the commission determines that one or more, but not all, of the markets of the company should remain regulated on and after January 1, 2006.

(e) The commission shall issue an order classifying the company as a regulated company that is subject to the provisions of this title that applied to the company on September 1, 2005, if the commission determines that all of the markets of the company in which the population in each area included in the markets is at least 30,000 should remain regulated on and after January 1, 2006. This subsection does not affect the authority of a regulated company to elect under Chapter 58 or 59 after January 1, 2005, and to be regulated under the chapter under which the company elected.

(f) Not later than November 30, 2006, the commission shall determine whether a market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 should remain regulated on or after January 1, 2007. The commission by rule shall determine the market test to be applied in determining whether the market should remain regulated. If the commission does not determine that the market should remain regulated on or after January 1, 2007, and the deregulation of that market results in a transitioning or regulated company no longer meeting the definition of a transitioning or regulated company, as appropriate, the commission shall issue an order reclassifying the company appropriately.

Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS. (a) Notwithstanding Section 65.052, an incumbent local exchange company may elect to have all of the company's markets remain regulated on and after January 1, 2006.

(b) To make an election under Subsection (a), an incumbent local exchange company must file an affidavit with the commission making that election not later than December 1, 2005.

(c) If an incumbent local exchange company makes an election

under this section, the commission shall issue an order classifying the company as a regulated company that is subject to the provisions of this title that applied to the company on September 1, 2005. This subsection does not affect the authority of a regulated company to elect under Chapter 58 or 59 after January 1, 2005, and to be regulated under the chapter under which the company elected.

Sec. 65.054. PETITION FOR DEREGULATION. (a) After July 1, 2007, a company may petition the commission to deregulate a market that the commission previously determined should remain regulated.

(b) If the commission deregulates a market under this section and the deregulation results in the transitioning or regulated company no longer meeting the definition of a transitioning or regulated company, as appropriate, the commission shall issue an order reclassifying the company appropriately.

Sec. 65.055. COMMISSION AUTHORITY TO REREGULATE CERTAIN MARKETS. (a) This section applies only to a market of an incumbent local exchange company in which the population in the area included in the market is less than 100,000.

(b) The commission, on its own motion or on a complaint that the commission considers to have merit, may determine that a market that was previously deregulated should again be subject to regulation.

(c) The commission by rule shall prescribe the procedures and standards applicable to a determination under this section.

[Sections 65.056-65.100 reserved for expansion]

SUBCHAPTER C. DEREGULATED COMPANY

Sec. 65.101. ISSUANCE OF CERTIFICATE OF OPERATING AUTHORITY. (a) A deregulated company may petition the commission to relinquish the company's certificate of convenience and necessity and receive a certificate of operating authority.

(b) The commission shall issue the deregulated company a certificate of operating authority and rescind the deregulated company's certificate of convenience and necessity if the commission finds that all of the company's markets have been deregulated under Subchapter B.

Sec. 65.102. REQUIREMENTS. (a) A deregulated company that holds a certificate of operating authority issued under this

subchapter is a nondominant carrier governed in the same manner as a holder of a certificate of operating authority issued under Chapter 54, except that the deregulated company:

(1) retains the obligations of a provider of last resort under Chapter 54;

(2) is subject to the following provisions in the same manner as an incumbent local exchange company that is not deregulated:

(A) Sections 54.156, 54.158, and 54.159;

(B) Section 55.012; and

(C) Chapter 60; and

(3) may not increase the company's rates for stand-alone residential local exchange voice service before the date that the commission has the opportunity to revise the monthly per line support under the Texas High Cost Universal Service Plan pursuant to Section 56.031, regardless of whether the company is an electing company under Chapter 58.

(b) In each deregulated market, a deregulated company shall make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company on or before August 31, 2005.

[Sections 65.103-65.150 reserved for expansion]

SUBCHAPTER D. TRANSITIONING COMPANY

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY. A transitioning company is governed by this subchapter and the provisions of this title that applied to the company immediately before the date the company was classified as a transitioning company. If there is a conflict between this subchapter and the other applicable provisions of this title, this subchapter controls.

