

BILL ANALYSIS

Senate Research Center

S.B. 21
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Business & Commerce
6/22/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Significant technological changes have occurred in the communications industry since 1995 when the current version of the Public Utilities Regulatory Act, with regard to telecommunications, was adopted. To encourage and accelerate the development of a competitive and advanced services environment and infrastructure, new rules, policies, and principles must be formulated consistent with the understanding that, as new technologies become available, all public policy must be driven by free market principles for the benefit of consumers in Texas consistent with the public interest.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 14 (Section 56.301, Utilities Code) and SECTION 26 (Sections 65.003, 65.052, and 65.055, Utilities Code) of this bill.

Rulemaking previously granted to the Public Utility Commission of Texas is modified in SECTION 9 (Section 56.021, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 33.001, Utilities Code, as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) Creates this subsection from existing text. Provides that the governing body of a municipality, to provide fair, just, and reasonable rates and adequate and efficient services, 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) Prohibits the governing body of a municipality, notwithstanding Subsection (a), from having jurisdiction over the BPL (broadband over power lines) 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. Amends Subtitle B, Title 2, Utilities Code, by adding Chapter 43, 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) Provides that 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. Sets forth that BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) Provides that the legislature finds that access to broadband services is important to this state; that 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; and 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) Provides that the legislature, consistent with the goal of increasing options for telecommunications in this state, 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. Sets forth that the purpose of this chapter is to provide the appropriate framework to support the deployment of BPL.

(d) Provides that 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. Requires the electric utility to have the right to decide, in its sole discretion, whether to implement BPL and prohibits the electric utility from being penalized for deciding to implement or not to implement BPL.

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

(b) Provides that 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) Provides that 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. Defines "BPL," "broadband over power lines," "BPL services," "BPL access," "BPL operator," "BPL Internet service provider," "BPL ISP," "BPL system," "BPL electric utility applications," "electric delivery system," and "electric utility."

[Reserves Sections 43.004-43.050 for expansion.]

SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. Authorizes an affiliate of an electric utility or a person unaffiliated with an electric utility to 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. Provides that 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 and that 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) Authorizes an electric utility to elect to allow an affiliate to own or operate a BPL system on the utility's electric delivery system; allow an unaffiliated entity to own or operate a BPL system on the electric utility's electric delivery system; or allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

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

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

(b) Authorizes 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) Requires the owner of the BPL system, 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, to 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) Prohibits an electric utility, notwithstanding Subsections (a)-(c), from charging 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; paying 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 discriminating 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. Prohibits the installation of a BPL system on an electric delivery system, because BPL systems provide benefits to electric delivery systems, from requiring 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. Provides that 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. Requires an electric utility that allows the installation and operation of a BPL system on its electric delivery system to 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. Requires an electric utility, should a disruption in the provision of electric service occur, to be governed by the terms and conditions of the retail electric delivery service tariff. Requires the provision of broadband services, at all times, to be secondary to the reliable provision of electric delivery services.

[Reserves Sections 43.056-43.100 for expansion.]

SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) Authorizes an electric utility through an affiliate, or through an unaffiliated entity, to 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) Prohibits the installation, operation, and use of a BPL system and the provision of BPL services from being regulated by the state, a municipality, or local government other than as provided for in this chapter.

(c) Prohibits the Public Utility Commission (commission) or a state or local government or a regulatory or quasi-governmental or a quasi-regulatory authority from requiring an electric utility, either through an affiliate or an unaffiliated

entity, to take certain actions, or prohibiting an electric utility from taking certain actions.

(d) Prohibits the municipality or local government, if it 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, 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) Authorizes the state or a municipality to impose a charge on the provision of BPL services, but prohibits the charge from being 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) Requires the electric utility's investment in a 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, where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a), to be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary to be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. Requires the invested capital and expenses described in this section to be allocated to the customer classes directly receiving the services.

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

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

[Reserves Sections 43.103-43.150 for expansion.]

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

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

(b) Provides that 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. Requires BPL operators to comply with all applicable federal laws, including those protecting licensed spectrum users from interference by BPL systems. Requires the operator of a radio frequency device to be required to cease operating the device upon notification by a Federal Communications Commission representative that the device is causing harmful interference. Prohibits operation from being resumed until the condition causing the harmful interference has been corrected.

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

(a) Prohibits a telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority from charging 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 certain conditions are met.

(c) Provides that 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. Amends Subchapter D, Chapter 52, Utilities Code, by adding Section 52.156, as follows:

Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS. Prohibits a telecommunications utility from establishing a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory, or engaging in predatory pricing or attempt to engage in predatory pricing.

