

By: Fraser

S.B. No. 21

A BILL TO BE ENTITLED

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AN ACT

relating to furthering competition in the communications industry.

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

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:

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

3 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

1 appropriate framework to support the deployment of BPL.

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

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

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

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

19 Sec. 43.003. DEFINITIONS. In this chapter:

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

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

26 (3) "BPL operator" means an entity that owns or
27 operates a BPL system on the electric power lines and related

1 facilities of an electric utility.

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

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

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

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

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

22 [Sections 43.004-43.050 reserved for expansion]

23 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

24 Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. An affiliate of
25 an electric utility or a person unaffiliated with an electric
26 utility may own, construct, maintain, and operate a BPL system and
27 provide BPL services on an electric utility's electric delivery

1 system consistent with the requirements of this chapter. Nothing
2 in this chapter shall prohibit an entity defined in Section
3 11.003(9) from providing BPL service or owning and operating a BPL
4 system. Nothing in this chapter shall prohibit an electric utility
5 from providing construction or maintenance services to a BPL
6 operator or BPL ISP provided that the costs of these services are
7 properly accounted for between the electric utility and the BPL
8 operator or BPL ISP.

9 Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM.

10 (a) An electric utility may elect to:

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

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

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

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

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

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

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

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

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

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

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

18 Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION
19 REQUIRED. Because BPL systems provide benefits to electric
20 delivery systems, the installation of a BPL system on an electric
21 delivery system shall not require the electric utility or the owner
22 of the BPL system or an entity defined in Section 11.003(9) to
23 obtain or expand easements or other rights-of-way for the BPL
24 system or to give additional consideration as a result of the
25 installation or the operation of a BPL system. For purposes of this
26 section, installation of a BPL system shall be deemed to be
27 consistent with installation of an electric delivery system.

1 Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.

2 An electric utility that allows the installation and operation of a
3 BPL system on its electric delivery system shall employ all
4 reasonable measures to ensure that the operation of the BPL system
5 does not interfere with or diminish the reliability of the
6 utility's electric delivery system. Should a disruption in the
7 provision of electric service occur, the electric utility shall be
8 governed by the terms and conditions of the retail electric
9 delivery service tariff. At all times, the provision of broadband
10 services shall be secondary to the reliable provision of electric
11 delivery services.

12 [Sections 43.056-43.100 reserved for expansion]

13 SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY
14 ELECTRIC UTILITY

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

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

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

27 (1) require an electric utility, either through an

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

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

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

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

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

24 Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND
25 UTILITY APPLICATIONS. (a) Where an electric utility permits the
26 installation of a BPL system on its electric delivery system under
27 Section 43.052(a), the electric utility's investment in that BPL

1 system to directly support the BPL electric utility applications
2 and other BPL services consumed by the electric utility that are
3 used and useful in providing electric utility service shall be
4 eligible for inclusion in the electric utility's invested capital,
5 and any fees or operating expenses that are reasonable and
6 necessary shall be eligible for inclusion as operating expenses for
7 purposes of any proceeding under Chapter 36. The invested capital
8 and expenses described in this section must be allocated to the
9 customer classes directly receiving the services.

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

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

18 [Sections 43.103-43.150 reserved for expansion]

19 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

20 Sec. 43.151. AFFILIATES OF ELECTRIC UTILITY. (a) Subject
21 to the limitations of this chapter, an electric utility may have a
22 full or partial ownership interest in a BPL operator or a BPL ISP.
23 Whether a BPL operator or a BPL ISP is an affiliate of the electric
24 utility shall be determined under Section 11.003(2) or Section
25 11.006.

26 (b) Neither a BPL operator nor a BPL ISP shall be considered
27 a "competitive affiliate" of an electric utility as that term is

1 defined in Section 39.157.

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

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

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

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

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

1 necessity in this state.

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

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

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

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

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

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

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

23 SECTION 6. Subsections (a), (b), and (c), Section 54.204,
24 Utilities Code, are amended to read as follows:

25 (a) Notwithstanding Section 14.008, a municipality or a
26 municipally owned utility may not discriminate against a
27 certificated telecommunications provider [~~telecommunications~~

1 ~~utility~~] regarding:

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

4 (2) access to a building; or

5 (3) a municipal utility pole attachment rate or term[~~7~~
6 ~~to the extent not addressed by federal law~~].

7 (b) In granting consent, a franchise, or a permit for the
8 use of a public street, alley, or right-of-way within its municipal
9 boundaries, a municipality or municipally owned utility may not
10 discriminate in favor of or against a certificated
11 telecommunications provider [~~telecommunications utility that holds~~
12 ~~or has applied for a certificate of convenience and necessity, a~~
13 ~~certificate of operating authority, or a service provider~~
14 ~~certificate of operating authority~~] regarding:

15 (1) municipal utility pole attachment or underground
16 conduit rates or terms[~~7~~, ~~to the extent not addressed by federal~~
17 ~~law~~]; or

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

23 (A) money;

24 (B) services;

25 (C) use of facilities; or

26 (D) another kind of consideration.

27 (c) A municipality or a municipally owned [~~Notwithstanding~~

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

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

18 (b) Except as specifically determined otherwise by the
19 commission under this subchapter or Subchapter G, the holder of a
20 certificate of convenience and necessity, or the holder of a
21 certificate of operating authority issued under Chapter 65, for an
22 area has the obligations of a provider of last resort regardless of
23 whether another provider has a certificate of operating authority
24 or service provider certificate of operating authority for that
25 area.