Sec. 65.152. GENERAL REQUIREMENTS. (a) A transitioning company may:

(1) exercise pricing flexibility in a market in the manner provided by Section 58.063 one day after providing an informational notice as required by that section; and

(2) introduce a new service in a market in the manner

provided by Section 58.153 one day after providing an informational notice as required by that section.

(b) A transitioning company may not be required to comply with exchange-specific retail quality of service standards or reporting requirements in a market that is deregulated.

Sec. 65.153. RATE REQUIREMENTS. (a) In a market that remains regulated, a transitioning company shall price the company's retail services in accordance with the provisions that applied to that company immediately before the date the company was classified as a transitioning company.

(b) In a market that is deregulated, a transitioning company shall price the company's retail services as follows:

(1) for all services, other than basic local telecommunications service, at any price higher than the service's long run incremental cost; and

(2) for basic local telecommunications service, at any price higher than the lesser of the service's long run incremental cost or the tariffed price on the date that market was deregulated, provided that the company may not increase the company's rates for stand-alone residential local exchange voice service before the date that the commission has the opportunity to revise the monthly per line support under the Texas High Cost Universal Service Plan pursuant to Section 56.031, regardless of whether the company is an electing company under Chapter 58.

(c) In each deregulated market, a transitioning company shall make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company on or before August 31, 2005.

(d) In any market, regardless of whether regulated or deregulated, the transitioning company may not:

(1) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(2) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an

exchange that is not deregulated; or

(3) engage in predatory pricing or attempt to engage in predatory pricing.

(e) A rate that meets the pricing requirements in Section 65.153(b) shall be deemed compliant with subsection (d)(2).

[Sections 65.154-65.200 reserved for expansion]

SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY DEREGULATED COMPANY. (a) On the date the last market of an incumbent local exchange company is deregulated, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) After reducing the rates under Subsection (a), a deregulated company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES.

(a) Notwithstanding any other provision of this title, a transitioning company that has more than three million access lines in service in this state on January 1, 2006, shall:

(1) on July 1, 2006, reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to 33 percent of the difference in the rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates;

(2) on July 1, 2007, reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to 33 percent of the difference in

the rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates; and

(3) on July 1, 2008, reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) After reducing the rates under Subsection (a), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN TRANSITIONING COMPANIES WITH NOT MORE THAN THREE MILLION ACCESS LINES. (a) Notwithstanding any other provision of this title, a company that is classified as a transitioning company effective January 1, 2006, and that has not more than three million access lines in service in this state on that date shall reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) On July 1, 2006, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that are not regulated on July 1, 2006, by the total number of the company's markets on December 30, 2005.

(c) On July 1, 2007, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(d) On July 1, 2008, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(e) On July 1, 2009 and each succeeding year thereafter on July 1, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount derived by multiplying the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005, except that a transitioning company shall be required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating

per minute of use switched access charges if more than 75% of the transitioning company's markets are not regulated on July 1 of 2009 or any succeeding year.

(f) After reducing the rates under Subsection (e), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY DESIGNATED TRANSITIONING COMPANY. (a) Notwithstanding any other provision of this title, a company that is classified as a transitioning company after January 1, 2006, shall reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) On the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that are not regulated on the date the company is classified as a transitioning company by the total number of the company's markets on December 30, 2005.

(c) On the first anniversary of the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates

in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(d) On the second anniversary of the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(e) On the third anniversary of the date the company is classified as a transitioning company and each anniversary thereafter, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount derived by multiplying the difference in the company's rates in effect on the day before the date the company was classified as a transitioning company, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005, except that a transitioning company shall be required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges if more than 75% of the transitioning company's markets are not regulated on July 1 of 2009

or any succeeding year.

(f) After reducing the rates under Subsection (e), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY. (a) After a deregulated or transitioning company reduces the company's rates under this subchapter, the company may not increase those rates above the applicable rates prescribed by this subchapter.

(b) If a transitioning company's federal per minute of use switched access rates are reduced, the company shall reduce the company's per minute of use switched access rates to not more than the applicable rates prescribed by this subchapter.