SECTION 5. Amends Section 54.202, Utilities Code, by adding new Subsection (c), as follows:

(c) Provides that 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. Amends Section 54.251, Utilities Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that 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) Authorizes a certificate holder to meet the holder's provider of last resort obligations using any available technology. Authorizes the commission, notwithstanding any provision of Chapter 56, to 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. Requires the certificate holder, as determined by the commission, to meet minimum quality of service standards comparable to those established for traditional wireline or landline technologies.

SECTION 7. Amends Subchapter G, Chapter 54, Utilities Code, by adding Section 54.3015, as follows:

Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. Provides that 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 8. Amends Subchapter H, Chapter 55, Utilities Code, by adding Section 55.1735, as follows:

Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. Prohibits the charge or surcharge that a local exchange company imposes for an access line used to provide pay telephone service in an exchange from exceeding the amount of the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

SECTION 9. Amends Section 56.021, Utilities Code, as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. Requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund to perform certain tasks, including financing the program established under Subchapter H.

SECTION 10. Amends Section 56.025, Utilities Code, by adding Subsection (g), to provide that this section (Maintenance of Rates and Expansion of Fund for Certain Companies) expires August 31, 2007.

SECTION 11. Amends Section 56.026, Utilities Code, by adding Subsection (e), to provide that this subsection and Subsections (c) and (d) (governing certain disbursements from the Universal Service Fund) expire August 31, 2007.

SECTION 12. Amends Subchapter B, Chapter 56, Utilities Code, by adding Sections 56.029 and 56.030, as follows:

Sec. 56.029. COMMISSION REVIEW AND EVALUATION OF SUPPORT AMOUNTS; ORDER. (a) Requires the commission, on or before October 1, 2005, to initiate a review and evaluation of the monthly per line support amounts available from the Texas High Cost Universal Service Plan and from the Small and Rural Incumbent Local Exchange Company Universal Service Plan.

(b) Requires the review and evaluation to include the commission's determination of appropriate 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. Requires the commission to conduct necessary proceedings to determine the appropriate monthly per line support amounts to be made available from those plans and the appropriate costs and revenues to be used to compute those amounts.

(c) Requires the commission, on or before November 15, 2006, to issue an order establishing the appropriate 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. Provides that the order takes effect September 1, 2007. Requires the commission to deliver the order to the lieutenant governor and the speaker of the house of representatives on the date the commission issues the order.

(d) Authorizes the commission to 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.

(e) Provides that this subsection and Subsections (a), (b), and (c) expire September 1, 2007.

Sec. 56.030. AFFIDAVITS OF COMPLIANCE. Requires a telecommunications provider that receives disbursements from the universal service fund, on or before September 1 of each year, to 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.

SECTION 13. Amends Subchapter B, Chapter 56, Utilities Code, by adding Section 56.031, as follows:

Sec. 56.031. COMMISSION REVIEW AND EVALUATION OF DISTANCE LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN

ENTITIES. (a) Requires the commission, on or before October 1, 2005, to 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) Requires the study to 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) Requires the commission to 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) Requires the commission, on or before November 15, 2006, to 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). Requires the commission to 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. Provides that this section expires September 1, 2007.

SECTION 14. Amends Chapter 56, Utilities Code, by adding Subchapter H, as follows:

SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. Requires the commission, by rule, to 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. Authorizes the commission to adopt rules to implement the program.

SECTION 15. Amends Section 57.048, Utilities Code, by adding Subsections (f)-(i), as follows:

(f) Authorizes a certificated telecommunications utility, notwithstanding any other provision of this title, to recover from the utility's customers an assessment imposed on the utility under this subchapter after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion, as determined by the comptroller of public accounts (comptroller). Authorizes a certificated telecommunications utility to recover only the amount of the assessment imposed after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion, as determined by the comptroller. Authorizes the utility to recover the assessment through a monthly billing process.

(g) Requires the comptroller to publish in the Texas Register the date on which the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion.

(h) Requires a certificated telecommunications utility that wants to recover the assessment under Subsection (f), not later than February 15 of each year, to file with the commission an affidavit or affirmation stating the amount that the utility paid to the comptroller under this section during the previous calendar year and the amount the utility recovered from its customers in cumulative payments during that year.

(i) Requires the commission to maintain the confidentiality of information the commission receives under this section that is claimed to be confidential for competitive purposes. Exempts the confidential information from disclosure under Chapter 552, Government Code.