26 (c) A certificate holder may meet the holder's provider of
27 last resort obligations using any available technology.

1 Notwithstanding any provision of Chapter 56, the commission may
2 adjust disbursements from the universal service fund to companies
3 using technologies other than traditional wireline or landline
4 technologies to meet provider of last resort obligations. As
5 determined by the commission, the certificate holder shall meet
6 minimum quality of service standards, including standards for 911
7 service, comparable to those established for traditional wireline
8 or landline technologies and shall offer services at a price
9 comparable to the monthly service charge for comparable services in
10 that exchange or the provider's nearest exchange.

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

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

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

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

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

27 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The

1 commission shall adopt and enforce rules requiring local exchange
2 companies to establish a universal service fund to:

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

6 (2) reimburse the telecommunications carrier that
7 provides the statewide telecommunications relay access service
8 under Subchapter D;

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

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

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

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

22 (7) reimburse a designated provider under Subchapter
23 F; ~~and~~

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

26 (9) finance the program established under Subchapter
27 H.

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

3 (g) This section expires August 31, 2007.

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

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

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

11 Sec. 56.029. UNIVERSAL SERVICE FUND STUDY; ATTESTATION
12 REQUIREMENT. (a) The commission shall conduct a review and
13 evaluation of whether the universal service fund accomplishes the
14 fund's purposes as prescribed by Section 56.021 and the
15 commission's final orders issued in Docket No. 18515 and Docket No.
16 18516. The evaluation shall determine whether the fund's purposes
17 have been sufficiently achieved, whether the fund should be
18 abolished or phased out, whether the fund should be brought within
19 the state treasury, and whether the entities receiving those funds
20 are spending the money for its intended purposes. The evaluation
21 must include a forward-looking, comprehensive assessment of the
22 appropriate use of the money in the fund and the manner in which
23 that money is collected and disbursed.

24 (b) Not later than January 1, 2006, the commission shall
25 require telecommunications providers receiving disbursements under
26 the universal service fund to provide to the commission the
27 information that the commission determines is necessary to

1 discharge the commission's duties under this section, including
2 information necessary to review and evaluate how money is collected
3 for the universal service fund and expended.

4 (c) Information provided under Subsection (b) is
5 confidential and is not subject to disclosure under Chapter 552,
6 Government Code.

7 (d) The commission may classify telecommunications
8 providers as the commission considers appropriate for efficiency
9 and may permit providers to share the cost of developing
10 information the commission determines is necessary to discharge the
11 commission's responsibilities under this section.

12 (e) Not later than January 5, 2007, the commission shall
13 deliver to the legislature a report for the legislature's revision
14 and approval on the results of the review and evaluation. The
15 report must:

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

18 (2) include the commission's assessment of the
19 universal service fund, including:

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

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

25 (C) any recommendations the commission has in
26 relation to accountability for use of the money in the fund,
27 including the usefulness of the attestation required by Subsection

1 (g); and

2 (3) include recommendations that ensure that a
3 telecommunications provider's support from the universal service
4 fund for a geographic area is consistent with Section 56.021 and the
5 commission's final orders issued in Docket No. 18515 and Docket No.
6 18516.

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

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

18 (h) In addition to the study required by this section, the
19 commission shall compile information necessary to determine
20 whether the current funding mechanism for the universal service
21 fund will be adequate in the future to sustain the purposes for
22 which the fund was created considering the development of new
23 technologies that are not subject to the existing funding mechanism
24 and the shift in jurisdictional control from this state to the
25 federal government. Not later than January 5, 2007, the commission
26 shall deliver to the legislature a report on this issue. If the
27 commission determines that the existing funding mechanism is not

1 adequate, or proposes to change the manner or level of current
2 funding, the commission must include recommendations for
3 alternative funding and basic service pricing methods that will be
4 adequate and are consistent with a policy of technology and
5 competitive neutrality in the assessment of fees and other
6 state-imposed economic burdens.

7 (i) This section expires September 1, 2007.

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

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

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

27 Sec. 56.032. COMMISSION REVIEW AND EVALUATION OF DISTANCE

1 LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN
2 ENTITIES. (a) On or before October 1, 2005, the commission shall
3 initiate a study for the purpose of evaluating a new funding
4 mechanism to provide financial support to all telecommunications
5 utilities that provide discounts or private network services at
6 prescribed rates to the entities identified in Subchapter B,
7 Chapter 57, Subchapter G, Chapter 58, and Subchapter D, Chapter 59.

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

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

22 (d) On or before November 15, 2006, the commission shall
23 issue a report to the speaker of the house of representatives and
24 the lieutenant governor on the viability of establishing a new
25 program or funding mechanism through which support shall be funded
26 and disbursed in exchange for providing discounts to the entities
27 listed in Subsection (b). The commission shall include in the

1 report its findings regarding the cost of any new funding
2 mechanism, the benefit of establishing a new program or funding
3 mechanism, and any other relevant information the commission deems
4 appropriate to assist the legislature in its review of discounts
5 for distance learning and private network services.

6 (e) This section expires September 1, 2007.