(c) Notwithstanding Subsections (a) and (b), a deregulated or transitioning company may decrease the company's per minute of use switched access rates to amounts that are less than the applicable rates prescribed by this subchapter.

[Sections 65.206-65.250 reserved for expansion]

SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 65.251. OVERSIGHT COMMITTEE. (a) In this subchapter, "committee" means the telecommunications competitiveness legislative oversight committee.

(b) The committee is composed of nine members as follows:

(1) the chair of the Senate Committee on Business and Commerce;

(2) the chair of the House Committee on Regulated Industries;

(3) three members of the senate appointed by the lieutenant governor;

(4) three members of the house of representatives appointed by the speaker of the house of representatives; and

(5) the chief executive of the Office of Public

Utility Counsel.

(c) An appointed member of the committee serves at the pleasure of the appointing official.

Sec. 65.252. COMMITTEE DUTIES. (a) The committee shall conduct joint public hearings with the commission at least annually regarding the introduction of full competition to telecommunications services in this state.

(b) The commission shall:

(1) collect and compile information from all telecommunications providers as necessary to conduct a hearing under this section; and

(2) maintain the confidentiality of information collected under this section that is claimed to be confidential for competitive purposes.

(c) Information that is claimed to be confidential under Subsection (b) is exempt from disclosure under Chapter 552, Government Code.

(d) The commission shall provide to the committee information regarding rules relating to telecommunications deregulation proposed by the commission. The committee may submit comments to the commission on those proposed rules.

(e) The committee shall monitor the effectiveness of telecommunications deregulation, including the fairness of rates, the quality of service, and the effect of regulation on the normal forces of competition.

(f) The committee may request reports and other information from the commission as necessary to carry out this subchapter.

(g) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities under this subchapter. The report must include:

(1) an analysis of any problems caused by telecommunications deregulation; and

(2) recommendations for any legislative action necessary to address those problems and to further competition within the telecommunications industry.

SECTION 25. Subtitle C, Title 2, Utilities Code, is amended

by adding Chapter 66 to read as follows:

CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

Sec. 66.001. FRANCHISING AUTHORITY. The commission shall be designated as the franchising authority for a state-issued franchise for the provision of cable service or video service.

Sec. 66.002. DEFINITIONS. In this chapter:

(1) "Actual incremental cost" means only current out-of-pocket expenses for labor, equipment repair, equipment replacement, and tax expenses directly associated with the labor or the equipment of a service provider that is necessarily and directly used to provide what were, under a superseded franchise, in-kind services, exclusive of any profit or overhead such as depreciation, amortization, or administrative expense.

(2) "Cable service" is defined as set forth in 47 U.S.C. Section 522(6).

(3) "Cable service provider" means a person who provides cable service.

(4) "Communications network" means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

(5) "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable or video services network in the public rights-of-way.

(6) "Gross revenues" means

(a) all consideration of any kind or nature including without limitation cash, credits, property, and in-kind contributions (services or goods) derived by the holder of a state-issued certificate of franchise authority from the operation of the cable service provider's or the video service provider's network to provide cable service or video service within the municipality. Gross revenue shall include all consideration paid to the holder of a state-issued certificate of franchise authority and

its affiliates (to the extent either is acting as a provider of a cable service or video service as authorized by this Chapter), which shall include but not be limited to the following: (i) all fees charged to subscribers for any and all cable service or video service provided by the holder of a state-issued certificate of franchise authority, (ii) any fee imposed on the holder of a state-issued certificate of franchise authority by this Chapter that is passed through and paid by subscribers (including without limitation the franchise fee set forth in this Chapter), (iii) compensation received by the holder of a state-issued certificate of franchise authority or its affiliates that is derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or video service with respect to commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel, subject to Subsection (b)(E). Gross Revenue includes a pro rata portion of all revenue derived by the holder of a state-issued certificate of franchise authority or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or the video service within a municipality, subject to Subsection (b)(C). The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross revenue. Revenue of an affiliate derived from the affiliate's provision of cable service or the video service shall be gross revenue to the extent the treatment of such revenue as revenue of the affiliate and not of the holder of a state-issued certificate of franchise authority has the effect (whether intentional or unintentional) of evading the payment of fees which would otherwise be paid to the municipality. In no event shall revenue of an affiliate be gross revenue to the holder of a

state-issued certificate of franchise authority if such revenue is otherwise subject to fees to be paid to the municipality.