SECTION 16. Amends Section 57.051, Utilities Code, as follows:

Sec. 57.051. SUNSET PROVISION. Provides that the Telecommunications Infrastructure Fund, rather than board, is subject to Chapter 325, Government Code (Texas Sunset Act), and that unless continued in existence as provided by that chapter, this subchapter expires, rather than the board is abolished and this subchapter expires, September 1, 2011, rather than 2005.

SECTION 17. Amends Section 58.258(a), Utilities Code, to prohibit an electing company's rates for private network services, notwithstanding the pricing flexibility authorized by this subtitle, from being increased before January 1, 2012, rather than on or before the sixth anniversary of the company's date of election, except that an electing company is authorized to increase a rate in accordance with the provisions of a customer specific contract.

SECTION 18. Amends Section 58.051(a), Utilities Code, to delete the provision stating that residential call waiting service is a basic network service.

SECTION 19. Amends Section 58.151, Utilities Code, as follows:

Sec. 58.151. SERVICES INCLUDED. Sets forth a date on which residential call waiting service ceases to be classified as a basic network service and a date on which certain directory assistance inquiries cease to be provided at no charge.

SECTION 20. Amends Subchapter G, Chapter 58, Utilities Code, by adding Section 58.268, as follows:

Sec. 58.268. CONTINUATION OF OBLIGATION. Requires an electing company, notwithstanding any other provision of this title, to continue to comply with this subchapter until January 1, 2012, regardless of the date the company elected under this chapter or any action taken in relation to that company under Chapter 65.

SECTION 21. Amends Section 59.077(a), Utilities Code, to prohibit an electing company's rates for private network services, notwithstanding the pricing flexibility authorized by this subtitle, from being increased before January 1, 2012, rather than on or before the sixth anniversary of the company's election date.

SECTION 22. Amends Subchapter D, Chapter 59, Utilities Code, by adding Section 59.083, as follows:

Sec. 59.083. CONTINUATION OF OBLIGATION. Requires an electing company, notwithstanding any other provision of this title, to continue to comply with this subchapter until January 1, 2012, regardless of the date the company elected under this chapter, or any action taken in relation to that company under Chapter 65.

SECTION 23. Amends Chapter 60, Utilities Code, by adding Subchapter J, as follows:

SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

Sec. 60.201. STATEMENT OF POLICY. Provides that 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. Provides that 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. Prohibits a telecommunications provider from unreasonably taking certain actions.

Sec. 60.204. INTERCONNECTION. (a) Requires a telecommunications provider to provide interconnection with other telecommunications providers' networks for the transmission and routing of telephone exchange service and exchange access.

(b) Requires a telecommunications provider to provide the interconnection at any technically feasible point within the provider's network and at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Requires the quality of the interconnection to be at least equal to the quality of the interconnection provided to itself, a subsidiary or affiliate of the provider, or any other party to which the provider provides interconnection.

Sec. 60.205. NUMBER PORTABILITY. Requires a telecommunications provider to provide number portability in accordance with federal requirements.

Sec. 60.206. DUTY TO NEGOTIATE. Requires a telecommunications provider to negotiate in good faith the terms and conditions of any agreement.

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

(b) Requires a telecommunications provider to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings and prohibits a provider from delaying that access unreasonably.

Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. Requires a telecommunications provider to 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. Requires a telecommunications provider to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 60.210. ACCESS TO SERVICES. Requires a telecommunications provider to provide access to certain services.

SECTION 24. Amends Subchapter A, Chapter 62, Utilities Code, by adding Section 62.003, as follows:

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO PROGRAMMING. (a) Provides that 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) Requires a provider of advanced services or local exchange telephone service, notwithstanding any other provision of this title, to 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 that 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) Requires a station either to be granted mandatory carriage or authorized to request retransmission consent with the provider to facilitate access by subscribers of a provider of advanced services or local exchange telephone service to the signals of local broadcast stations.

(d) Provides that 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) Requires a provider of advanced services or local exchange telephone service to transmit without degradation the signals a local broadcast station delivers to the provider. Prohibits the transmission quality offered a broadcast station from being lower than the quality made available to another broadcast station or video or audio programming source.

(f) Prohibits a provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers from discriminating 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 deleting, changing, or altering a copyright identification transmitted as part of a broadcast station's signal.

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

SECTION 25. (a) Amends Chapter 64, Utilities Code, by adding Subchapter E, as follows:

**SUBCHAPTER E. PROTECTIONS RELATED TO BROADBAND
NETWORKS AND ADVANCED SERVICES**

Sec. 64.201. **POLICY.** Establishes that it is the policy of this state to foster free market intermodal communications competition, including providing incentives to invest in advanced communications infrastructure, while still maintaining the "end to end" concept that facilitated the creation and growth of the Internet and still preserving customer choice in the Internet-enabled applications customers employ in association with broadband service.