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

9 SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

10 Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The
11 commission by rule shall establish a program to provide from the
12 universal service fund financial assistance for a free telephone
13 service for blind and visually impaired persons that offers the
14 text of newspapers using synthetic speech. The commission may
15 adopt rules to implement the program.

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

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

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

24 (2) residential tone dialing service;

25 (3) lifeline and tel-assistance service;

26 (4) service connection for basic residential
27 services;

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

3 (6) private pay telephone access service;

4 (7) call trap and trace service;

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

8 (9) mandatory residential extended area service
9 arrangements; and

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (5) "1-plus" intraLATA message toll services;

18 (6) 0+ and 0- operator services;

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

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

23 (B) for an electing company subject to Section
24 58.301, prices for residential call forwarding and other custom
25 calling services shall be capped at the prices in effect on
26 September 1, 1999, until the electing company implements the
27 reduction in switched access rates described by Section 58.301(2);

1 (8) call return, caller identification, and call
2 control options, except that, for an electing company subject to
3 Section 58.301, prices for residential call return, caller
4 identification, and call control options shall be capped at the
5 prices in effect on September 1, 1999, until the electing company
6 implements the reduction in switched access rates described by
7 Section 58.301(2);

8 (9) central office based PBX-type services;

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

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

17 (12) new services;

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

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

24 (15) 800 and foreign exchange services;

25 (16) private line service;

26 (17) special access service;

27 (18) services from public pay telephones;

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

2 (20) 911 services provided to a local authority that
3 are available from another provider;

4 (21) speed dialing;

5 (22) three-way calling; and

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

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

14 (a) Notwithstanding the pricing flexibility authorized by
15 this subtitle, an electing company's rates for private network
16 services may not be increased [~~on or~~] before January 1, 2012 [~~the~~
17 ~~sixth anniversary of the company's date of election~~]. However, an
18 electing company may increase a rate in accordance with the
19 provisions of a customer specific contract.

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

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

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

27 or

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

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

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

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

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

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

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

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

21 SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

22 Sec. 60.201. STATEMENT OF POLICY. It is the policy of this
23 state that providers of telecommunications services operate in a
24 manner that is consistent with minimum standards to provide
25 customers with continued competitive choices.

26 Sec. 60.202. APPLICABILITY OF SUBCHAPTER. A provision of
27 this subchapter applies only to the extent the provision has not

1 been preempted by federal law or a rule, regulation, or order of the
2 Federal Communications Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 19 (1) 911 and E-911 service;
20 (2) directory assistance service to allow other
21 telecommunications providers' customers to obtain telephone
22 numbers; and
23 (3) operator call completion service.

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

26 Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO
27 PROGRAMMING. (a) This section applies only to a provider of

1 advanced services or local exchange telephone service that has more
2 than 500,000 access lines in service in this state and that delivers
3 audio programming with localized content or video programming to
4 its subscribers.

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

14 (c) To facilitate access by subscribers of a provider of
15 advanced services or local exchange telephone service to the
16 signals of local broadcast stations, a station either shall be
17 granted mandatory carriage or may request retransmission consent
18 with the provider.

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

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

1 audio programming source.

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

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

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

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

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

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

1 CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE

2 COMPANY MARKETS

3 SUBCHAPTER A. GENERAL PROVISIONS

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

9 Sec. 65.002. DEFINITIONS. In this chapter:

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

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

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

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

21 (A) residential tone dialing service;

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

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

27 (D) at the election of the incumbent local

1 exchange company, mandatory residential extended area service
2 arrangements, mandatory residential extended metropolitan service
3 or other mandatory residential toll-free calling arrangements,
4 mandatory expanded local calling service arrangements, or another
5 service that a company is required under a tariff to provide to a
6 customer who subscribes or may subscribe to basic network services;
7 and

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

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

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

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

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

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

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

27 Sec. 65.004. INFORMATION. (a) The commission may collect

1 and compile information from all telecommunications providers as
2 necessary to implement and enforce this chapter.

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

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

11 [Sections 65.006-65.050 reserved for expansion]

12 SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

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

18 (b) A market of an incumbent local exchange company in which
19 the population in the area included in the market is less than
20 30,000 is deregulated on January 1, 2007, unless the commission
21 determines under Section 65.052(f) that the market should remain
22 regulated.

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

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

1 1, 2006; and

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

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

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

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

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

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

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

26 (c) The commission shall issue an order classifying an
27 incumbent local exchange company as a deregulated company that is

1 subject to Subchapter C if:

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

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

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

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

22 (f) Not later than November 30, 2006, the commission shall
23 determine whether a market of an incumbent local exchange company
24 in which the population in the area included in the market is less
25 than 30,000 should remain regulated on or after January 1, 2007.
26 The commission by rule shall determine the market test to be applied
27 in determining whether the market should remain regulated. If the

1 commission does not determine that the market should remain
2 regulated on or after January 1, 2007, and the deregulation of that
3 market results in a transitioning or regulated company no longer
4 meeting the definition of a transitioning or regulated company, as
5 appropriate, the commission shall issue an order reclassifying the
6 company appropriately.

7 Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS.

8 (a) Notwithstanding Section 65.052, an incumbent local exchange
9 company may elect to have all of the company's markets remain
10 regulated on and after January 1, 2006.