(b) for purposes of this section, "gross revenues" does not include:

(A) any revenue not actually received, even if billed, such as bad debt;

(B) Non-cable services or non-video services revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state-issued certificate of franchise authority to provide cable service or video service;

(C) Refunds, rebates or discounts made to subscribers, leased access providers, advertisers, and/or municipality;

(D) Any revenues from services classified as non-cable service under federal law including without limitation revenue received from telecommunications services; revenue received from information services (but not excluding Internet protocol cable services or Internet protocol video services); and any other revenues attributed by the holder of a state-issued certificate of franchise authority to non-cable service in accordance with FCC or commission rules, regulations, standards or orders;

(E) Any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services, but not excluding any commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel;

(F) The sale of cable services or video services for resale in which the purchaser is required to collect this Chapter's fees from the purchaser's customer. Nothing under this Chapter is intended to limit state's rights pursuant to 47 U.S.C. § 542(h);

(G) The provision of cable services or video services to customers at no charge, as required or allowed by this Chapter including without limitation the provision of cable services or video services to public institutions as required or permitted in this Chapter, including without limitation public schools or governmental entities as required or permitted in this Chapter;

(H) Any tax of general applicability imposed upon the holder of a state-issued certificate of franchise authority or upon subscribers by a city, state, federal or any other governmental entity and required to be collected by the holder of a state-issued certificate of franchise authority and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and fees not imposed by this Chapter);

(I) Any foregone revenue from the holder of a state-issued certificate of franchise authority's provision of free or reduced cost cable services or video services to any person including without limitation employees of the holder of a state-issued certificate of franchise authority, to the municipality and other public institutions or other institutions as allowed in this Chapter; provided, however, that any foregone revenue which the holder of a state-issued certificate of franchise authority chooses not to receive in exchange for trades, barters, services or other items of value shall be included in gross revenue;

(J) Sales of capital assets or sales of surplus equipment that is not used by the purchaser to receive cable services or video services from the holder of a state-issued certificate of franchise authority;

(K) Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; and

(L) Reimbursement by programmers of marketing costs incurred by the holder of a state-issued franchise for the introduction of new programming that exceed the actual costs.

(c) for purposes of this definition, a provider's network consists solely of the optical spectrum wavelengths, bandwith, or

other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the municipality as designated by the provider it its franchise.

(7) "Incumbent Cable Service Provider" means the cable service provider serving the largest number of subscribers in a particular municipality on September 1, 2005.

(8) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

(9) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(10) "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d).

(11) "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public right-of-way without regard to delivery technology. This term does not include a cable service provider.

Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE. (a) An entity or person seeking to provide cable service or video service in this state after September 1, 2005, shall file an application for a state-issued certificate of franchise authority with the commission as required by this section. An entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement expires.

(b) The commission shall issue a certificate of franchise authority to offer cable service or video service within 14

business days of receipt of an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming:

(1) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service or video service in this state;

(2) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(3) that the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

(4) a description of the service area footprint to be served within the municipality, if applicable, otherwise the municipality to be served by the applicant, which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area, and upon such expansion, notice to the commission of the service area to be served by the applicant; and

(5) the location of the applicant's principal place of business and the names of the applicant's principal executive officers.

(c) The certificate of franchise authority issued by the commission shall contain:

(1) a grant of authority to provide cable service or video service as requested in the application;

(2) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered; and

(3) a statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

(d) The certificate of franchise authority issued by the

commission is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be filed with the commission and the relevant municipality within 14 business days of the completion of such transfer.

(e) The certificate of franchise authority issued by the commission may be terminated by the cable service provider or video service provider by submitting notice to the commission.

66.004. ELIGIBILITY FOR COMMISSION ISSUED FRANCHISE. (a) A cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter until the later of January 1, 2008 or the expiration date of the existing franchise agreement.

(b) For purposes of this section, a cable service provider or video service provider will be deemed to have or had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality.