Sec. 64.202. **PROHIBITION ON PREVENTION OR INHIBITION.** Prohibits a network provider that deploys broadband networks and provides advanced services from preventing or inhibiting the use of any application or product by customers in association with the use of an advanced service by blocking transmission and delivery of traffic to and from a particular port, Internet address, or Internet site, by limiting the speed available for use by any particular application, or by instituting technical limitations on the use of any Internet-enabled application. Authorizes a network provider to take reasonable and necessary actions to protect the network from harm and to prevent degradation of service to its general body of customers. Provides that this section does not prohibit a network provider from offering or supporting a service or application, including adware, spyware, malware, antivirus, antispam, content filtering, or parental controls or protections, if the customer has a choice between the network provider's service or application and those of an unaffiliated vendor.

Sec. 64.203. **PROHIBITION ON BLOCKING AND REDIRECTING.** Prohibits a network provider that deploys broadband networks and provides advanced services or an Internet service from knowingly or intentionally blocking or redirecting a customer's

attempt to access an Internet application or advanced service without notice to the customer unless certain circumstances exist.

Sec. 64.204. JURISDICTION. Provides that the commission has jurisdiction to enforce this subchapter.

(b) Requires the commission to conduct a study to determine whether Title 2, Utilities Code, adequately preserves customer choice in the Internet-enabled applications employed in association with broadband service and report its conclusions and recommendations to the legislature not later than January 1, 2007. Requires the study to include consultation with and comment from all interested parties.

SECTION 26. Amends Subtitle C, Title 2, Utilities Code, by adding Chapter 65, as follows:

CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE COMPANY MARKETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. STATEMENT OF POLICY. Sets forth that 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. Defines for purposes of this chapter "deregulated company," "market," "regulated company," "stand-alone residential local exchange voice service," and "transitioning company."

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

(b) Authorizes the commission to 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) Authorizes the commission to collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter.

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

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

[Reserves Sections 65.006-65.050 for expansion.]

SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

Sec. 65.051. MARKETS DEREGULATED. (a) Provides that 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) Provides that 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) Requires the commission, except as provided by Subsection (f), to determine whether each market of an incumbent local exchange company should remain regulated on and after January 1, 2006, and issue a final order classifying the company in accordance with this section effective January 1, 2006.

(b) Prohibits the commission, in making a determination under Subsection (a), from determining that a market should remain regulated if certain population characteristics in the area included in the market exist.

(c) Requires the commission to issue an order classifying an incumbent local exchange company as a deregulated company that is subject to Subchapter C if the company does not have any markets in which the population in the area included in the market is less than 30,000 and the commission does not determine that a market of the company should remain regulated on and after January 1, 2006.

(d) Requires the commission, regardless of the population in the area included in an incumbent local exchange company's markets, to 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) Requires the commission to 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. Provides that 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) Requires the commission, not later than November 30, 2006, to 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. Requires the commission by rule to determine the market test to be applied in determining whether the market should remain regulated. Requires the commission, if it 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, to issue an order reclassifying the company appropriately.

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

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

(c) Requires the commission, if an incumbent local exchange company makes an election under this section, to 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. Provides that 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) Authorizes a transitioning or regulated company, after July 1, 2007, to petition the commission to deregulate a market that the commission previously determined should remain regulated.

(b) Requires the commission, if it 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, to issue an order reclassifying the company appropriately.

Sec. 65.055. COMMISSION AUTHORITY TO REREGULATE CERTAIN MARKETS. (a) Provides that 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) Authorizes the commission, on its own motion or on a complaint that it considers to have merit, to determine that a market that was previously deregulated should again be subject to regulation.

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

[Reserves Sections 65.056-65.100 for expansion.]

SUBCHAPTER C. DEREGULATED COMPANY

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

(b) Requires the commission to 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) Provides that 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 retains the obligations of a provider of last resort under Chapter 54; is subject to certain provisions in the same manner as an incumbent local exchange company that is not deregulated; and may not increase the company's rates for stand-alone residential local exchange voice service before the date the commission order issued under Section 56.029(c) takes effect, regardless of whether the company is an electing company under Chapter 58.

(b) Requires a deregulated company, in each market, to make available to all customers uniformly throughout that market the same price for all services and products. Provides that for the purposes of this subsection, the requirement for the same price for all services and products excludes promotional offers made to former customers in which the promotional price and terms have a duration of six months or less.

[Reserves Sections 65.103-65.150 for expansion.]

