

By: Fraser

S.B. No. 21

A BILL TO BE ENTITLED

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

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

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

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

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

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

18 Sec. 43.003. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

21 [Sections 43.004-43.050 reserved for expansion]

22 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

23 Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. An affiliate of
24 an electric utility or a person unaffiliated with an electric
25 utility may own, construct, maintain, and operate a BPL system and
26 provide BPL services on an electric utility's electric delivery
27 system consistent with the requirements of this chapter. Nothing

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

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

9 (a) An electric utility may elect to:

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

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

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

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

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

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

27 (c) If all or part of a BPL system is installed on poles or

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

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

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

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

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

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

27 Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.

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

11 [Sections 43.056-43.100 reserved for expansion]

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

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

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

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

26 (1) require an electric utility, either through an
27 affiliate or an unaffiliated entity, to install a BPL system on its

1 power lines or offer BPL services in all or any part of the electric
2 utility's certificated service area;

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

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

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

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

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

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

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

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

17 [Sections 43.103-43.150 reserved for expansion]

18 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

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

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

1 Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL

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

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

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

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

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

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

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

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

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

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

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

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

22 SECTION 6. Section 54.251, Utilities Code, is amended by
23 amending Subsection (b) and adding Subsection (c) to read as
24 follows:

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

1 certificate of operating authority issued under Chapter 65, for an
2 area has the obligations of a provider of last resort regardless of
3 whether another provider has a certificate of operating authority
4 or service provider certificate of operating authority for that
5 area.

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

15 SECTION 7. Subchapter G, Chapter 54, Utilities Code, is
16 amended by adding Section 54.3015 to read as follows:

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

22 SECTION 8. Subchapter H, Chapter 55, Utilities Code, is
23 amended by adding Section 55.1735 to read as follows:

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

1 access line used for regular business purposes in that exchange.

2 SECTION 9. Section 56.021, Utilities Code, is amended to
3 read as follows:

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

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

10 (2) reimburse the telecommunications carrier that
11 provides the statewide telecommunications relay access service
12 under Subchapter D;

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

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

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

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

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

1 (8) reimburse a successor utility under Subchapter G;
2 and
3 (9) finance the program established under Subchapter
4 H.

5 SECTION 10. Section 56.025, Utilities Code, is amended by
6 adding Subsection (g) to read as follows:

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

8 SECTION 11. Section 56.026, Utilities Code, is amended by
9 adding Subsection (e) to read as follows:

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

12 SECTION 12. Subchapter B, Chapter 56, Utilities Code, is
13 amended by adding Sections 56.029 and 56.030 to read as follows:

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

20 (b) The review and evaluation must include the commission's
21 determination of appropriate monthly per line support amounts to be
22 made available from the Texas High Cost Universal Service Plan and
23 from the Small and Rural Incumbent Local Exchange Company Universal
24 Service Plan. The commission shall conduct necessary proceedings
25 to determine the appropriate monthly per line support amounts to be
26 made available from those plans and the appropriate costs and
27 revenues to be used to compute those amounts.

1 (c) On or before November 15, 2006, the commission shall
2 issue an order establishing the appropriate monthly per line
3 support amounts to be made available from the Texas High Cost
4 Universal Service Plan and from the Small and Rural Incumbent Local
5 Exchange Company Universal Service Plan. The order takes effect
6 September 1, 2007. The commission shall deliver the order to the
7 lieutenant governor and the speaker of the house of representatives
8 on the date the commission issues the order.

9 (d) The commission may revise the monthly per line support
10 amounts to be made available from the Texas High Cost Universal
11 Service Plan and from the Small and Rural Incumbent Local Exchange
12 Company Universal Service Plan at any time after September 1, 2007,
13 after notice and an opportunity for hearing.

14 (e) This subsection and Subsections (a), (b), and (c) expire
15 September 1, 2007.

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

25 SECTION 13. Subchapter B, Chapter 56, Utilities Code, is
26 amended by adding Section 56.031 to read as follows:

27 Sec. 56.031. 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. This section
6 expires September 1, 2007.

7 SECTION 14. 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 15. Section 57.048, Utilities Code, is amended by
17 adding Subsections (f)-(i) to read as follows:

18 (f) Notwithstanding any other provision of this title, a
19 certificated telecommunications utility may recover from the
20 utility's customers an assessment imposed on the utility under this
21 subchapter after the total amount deposited to the credit of the
22 fund, excluding interest and loan repayments, is equal to \$1.5
23 billion, as determined by the comptroller. A certificated
24 telecommunications utility may recover only the amount of the
25 assessment imposed after the total amount deposited to the credit
26 of the fund, excluding interest and loan repayments, is equal to
27 \$1.5 billion, as determined by the comptroller. The utility may

1 recover the assessment through a monthly billing process.

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

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

12 (i) The commission shall maintain the confidentiality of
13 information the commission receives under this section that is
14 claimed to be confidential for competitive purposes. The
15 confidential information is exempt from disclosure under Chapter
16 552, Government Code.