(c) The terms "Affiliates or successor entity" in this section shall include but not be limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

(d) Except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the enactment of this Chapter, and owed or owing to any private person, firm, partnership corporation, or other entity including without limitation, those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and interests in effect on September 1, 2005,

shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

66.005. FRANCHISE FEE. (a) The holder of a state-issued certificate of franchise authority shall pay each municipality in which it provides cable service or video service a franchise fee of five percent based upon the definition of gross revenues as set forth in this chapter. That same franchise fee structure shall apply to any unincorporated areas that are annexed by a municipality after the effective date of the state-issued certificate of franchise authority.

(b) A cable service provider or video service provider shall pay the state a franchise fee equal to three percent of the provider's gross revenues, as defined by this chapter, for those customers served in the unincorporated areas of the state, if no local franchise agreement exists.

(c) The franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may review the business records of the cable service provider or video service provider to the extent necessary to

ensure compensation in accordance with subsection (a). The state may review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with subsection (b). Each party shall bear the party's own costs of the examination. A municipality or the state may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(d) The holder of a state-issued certificate of franchise authority may recover from the provider's customers any fee imposed by this chapter.

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Until the expiration of the incumbent cable service provider's agreement or January 1, 2008, whichever is later, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. The holder of a state-issued certificate of franchise authority shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly, to the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

(b) On the expiration of the incumbent cable service provider's agreement or January 1, 2008, whichever is later, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service one percent of the provider's gross revenues, as defined by this Chapter, in lieu of in-kind compensation and grants. Payments under this Subsection shall be paid in the same manner as outlined in Section 66.005(c).

(c) All fees paid to municipalities under this subsection are paid in accordance with 47 U.S.C. Section 531, 541(a)(4)(B), and may be used by the municipality as allowed by federal law, further these payments are not chargeable as a credit against the franchise fee payments authorized under this Chapter.

(d) The following services shall continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until January 1, 2008, or until the term of the franchise was to expire, whichever is later:

(A) institutional network capacity; however defined or referred to in the municipal cable franchise, but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of the termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and

(B) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination until January 1, 2008, after which a provider that provides the services may deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the services if the municipality requires the services after that date. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the termination.

Sec. 66.007. BUILD-OUT. The holder of a state-issued certificate of franchise authority shall not be required to comply with mandatory build-out provisions.

Sec. 66.008. CUSTOMER SERVICE STANDARDS. (a) The holder of a state-issued certificate of franchise authority shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) until there are two or more providers offering service, excluding direct-to-home satellite service, in the relevant municipality.

(b) The commission shall receive service quality complaints from customers of the holder of state-issued certificate of franchise authority. The commission shall post on the commission's Internet website each calendar quarter the number of complaints made against each franchise holder.

Sec. 66.009. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CHANNELS. (a) Not later than 120 days after a request by a municipality, the holder of a state-issued certificate of franchise authority shall provide the municipality with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming.

(b) The holder of a state-issued certificate of franchise authority shall provide no fewer than the number of PEG access channels a municipality has activated under the incumbent cable service provider's franchise agreement as of September 1, 2005.

(c) If a municipality did not have PEG access channels as of September 1, 2005, the cable service provider or video service provider shall furnish:

(1) up to three PEG channels for a municipality with a population of at least 50,000; and

(2) up to two PEG channels for a municipality with a population of less than 50,000.

(d) Any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day shall no longer be made available to the municipality, but may be programmed at the cable service provider's or video service provider's discretion. At such time as the municipality can certify to the cable service provider or video service provider a schedule for at least eight hours of daily programming, the cable service provider or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(e) In the event a municipality has not utilized the minimum number of access channels as permitted by Subsection (c), access to the additional channel capacity allowed in Subsection (c) shall be provided upon 90 days' written notice if the municipality meets the following standard: if a municipality has one active PEG channel

and wishes to activate an additional PEG channel, the initial channel shall be considered to be substantially utilized when 12 hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three video-castings of a program. If a municipality is entitled to three PEG channels under Subsection (c) and has in service two active PEG channels, each of the two active channels shall be considered to be substantially utilized when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters.