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

14 (c) If an incumbent local exchange company makes an election
15 under this section, the commission shall issue an order classifying
16 the company as a regulated company that is subject to the provisions
17 of this title that applied to the company on September 1, 2005.
18 This subsection does not affect the authority of a regulated
19 company to elect under Chapter 58 or 59 after January 1, 2005, and
20 to be regulated under the chapter under which the company elected.

21 Sec. 65.054. PETITION FOR DEREGULATION. (a) After July 1,
22 2007, a company may petition the commission to deregulate a market
23 that the commission previously determined should remain regulated.

24 (b) If the commission deregulates a market under this
25 section and the deregulation results in the transitioning or
26 regulated company no longer meeting the definition of a
27 transitioning or regulated company, as appropriate, the commission

1 shall issue an order reclassifying the company appropriately.

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

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

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

12 [Sections 65.056-65.100 reserved for expansion]

13 SUBCHAPTER C. DEREGULATED COMPANY

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

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

23 Sec. 65.102. REQUIREMENTS. (a) A deregulated company that
24 holds a certificate of operating authority issued under this
25 subchapter is a nondominant carrier governed in the same manner as a
26 holder of a certificate of operating authority issued under Chapter
27 54, except that the deregulated company:

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

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

6 (A) Sections 54.156, 54.158, and 54.159;

7 (B) Section 55.012; and

8 (C) Chapter 60; and

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

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

20 [Sections 65.103-65.150 reserved for expansion]

21 SUBCHAPTER D. TRANSITIONING COMPANY

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

1 subchapter controls.

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

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

7 (2) introduce a new service in a market in the manner
8 provided by Section 58.153 one day after providing an informational
9 notice as required by that section.

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

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

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

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

23 (2) for basic local telecommunications service, at any
24 price higher than the lesser of the service's long run incremental
25 cost or the tariffed price on the date that market was deregulated,
26 provided that the company may not increase the company's rates for
27 stand-alone residential local exchange voice service before the

1 date that the commission has the opportunity to revise the monthly
2 per line support under the Texas High Cost Universal Service Plan
3 pursuant to Section 56.031, regardless of whether the company is an
4 electing company under Chapter 58.

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

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

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

15 (2) establish a retail rate for a basic or non-basic
16 service in a deregulated market that is subsidized either directly
17 or indirectly by a basic or non-basic service provided in an
18 exchange that is not deregulated; or

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

21 (e) A rate that meets the pricing requirements in Subsection
22 (b) shall be deemed compliant with Subsection (d)(2).

23 [Sections 65.154-65.200 reserved for expansion]

24 SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

25 Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY
26 DEREGULATED COMPANY. (a) On the date the last market of an
27 incumbent local exchange company is deregulated, the company shall

1 reduce both the company's originating and terminating per minute of
2 use switched access rates in each market to parity with the
3 company's respective federal originating and terminating per
4 minute of use switched access rates.

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

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

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

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

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

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

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

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

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

26 (b) On July 1, 2006, the transitioning company shall reduce
27 both the company's originating and terminating per minute of use

1 switched access rates in each market by an amount equal to the
2 lesser of:

3 (1) 25 percent of the difference in the company's rates
4 in effect on June 30, 2006, and the company's respective federal
5 originating and terminating per minute of use switched access rates
6 in effect on that date; or

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

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

15 (1) 25 percent of the difference in the company's rates
16 in effect on June 30, 2006, and the company's respective federal
17 originating and terminating per minute of use switched access rates
18 in effect on that date; or

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

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

27 (1) 25 percent of the difference in the company's rates

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

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

8 (e) On July 1, 2009, and each succeeding year thereafter on
9 July 1, the transitioning company shall reduce both the company's
10 originating and terminating per minute of use switched access rates
11 in each market by an amount derived by multiplying the difference in
12 the company's rates in effect on June 30, 2006, and the company's
13 respective federal originating and terminating per minute of use
14 switched access rates in effect on that date by a percentage derived
15 by dividing the number of the company's markets that were
16 deregulated in the prior 12 months by the total number of the
17 company's markets on December 30, 2005, except that a transitioning
18 company shall be required to reduce both the company's originating
19 and terminating per minute of use switched access charges to parity
20 with the company's respective federal originating and terminating
21 per minute of use switched access charges if more than 75 percent of
22 the transitioning company's markets are not regulated on July 1 of
23 2009 or any succeeding year.

24 (f) After reducing the rates under Subsection (e), a
25 transitioning company shall maintain parity with the company's
26 federal originating and terminating per minute of use switched
27 access rates. If the company's federal originating and terminating

1 per minute of use switched access rates are changed, the company
2 shall change the company's per minute of use switched access rates
3 in each market as necessary to re-achieve parity with the company's
4 federal originating and terminating per minute of use switched
5 access rates.