SUBCHAPTER D. TRANSITIONING COMPANY

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY. Provides that 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. Provides that if there is a conflict between this chapter and the other applicable provisions of this title, this chapter controls.

Sec. 65.152. GENERAL REQUIREMENTS. (a) Authorizes a transitioning company to take certain actions.

(b) Prohibits a transitioning company from being 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) Requires a transitioning company, in a market that remains regulated, to 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) Requires a transitioning company, in a market that is deregulated, to price the company's retail services in a certain manner.

(c) Requires a transitioning company, in each deregulated market, to make available to all customers uniformly throughout that market the same price for all services and products. Provides that for the purposes of this subsection, the requirement for the same price for all services and products excludes promotional offers made to former customers in which the promotional price and terms have a duration of six months or less.

(d) Prohibits a transitioning company, in any market, regardless of whether regulated or deregulated, from taking certain actions.

[Reserves Sections 65.154-65.200 for expansion.]

SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY DEREGULATED COMPANY. (a) Requires the company, on the date the last market of an incumbent local exchange company is deregulated, to 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) Requires a deregulated company, after reducing the rates under Subsection (a), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to 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) Requires a transitioning company that has more than three million access lines in service in this state on January 1, 2006, notwithstanding any other provision of this title, to take certain actions relating to both the company's originating and terminating per minute of use switched access rates in each market, and the company's respective federal originating and terminating per minute of use switched access rates.

(b) Requires a transitioning company, after reducing the rates under Subsection (a), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to 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) Requires 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, notwithstanding any other provision of this title, to reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) Requires the transitioning company on July 1, 2006, to 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 certain amounts.

(c) Requires the transitioning company, on July 1, 2007, to 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 certain amounts.

(d) Requires the transitioning company, on July 1, 2008, to 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 certain amounts.

(e) Requires the transitioning company, on July 1, 2009, to 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.

(f) Requires a transitioning company, after reducing the rates under Subsection (e), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to 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) Requires a company that is classified as a transitioning company after January 1, 2006, notwithstanding any other provision of this title, to reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) Requires the company, on the date the company is classified as a transitioning company, to 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 certain amounts.

(c) Requires the company, on the first anniversary of the date the company is classified as a transitioning company, to 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 certain amounts.

(d) Requires the company, on the second anniversary of the date the company is classified as a transitioning company, to 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 certain amounts.

(e) Requires the company, on the third anniversary of the date the company is classified as a transitioning company, to 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.

(f) Requires a transitioning company, after reducing the rates under Subsection (e), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to 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) Prohibits a company, after a deregulated or transitioning company reduces the company's rates under this subchapter, from increasing those rates above the applicable rates prescribed by this subchapter.

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

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

[Reserves Sections 65.206-65.250 for expansion.]

SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 65.251. OVERSIGHT COMMITTEE. (a) Defines "committee."

(b) Sets forth the composition of the telecommunications competitiveness legislative oversight committee (committee).

(c) Provides that an appointed member of the committee serves at the pleasure of the appointing official.

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

(b) Requires the commission to collect and compile information from all telecommunications providers as necessary to conduct a hearing under this section; and maintain the confidentiality of information collected under this section that is claimed to be confidential for competitive purposes.

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

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

(e) Requires the committee to 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) Authorizes the committee to request reports and other information from the commission as necessary to carry out this subchapter.

(g) Requires the committee, not later than November 15 of each even-numbered year, to report to the governor, lieutenant governor, and speaker of the house of

representatives on the committee's activities under this subchapter. Sets forth information that must be included in the report.

SECTION 27. Amends Subtitle C, Title 2, Utilities Code, by adding Chapter 66 , as follows:

CHAPTER 66. STATEWIDE CABLE AND VIDEO FRANCHISE

Sec. 66.001. STATEMENT OF STATE POLICY. (a) Sets forth that it is the policy of this state to promote competition among providers of cable and video services so that customers may benefit from innovations in service quality and market-based pricing.

(b) Requires the commission to be designated as the franchising authority for a statewide franchise.

SECTION 28. Repealers: Sections 57.048(c) and (d), Utilities Code;
Subchapters B-F, Chapter 62, Utilities Code; and
Chapters 61 and 63, Utilities Code.

SECTION 29. Requires the comptroller, if on August 31, 2005, the assessment prescribed by Section 57.048, Utilities Code, is imposed at a rate of less than 1.25 percent, to, on September 1, 2005, reset the rate of the assessment to 1.25 percent.

SECTION 29. Effective date: September 1, 2005, or on the 91st day after the last day of the legislative session.