(f) The operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of such channel. The holder of a state-issued certificate of franchise authority shall be responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

(g) The municipality must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued certificate of franchise authority are provided or submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the cable service provider or video service provider, which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver services.

(h) Where technically feasible, the holder of a state-issued certificate of franchise authority and an incumbent cable service provider shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG

programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a state-issued certificate of franchise authority and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of PEG channels.

(i) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

Sec. 66.010. NONDISCRIMINATION BY MUNICIPALITY. (a) A municipality shall allow the holder of a state-issued certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a state-issued certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. All use of a public right-of-way by the holder of a state-issued certificate of franchise authority is nonexclusive and subject to Section 66.011.

(b) A municipality may not discriminate against the holder of a state-issued certificate of franchise authority regarding:

(1) the authorization or placement of a communications network in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment term.

Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY. (a) A municipality may enforce police power-based regulations in the management of a public right-of-way that apply to the holder of a state-issued certificate of franchise authority within the municipality. A municipality may enforce police power-based regulations in the management of the activities of the holder of a state-issued certificate of franchise authority to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of the holder of a state-issued certificate of franchise authority's use of the public right-of-way must be competitively neutral and may not be unreasonable or discriminatory. A municipality may not impose on activities of the holder of a state-issued certificate of franchise

authority a requirement:

(1) that particular business offices be located in the municipality;

(2) regarding the filing of reports and documents with the municipality that are not required by state or federal law and that are not related to the use of the public right-of-way except that a municipality may request maps and records maintained in the ordinary course of business for purposes of locating the portions of a communications network that occupy public rights-of-way. Any maps or records of the location of a communications network received by a municipality shall be confidential and exempt from disclosure under Chapter 552, Government Code, and may be used by a municipality only for the purpose of planning and managing construction activity in the public right-of-way. A municipality may not request information concerning the capacity or technical configuration of the holder of a state-issued certificate of franchise authority's facilities;

(3) for the inspection of the holder of a state-issued certificate of franchise authority's business records except to extent permitted under Section 66.005(c);

(4) for the approval of transfers of ownership or control of the holder of a state-issued certificate of franchise authority's business, except that a municipality may require that the holder of a state-issued certificate of franchise authority maintain a current point of contact and provide notice of a transfer within a reasonable time; or

(5) that the holder of a state-issued certificate of franchise authority that is self-insured under the provisions of state law obtain insurance or bonding for any activities within the municipality, except that a self-insured provider shall provide substantially the same defense and claims processing as an insured provider. A bond may not be required from a provider for any work consisting of aerial construction except that a reasonable bond may be required of a provider that cannot demonstrate a record of at least four years' performance of work in any municipal public right-of-way free of currently unsatisfied claims by a municipality for damage to the right-of-way.

(b) Notwithstanding any other law, a municipality may require the issuance of a construction permit, without cost, to the holder of a state-issued certificate of franchise authority that is locating facilities in or on a public right-of-way in the municipality. The terms of the permit shall be consistent with construction permits issued to other persons excavating in a public right-of-way.

(c) In the exercise of its lawful regulatory authority, a municipality shall promptly process all valid and administratively complete applications of the holder of a state-issued certificate of franchise authority for a permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or obtain zoning or subdivision regulation approvals or other similar approvals. A municipality shall make every reasonable effort not to delay or unduly burden the provider in the timely conduct of the provider's business.

(d) If there is an emergency necessitating response work or repair, the holder of a state-issued certificate of franchise authority may begin the repair or emergency response work or take any action required under the circumstances without prior approval from the affected municipality, if the holder of a state-issued certificate of franchise authority notifies the municipality as promptly as possible after beginning the work and later obtains any approval required by a municipal ordinance applicable to emergency response work.