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

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

16 (1) 25 percent of the difference in the company's rates
17 in effect on the day before the date the company was classified, and
18 the company's respective federal originating and terminating per
19 minute of use switched access rates in effect on that date; or

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

25 (c) On the first anniversary of the date the company is
26 classified as a transitioning company, the company shall reduce
27 both the company's originating and terminating per minute of use

1 switched access rates in each market by an amount equal to the
2 lesser of:

3 (1) 25 percent of the difference in the company's rates
4 in effect on the day before the date the company was classified, and
5 the company's respective federal originating and terminating per
6 minute of use switched access rates in effect on that date; or

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

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

16 (1) 25 percent of the difference in the company's rates
17 in effect on the day before the date the company was classified, and
18 the company's respective federal originating and terminating per
19 minute of use switched access rates in effect on that date; or

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

24 (e) On the third anniversary of the date the company is
25 classified as a transitioning company and each anniversary
26 thereafter, the company shall reduce both the company's originating
27 and terminating per minute of use switched access rates in each

1 market by an amount derived by multiplying the difference in the
2 company's rates in effect on the day before the date the company was
3 classified as a transitioning company, and the company's respective
4 federal originating and terminating per minute of use switched
5 access rates in effect on that date by a percentage derived by
6 dividing the number of the company's markets that were deregulated
7 in the prior 12 months by the total number of the company's markets
8 on December 30, 2005, except that a transitioning company shall be
9 required to reduce both the company's originating and terminating
10 per minute of use switched access charges to parity with the
11 company's respective federal originating and terminating per
12 minute of use switched access charges if more than 75 percent of the
13 transitioning company's markets are not regulated on July 1 of 2009
14 or any succeeding year.

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

24 Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY.

25 (a) After a deregulated or transitioning company reduces the
26 company's rates under this subchapter, the company may not increase
27 those rates above the applicable rates prescribed by this

1 subchapter.

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

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

10 [Sections 65.206-65.250 reserved for expansion]

11 SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

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

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

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

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

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

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

24 (5) the chief executive of the Office of Public
25 Utility Counsel.

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

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

5 (b) The commission shall:

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

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

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

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

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

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

25 (g) Not later than November 15 of each even-numbered year,
26 the committee shall report to the governor, lieutenant governor,
27 and speaker of the house of representatives on the committee's

1 activities under this subchapter. The report must include:

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

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

7 SECTION 25. Subtitle C, Title 2, Utilities Code, is amended
8 by adding Chapter 66 to read as follows:

9 CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

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

13 Sec. 66.002. DEFINITIONS. In this chapter:

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

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

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

25 (4) "Communications network" means a component or
26 facility that is, wholly or partly, physically located within a
27 public right-of-way and that is used to provide video programming,

1 cable, voice, or data services.

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

9 (6)(A) "Gross revenues" means all consideration of any
10 kind or nature including without limitation cash, credits,
11 property, and in-kind contributions (services or goods) derived by
12 the holder of a state-issued certificate of franchise authority
13 from the operation of the cable service provider's or the video
14 service provider's network to provide cable service or video
15 service within the municipality. Gross revenue shall include all
16 consideration paid to the holder of a state-issued certificate of
17 franchise authority and its affiliates (to the extent either is
18 acting as a provider of a cable service or video service as
19 authorized by this chapter), which shall include but not be limited
20 to the following: (i) all fees charged to subscribers for any and
21 all cable service or video service provided by the holder of a
22 state-issued certificate of franchise authority; (ii) any fee
23 imposed on the holder of a state-issued certificate of franchise
24 authority by this chapter that is passed through and paid by
25 subscribers (including without limitation the franchise fee set
26 forth in this chapter); and (iii) compensation received by the
27 holder of a state-issued certificate of franchise authority or its

1 affiliates that is derived from the operation of the holder of a
2 state-issued certificate of franchise authority's network to
3 provide cable service or video service with respect to commissions
4 that are paid to the holder of a state-issued certificate of
5 franchise authority as compensation for promotion or exhibition of
6 any products or services on the holder of a state-issued
7 certificate of franchise authority's network, such as a "home
8 shopping" or a similar channel, subject to Paragraph (B)(v). Gross
9 revenue includes a pro rata portion of all revenue derived by the
10 holder of a state-issued certificate of franchise authority or its
11 affiliates pursuant to compensation arrangements for advertising
12 derived from the operation of the holder of a state-issued
13 certificate of franchise authority's network to provide cable
14 service or the video service within a municipality, subject to
15 Paragraph (B)(iii). The allocation shall be based on the number of
16 subscribers in the municipality divided by the total number of
17 subscribers in relation to the relevant regional or national
18 compensation arrangement. Advertising commissions paid to third
19 parties shall not be netted against advertising revenue included in
20 gross revenue. Revenue of an affiliate derived from the
21 affiliate's provision of cable service or the video service shall
22 be gross revenue to the extent the treatment of such revenue as
23 revenue of the affiliate and not of the holder of a state-issued
24 certificate of franchise authority has the effect (whether
25 intentional or unintentional) of evading the payment of fees which
26 would otherwise be paid to the municipality. In no event shall
27 revenue of an affiliate be gross revenue to the holder of a

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

3 (B) For purposes of this section, "gross
4 revenues" does not include:

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

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

12 (iii) refunds, rebates, or discounts made
13 to subscribers, leased access providers, advertisers, or a
14 municipality;

15 (iv) any revenues from services classified
16 as non-cable service under federal law including without limitation
17 revenue received from telecommunications services; revenue
18 received from information services (but not excluding Internet
19 protocol cable services or Internet protocol video services); and
20 any other revenues attributed by the holder of a state-issued
21 certificate of franchise authority to non-cable service in
22 accordance with Federal Communications Commission or commission
23 rules, regulations, standards, or orders;