17 SECTION 16. Section 57.051, Utilities Code, is amended to
18 read as follows:

19 Sec. 57.051. SUNSET PROVISION. The Telecommunications
20 Intrastructure Fund [~~Board~~] is subject to Chapter 325, Government
21 Code (Texas Sunset Act). Unless continued in existence as provided
22 by that chapter, [~~the board is abolished and~~] this subchapter
23 expires September 1, 2011 [~~2005~~].

24 SECTION 17. Section 58.258(a), Utilities Code, is amended
25 to read as follows:

26 (a) Notwithstanding the pricing flexibility authorized by
27 this subtitle, an electing company's rates for private network

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

5 SECTION 18. Section 58.051(a), Utilities Code, is amended
6 to read as follows:

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

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

12 (2) residential tone dialing service;

13 (3) lifeline and tel-assistance service;

14 (4) service connection for basic residential
15 services;

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

18 (6) private pay telephone access service;

19 (7) call trap and trace service;

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

23 (9) mandatory residential extended area service
24 arrangements; and

25 (10) mandatory residential extended metropolitan
26 service or other mandatory residential toll-free calling
27 arrangements [~~, and~~

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

2 SECTION 19. Section 58.151, Utilities Code, is amended to
3 read as follows:

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

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

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

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

20 (5) "1-plus" intraLATA message toll services;

21 (6) 0+ and 0- operator services;

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

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

26 (B) for an electing company subject to Section
27 58.301, prices for residential call forwarding and other custom

1 calling services shall be capped at the prices in effect on
2 September 1, 1999, until the electing company implements the
3 reduction in switched access rates described by Section 58.301(2);

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

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

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

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

20 (12) new services;

21 (13) directory assistance services, except that an
22 electing company shall provide to a residential customer the first
23 three directory assistance inquiries in a monthly billing cycle at
24 no charge until January 1, 2007;

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

27 (15) 800 and foreign exchange services;

- 1 (16) private line service;
- 2 (17) special access service;
- 3 (18) services from public pay telephones;
- 4 (19) paging services and mobile services (IMTS);
- 5 (20) 911 services provided to a local authority that
- 6 are available from another provider;
- 7 (21) speed dialing;
- 8 (22) three-way calling; and
- 9 (23) all other services subject to the commission's
- 10 jurisdiction that are not specifically classified as basic network
- 11 services in Section 58.051, except that nothing in this section
- 12 shall preclude a customer from subscribing to a local flat rate
- 13 residential or business line for a computer modem or a facsimile
- 14 machine.

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

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

- 21 (1) the date the company elected under this chapter;
- 22 or
- 23 (2) any action taken in relation to that company under
24 Chapter 65.

25 SECTION 21. Section 59.077(a), Utilities Code, is amended
26 to read as follows:

- 27 (a) Notwithstanding the pricing flexibility authorized by

1 this subtitle, an electing company's rates for private network
2 services may not be increased [~~on or~~] before January 1, 2012 [~~the~~
3 ~~sixth anniversary of the company's election date~~].

4 SECTION 22. Subchapter D, Chapter 59, Utilities Code, is
5 amended by adding Section 59.083 to read as follows:

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

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

11 or

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

14 SECTION 23. Chapter 60, Utilities Code, is amended by
15 adding Subchapter J to read as follows:

16 SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

17 Sec. 60.201. STATEMENT OF POLICY. It is the policy of this
18 state that providers of telecommunications services operate in a
19 manner that is consistent with minimum standards to provide
20 customers with continued competitive choices.

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

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

27 (1) discriminate against another provider by refusing

1 access to an exchange;

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

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

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

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

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

13 Sec. 60.204. INTERCONNECTION. (a) A telecommunications
14 provider shall provide interconnection with other
15 telecommunications providers' networks for the transmission and
16 routing of telephone exchange service and exchange access.

17 (b) A telecommunications provider shall provide the
18 interconnection at any technically feasible point within the
19 provider's network and at rates, terms, and conditions that are
20 just, reasonable, and nondiscriminatory. The quality of the
21 interconnection must be at least equal to the quality of the
22 interconnection provided to itself, a subsidiary or affiliate of
23 the provider, or any other party to which the provider provides
24 interconnection.

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

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

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

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

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

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

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

23 (1) 911 and E-911 service;

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

27 (3) operator call completion service.

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

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

9 (b) Notwithstanding any other provision of this title, a
10 provider of advanced services or local exchange telephone service
11 shall provide subscribers access to the signals of the local
12 broadcast television and radio stations licensed by the Federal
13 Communications Commission to serve those subscribers over the air;
14 provided with respect to low power television stations, this
15 Section shall only apply to those low power television stations
16 that are "qualified low power stations" as defined in 47 U.S.C.
17 §534(h)(2).

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

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

27 (e) A provider of advanced services or local exchange

1 telephone service shall transmit without degradation the signals a
2 local broadcast station delivers to the provider. The transmission
3 quality offered a broadcast station may not be lower than the
4 quality made available to another broadcast station or video or
5 audio programming source.