(e) The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY; NOTICE OF LIABILITY. (a) The holder of a state-issued certificate of franchise authority shall indemnify and hold a municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which

recovery of damages is sought, that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the holder of a state-issued certificate of franchise authority, any agent, officer, director, representative, employee, affiliate, or subcontractor of the holder of a state-issued certificate of franchise authority, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality or its officers, employees, contractors, or subcontractors. If the holder of a state-issued certificate of franchise authority and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This subsection is solely for the benefit of the municipality and the holder of a state-issued certificate of franchise authority and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

(b) The holder of a state-issued certificate of franchise authority and a municipality shall promptly advise the other in writing of any known claim or demand against the holder of a state-issued certificate of franchise authority or the municipality related to or arising out of the holder of a state-issued certificate of franchise authority's activities in a public right-of-way.

(c) The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

Sec. 66.013. MUNICIPAL AUTHORITY. In addition to a municipality's authority to exercise its nondiscriminatory police power with respect to public rights-of-way under current law, a municipality's authority to regulate the holder of state-issued certificate of franchise authority is limited to:

(1) a requirement that the holder of a state-issued certificate of franchise authority who is providing cable service or video service within the municipality register with the municipality and maintain a point of contact;

(2) the establishment of reasonable guidelines regarding the use of public, educational, and governmental access channels; and

(3) submit reports within 30 days on the customer service standards referenced in Section 66.008 if the provider is subject to those standards and has continued and unresolved customer service complaints indicating a clear failure on the part of the holder of a state-issued certificate of franchise authority to comply with the standards.

Sec. 66.014. DISCRIMINATION PROHIBITED. (a) To the extent required by 47 U.S.C. Section 541(a)(3), a cable service provider or video service provider that has been granted a state-issued certificate of franchise authority may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(b) An affected person may seek enforcement of the requirements described by subsection (a) by initiating a proceeding with the commission. A municipality within which the potential residential cable service or video service subscribers referenced in subsection (a) may be considered an affected person for purposes of this section.

(c) The holder of a state-issued certificate of franchise authority shall have a reasonable period of time to become capable of providing cable service or video service to all households within the designated franchise area as defined in Section 66.003(b)(4) and may satisfy the requirements of this section through the use of an alternative technology notwithstanding differences in the specific content or functionality provided.

Sec. 66.015. COMPLIANCE. (a) Should the holder of a state-issued certificate of franchise authority be found by a court of competent jurisdiction to be in noncompliance with the requirements of this chapter, the court shall order the holder a

state-issued certificate of franchise authority, within a specified reasonable period of time, to cure such noncompliance. Failure to comply shall subject the holder of the state-issued franchise of franchise authority to penalties as the court shall reasonably impose, up to and including revocation of the state-issued certificate of franchise authority granted under this chapter.

(b) A municipality within which the provider offers cable service or video service shall be an appropriate party in any such litigation.

Sec. 66.016. APPLICABILITY OF OTHER LAWS. (a) Nothing in this Chapter shall be interpreted to prevent a voice provider, cable service provider or video service provider, or municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

(b) Nothing in this Chapter shall limit the ability of a municipality under existing law to receive compensation for use of the public rights-of-way from entities determined not to be subject to all or part of this Chapter, including but not limited to provider of internet protocol cable or video services, unless such payments are expressly prohibited by federal law.

Sec. 66.017. STUDY. (a) The telecommunications competitiveness legislative oversight committee shall conduct a joint interim study with the commission regarding the following:

(1) appropriate alternative forms of competitively neutral compensation methodology that should flow to municipalities from all sources related to the provision of information services, telecommunication services, cable services and video services;

(2) right-of-way access and fees;

(3) the transition from local franchise authority to state-issued authority, including methods to maintain current municipal revenue streams, including franchise fees and in-kind contributions; continuation of public, educational, and governmental access channels; and build-out requirements; and

(4) other relevant issues.

(b) The committee shall report its findings to the lieutenant governor and speaker of the House of Representatives no later than December 31, 2006.

(c) This section expires January 1, 2007.

SECTION 26. Section 283.002, Local Government Code, is amended by amending Subsection (2) and adding Subsection (7) to read as follows:

(2) "Certificated telecommunications provider" means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

(7) "Voice service" means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

SECTION 27. The following provisions of the Utilities Code are repealed:

(1) Subchapters B-F, Chapter 62; and

(2) Chapters 61 and 63.

SECTION 28. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 29. This Act takes effect September 1, 2005, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect on the 91st day after the last day of the legislative session.