24 (v) any revenue paid by subscribers to home
25 shopping programmers directly from the sale of merchandise through
26 any home shopping channel offered as part of the cable services or
27 video services, but not excluding any commissions that are paid to

1 the holder of a state-issued certificate of franchise authority as
2 compensation for promotion or exhibition of any products or
3 services on the holder of a state-issued certificate of franchise
4 authority's network, such as a "home shopping" or a similar
5 channel;

6 (vi) the sale of cable services or video
7 services for resale in which the purchaser is required to collect
8 this chapter's fees from the purchaser's customer. Nothing under
9 this chapter is intended to limit state's rights pursuant to 47
10 U.S.C. Section 542(h);

11 (vii) the provision of cable services or
12 video services to customers at no charge, as required or allowed by
13 this chapter, including without limitation the provision of cable
14 services or video services to public institutions, as required or
15 permitted in this chapter, including without limitation public
16 schools or governmental entities, as required or permitted in this
17 chapter;

18 (viii) any tax of general applicability
19 imposed upon the holder of a state-issued certificate of franchise
20 authority or upon subscribers by a city, state, federal, or any
21 other governmental entity and required to be collected by the
22 holder of a state-issued certificate of franchise authority and
23 remitted to the taxing entity (including, but not limited to, sales
24 and use tax, gross receipts tax, excise tax, utility users tax,
25 public service tax, communication taxes, and fees not imposed by
26 this chapter);

27 (ix) any forgone revenue from the holder of

1 a state-issued certificate of franchise authority's provision of
2 free or reduced cost cable services or video services to any person
3 including without limitation employees of the holder of a
4 state-issued certificate of franchise authority, to the
5 municipality and other public institutions or other institutions as
6 allowed in this chapter; provided, however, that any forgone
7 revenue which the holder of a state-issued certificate of franchise
8 authority chooses not to receive in exchange for trades, barters,
9 services, or other items of value shall be included in gross
10 revenue;

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

15 (xi) directory or Internet advertising
16 revenue including, but not limited to, yellow pages, white pages,
17 banner advertisement, and electronic publishing; and

18 (xii) reimbursement by programmers of
19 marketing costs incurred by the holder of a state-issued franchise
20 for the introduction of new programming that exceed the actual
21 costs.

22 (C) For purposes of this definition, a provider's
23 network consists solely of the optical spectrum wavelengths,
24 bandwidth, or other current or future technological capacity used
25 for the transmission of video programming over wireline directly to
26 subscribers within the geographic area within the municipality as
27 designated by the provider in its franchise.

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

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

8 (9) "Video programming" means programming provided
9 by, or generally considered comparable to programming provided by,
10 a television broadcast station, as set forth in 47 U.S.C. Section
11 522(20).

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

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

23 Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE
24 OR VIDEO SERVICE. (a) An entity or person seeking to provide cable
25 service or video service in this state after September 1, 2005,
26 shall file an application for a state-issued certificate of
27 franchise authority with the commission as required by this

1 section. An entity providing cable service or video service under a
2 franchise agreement with a municipality is not subject to this
3 subsection with respect to such municipality until the franchise
4 agreement expires.

5 (b) The commission shall issue a certificate of franchise
6 authority to offer cable service or video service within 14
7 business days of receipt of an affidavit submitted by the applicant
8 and signed by an officer or general partner of the applicant
9 affirming:

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

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

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

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

1 area to be served by the applicant; and

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

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

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

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

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

16 (d) The certificate of franchise authority issued by the
17 commission is fully transferable to any successor in interest to
18 the applicant to which it is initially granted. A notice of
19 transfer shall be filed with the commission and the relevant
20 municipality within 14 business days of the completion of such
21 transfer.

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

25 Sec. 66.004. ELIGIBILITY FOR COMMISSION-ISSUED FRANCHISE.

26 (a) A cable service provider or a video service provider that
27 currently has or had previously received a franchise to provide

1 cable service or video service with respect to such municipalities
2 is not eligible to seek a state-issued certificate of franchise
3 authority under this chapter until the later of January 1, 2008, or
4 the expiration date of the existing franchise agreement.

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

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

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

1 2005, shall continue in full force and effect, without the
2 necessity for renewal, extension, or continuance, and shall be paid
3 and performed by the holder of a state-issued certificate of
4 franchise authority, and shall apply as though the revenue
5 generated by the holder of a state-issued certificate of franchise
6 authority continued to be generated pursuant to the permit or
7 franchise issued by the prior local franchising authority or
8 municipality within the geographic area to which the prior permit
9 or franchise applies. It shall be a condition to the issuance and
10 continuance of a state-issued certificate of franchise authority
11 that the private contractual rights and obligations herein
12 described continue to be honored, paid, or performed to the same
13 extent as though the cable service provider continued to operate
14 under its prior franchise or permit, for the duration of such
15 state-issued certificate of franchise authority and any renewals or
16 extensions thereof, and that the applicant so agrees. Any person,
17 firm, partnership, corporation, or other entity holding or claiming
18 rights herein reserved may enforce same by an action brought in a
19 court of competent jurisdiction.

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

1 (b) The franchise fee payable under this section is to be
2 paid quarterly, within 45 days after the end of the quarter for the
3 preceding calendar quarter. Each payment shall be accompanied by a
4 summary explaining the basis for the calculation of the fee. A
5 municipality may review the business records of the cable service
6 provider or video service provider to the extent necessary to
7 ensure compensation in accordance with Subsection (a). Each party
8 shall bear the party's own costs of the examination. A municipality
9 or the state may, in the event of a dispute concerning compensation
10 under this section, bring an action in a court of competent
11 jurisdiction.

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

15 Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY.

16 (a) Until the expiration of the incumbent cable service provider's
17 agreement or January 1, 2008, whichever is later, the holder of a
18 state-issued certificate of franchise authority shall pay a
19 municipality in which it is offering cable service or video service
20 the same cash payments on a per subscriber basis as required by the
21 incumbent cable service provider's franchise agreement. The holder
22 of a state-issued certificate of franchise authority shall report
23 quarterly to the municipality the total number of subscribers
24 served within the municipality. The amount paid by the holder of a
25 state-issued certificate of franchise authority shall be
26 calculated quarterly by the municipality by multiplying the amount
27 of cash payment under the incumbent cable service provider's

1 franchise agreement by a number derived by dividing the number of
2 subscribers served by a video service provider or cable service
3 provider by the total number of video or cable service subscribers
4 in the municipality. Such pro rata payments are to be paid
5 quarterly to the municipality within 45 days after the end of the
6 quarter for the preceding calendar quarter.

7 (b) On the expiration of the incumbent cable service
8 provider's agreement or January 1, 2008, whichever is later, the
9 holder of a state-issued certificate of franchise authority shall
10 pay a municipality in which it is offering cable service or video
11 service one percent of the provider's gross revenues, as defined by
12 this chapter, or at the municipality's election, the per subscriber
13 fee that was paid to the municipality under the expired incumbent
14 cable service provider's agreement, in lieu of in-kind compensation
15 and grants. Payments under this subsection shall be paid in the
16 same manner as outlined in Section 66.005(b).

17 (c) All fees paid to municipalities under this section are
18 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
19 may be used by the municipality as allowed by federal law; further,
20 these payments are not chargeable as a credit against the franchise
21 fee payments authorized under this chapter.

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

26 (1) institutional network capacity, however defined
27 or referred to in the municipal cable franchise but generally

1 referring to a private line data network capacity for use by the
2 municipality for noncommercial purposes, shall continue to be
3 provided at the same capacity as was provided to the municipality
4 prior to the date of the termination, provided that the
5 municipality will compensate the provider for the actual
6 incremental cost of the capacity; and

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

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

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

27 (b) The commission shall receive service quality complaints

1 from customers of the holder of a state-issued certificate of
2 franchise authority. The commission shall post on the commission's
3 Internet website each calendar quarter the number of complaints
4 made against each franchise holder.

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

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

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

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

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

22 (d) Any PEG channel provided pursuant to this section that
23 is not utilized by the municipality for at least eight hours a day
24 shall no longer be made available to the municipality, but may be
25 programmed at the cable service provider's or video service
26 provider's discretion. At such time as the municipality can
27 certify to the cable service provider or video service provider a

1 schedule for at least eight hours of daily programming, the cable
2 service provider or video service provider shall restore the
3 previously lost channel but shall be under no obligation to carry
4 that channel on a basic or analog tier.

5 (e) In the event a municipality has not utilized the minimum
6 number of access channels as permitted by Subsection (c), access to
7 the additional channel capacity allowed in Subsection (c) shall be
8 provided upon 90 days' written notice if the municipality meets the
9 following standard: if a municipality has one active PEG channel
10 and wishes to activate an additional PEG channel, the initial
11 channel shall be considered to be substantially utilized when 12
12 hours are programmed on that channel each calendar day. In
13 addition, at least 40 percent of the 12 hours of programming for
14 each business day on average over each calendar quarter must be
15 nonrepeat programming. Nonrepeat programming shall include the
16 first three video-castings of a program. If a municipality is
17 entitled to three PEG channels under Subsection (c) and has in
18 service two active PEG channels, each of the two active channels
19 shall be considered to be substantially utilized when 12 hours are
20 programmed on each channel each calendar day and at least 50 percent
21 of the 12 hours of programming for each business day on average over
22 each calendar quarter is nonrepeat programming for three
23 consecutive calendar quarters.

24 (f) The operation of any PEG access channel provided
25 pursuant to this section shall be the responsibility of the
26 municipality receiving the benefit of such channel, and the holder
27 of a state-issued certificate of franchise authority bears only the

1 responsibility for the transmission of such channel. The holder of
2 a state-issued certificate of franchise authority shall be
3 responsible for providing the connectivity to each PEG access
4 channel distribution point up to the first 200 feet.

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

16 (h) Where technically feasible, the holder of a
17 state-issued certificate of franchise authority and an incumbent
18 cable service provider shall use reasonable efforts to interconnect
19 their cable or video systems for the purpose of providing PEG
20 programming. Interconnection may be accomplished by direct cable,
21 microwave link, satellite, or other reasonable method of
22 connection. Holders of a state-issued certificate of franchise
23 authority and incumbent cable service providers shall negotiate in
24 good faith and incumbent cable service providers may not withhold
25 interconnection of PEG channels.

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

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

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

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

15 (2) access to a building; or

16 (3) a municipal utility pole attachment term.

17 Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY.

18 (a) A municipality may enforce police power-based regulations in
19 the management of a public right-of-way that apply to the holder of
20 a state-issued certificate of franchise authority within the
21 municipality. A municipality may enforce police power-based
22 regulations in the management of the activities of the holder of a
23 state-issued certificate of franchise authority to the extent that
24 they are reasonably necessary to protect the health, safety, and
25 welfare of the public. Police power-based regulation of the holder
26 of a state-issued certificate of franchise authority's use of the
27 public right-of-way must be competitively neutral and may not be

1 unreasonable or discriminatory. A municipality may not impose on
2 activities of the holder of a state-issued certificate of franchise
3 authority a requirement:

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

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

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

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

1 within a reasonable time; or

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

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

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

1 provider in the timely conduct of the provider's business.

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

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

14 Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY;
15 NOTICE OF LIABILITY. (a) The holder of a state-issued certificate
16 of franchise authority shall indemnify and hold a municipality and
17 its officers and employees harmless against any and all claims,
18 lawsuits, judgments, costs, liens, losses, expenses, fees
19 (including reasonable attorney's fees and costs of defense),
20 proceedings, actions, demands, causes of action, liability, and
21 suits of any kind and nature, including personal or bodily injury
22 (including death), property damage, or other harm for which
23 recovery of damages is sought, that is found by a court of competent
24 jurisdiction to be caused solely by the negligent act, error, or
25 omission of the holder of a state-issued certificate of franchise
26 authority or any agent, officer, director, representative,
27 employee, affiliate, or subcontractor of the holder of a

1 state-issued certificate of franchise authority or their
2 respective officers, agents, employees, directors, or
3 representatives, while installing, repairing, or maintaining
4 facilities in a public right-of-way. The indemnity provided by
5 this subsection does not apply to any liability resulting from the
6 negligence of the municipality or its officers, employees,
7 contractors, or subcontractors. If the holder of a state-issued
8 certificate of franchise authority and the municipality are found
9 jointly liable by a court of competent jurisdiction, liability
10 shall be apportioned comparatively in accordance with the laws of
11 this state without, however, waiving any governmental immunity
12 available to the municipality under state law and without waiving
13 any defenses of the parties under state law. This subsection is
14 solely for the benefit of the municipality and the holder of a
15 state-issued certificate of franchise authority and does not create
16 or grant any rights, contractual or otherwise, for or to any other
17 person or entity.

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

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

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

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

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

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

19 Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose
20 of this section is to prevent discrimination among potential
21 residential subscribers.

22 (b) A cable service provider or video service provider that
23 has been granted a state-issued certificate of franchise authority
24 may not deny access to service to any group of potential residential
25 subscribers because of the income of the residents in the local area
26 in which such group resides.

27 (c) An affected person may seek enforcement of the

1 requirements described by Subsection (b) by initiating a proceeding
2 with the commission. A municipality within which the potential
3 residential cable service or video service subscribers referenced
4 in Subsection (b) may be considered an affected person for purposes
5 of this section.

6 (d) The holder of a state-issued certificate of franchise
7 authority shall have a reasonable period of time to become capable
8 of providing cable service or video service to all households
9 within the designated franchise area as defined in Section
10 66.003(b)(4) and may satisfy the requirements of this section
11 through the use of an alternative technology that provides
12 comparable content, service, and functionality.

13 (e) Notwithstanding any provision of this chapter, the
14 commission has the authority to make the determination regarding
15 the comparability of the technology and the service provided.
16 Notwithstanding any provision of this chapter, the commission has
17 the authority to monitor the deployment of cable services, video
18 services, or alternate technology.

19 Sec. 66.015. COMPLIANCE. (a) Should the holder of a
20 state-issued certificate of franchise authority be found by a court
21 of competent jurisdiction to be in noncompliance with the
22 requirements of this chapter, the court shall order the holder a
23 state-issued certificate of franchise authority, within a
24 specified reasonable period of time, to cure such noncompliance.
25 Failure to comply shall subject the holder of the state-issued
26 franchise of franchise authority to penalties as the court shall
27 reasonably impose, up to and including revocation of the

1 state-issued certificate of franchise authority granted under this
2 chapter.

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

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

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

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

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

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

27 (3) the transition from local franchise authority to

1 state-issued authority, including methods to maintain current
2 municipal revenue streams, including franchise fees and in-kind
3 contributions; continuation of public, educational, and
4 governmental access channels; and build-out requirements; and

5 (4) other relevant issues.

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

9 (c) This section expires January 1, 2007.

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

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

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

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

26 (1) Subchapters B through F, Chapter 62; and

27 (2) Chapters 61 and 63.

1 SECTION 28. The Public Utility Commission of Texas shall
2 conduct a study to determine whether Title 2, Utilities Code,
3 adequately preserves customer choice in the Internet-enabled
4 applications employed in association with broadband service and
5 shall report its conclusions and recommendations to the legislature
6 not later than January 1, 2007. The study must include
7 consultation with and comment from all interested parties.

8 SECTION 29. If any provision of this Act or its application
9 to any person or circumstance is held invalid, the invalidity does
10 not affect other provisions or applications of this Act that can be
11 given effect without the invalid provision or application, and to
12 this end the provisions of this Act are declared to be severable.

13 SECTION 30. This Act takes effect September 1, 2005, if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for effect on that
17 date, this Act takes effect on the 91st day after the last day of the
18 legislative session.