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

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

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

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

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

27 SECTION 25. (a) Chapter 64, Utilities Code, is amended by

1 adding Subchapter E to read as follows:

2 SUBCHAPTER E. PROTECTIONS RELATED TO BROADBAND

3 NETWORKS AND ADVANCED SERVICES

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

12 Sec. 64.202. PROHIBITION ON PREVENTION OR INHIBITION. A
13 network provider that deploys broadband networks and provides
14 advanced services may not prevent or inhibit the use of any
15 application or product by customers in association with the use of
16 an advanced service by blocking transmission and delivery of
17 traffic to and from a particular port, Internet address, or
18 Internet site, by limiting the speed available for use by any
19 particular application, or by instituting technical limitations on
20 the use of any Internet-enabled application. However, a network
21 provider may take reasonable and necessary actions to protect the
22 network from harm and to prevent degradation of service to its
23 general body of customers. This section does not prohibit a network
24 provider from offering or supporting a service or application,
25 including adware, spyware, malware, antivirus, antispyware, content
26 filtering, or parental controls or protections, if the customer has
27 a choice between the network provider's service or application and

1 those of an unaffiliated vendor.

2 Sec. 64.203. PROHIBITION ON BLOCKING AND REDIRECTING. A
3 network provider that deploys broadband networks and provides
4 advanced services or an Internet service may not knowingly or
5 intentionally block or redirect a customer's attempt to access an
6 Internet application or advanced service without notice to the
7 customer unless the:

8 (1) blocking or redirecting is necessary to comply
9 with the Digital Millennium Copyright Act (Pub. L. No. 105-304),
10 any other federal or state law, a court order, a request from a law
11 enforcement official, or a lawful process or is necessary for
12 reasons of national security;

13 (2) owner or others in control of the application or
14 advanced service request the blocking or redirecting of traffic;

15 (3) blocking or redirecting is necessary for the
16 protection of the advanced services provider's or Internet service
17 provider's customers, network, facilities, or business reputation
18 or is the consequence of the advanced services provider's or
19 Internet service provider's activities with respect to
20 maintenance, monitoring, repair, network, reconfiguration,
21 software or hardware changes, or network outages;

22 (4) blocking or redirecting occurs as a result of
23 software changes, incompatibility of software used by the customer,
24 or any other reason attributable to a third party or not within the
25 reasonable control of the advanced services provider or Internet
26 service provider;

27 (5) blocking or redirecting is done to provide notice

1 to the customer of:

2 (A) network conditions;

3 (B) conditions pertaining to the customer's
4 system or software; or

5 (C) changes to prices, features, functions,
6 operations, or terms of service; or

7 (6) action taken is incident to the enforcement of, or
8 allowed by, the posted terms of service, privacy policy or
9 acceptable use policies, or conditions that apply to use of the
10 service.

11 Sec. 64.204. JURISDICTION. The commission has jurisdiction
12 to enforce this subchapter.

13 (b) The Public Utility Commission of Texas shall conduct a
14 study to determine whether Title 2, Utilities Code, adequately
15 preserves customer choice in the Internet-enabled applications
16 employed in association with broadband service and report its
17 conclusions and recommendations to the legislature not later than
18 January 1, 2007. The study must include consultation with and
19 comment from all interested parties.

20 SECTION 26. Subtitle C, Title 2, Utilities Code, is amended
21 by adding Chapter 65 to read as follows:

22 CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE

23 COMPANY MARKETS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 65.001. STATEMENT OF POLICY. It is the policy of this
26 state to provide for full rate and service competition in the
27 telecommunications market of this state so that customers may

1 benefit from innovations in service quality and market-based
2 pricing.

3 Sec. 65.002. DEFINITIONS. In this chapter:

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

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

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

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

15 (A) residential tone dialing service;

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

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

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

1 and

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

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

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

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

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

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

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

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

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

1 Government Code.

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

5 [Sections 65.006-65.050 reserved for expansion]

6 SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

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

12 (b) A market of an incumbent local exchange company in which
13 the population in the area included in the market is less than
14 30,000 is deregulated on January 1, 2007, unless the commission
15 determines under Section 65.052(f) that the market should remain
16 regulated.

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

20 (1) determine whether each market of an incumbent
21 local exchange company should remain regulated on and after January
22 1, 2006; and

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

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

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

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

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

11 (B) at least one is an entity providing
12 residential telephone service in the market using facilities that
13 the entity owns; and

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

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

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

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

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

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

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

1 Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS.

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

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

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

15 Sec. 65.054. PETITION FOR DEREGULATION. (a) After July 1,
16 2007, a transitioning or regulated company may petition the
17 commission to deregulate a market that the commission previously
18 determined should remain regulated.

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

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

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

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

7 [Sections 65.056-65.100 reserved for expansion]

8 SUBCHAPTER C. DEREGULATED COMPANY

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

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

18 Sec. 65.102. REQUIREMENTS. (a) A deregulated company that
19 holds a certificate of operating authority issued under this
20 subchapter is a nondominant carrier governed in the same manner as a
21 holder of a certificate of operating authority issued under Chapter
22 54, except that the deregulated company:

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

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

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

2 (B) Section 55.012; and

3 (C) Chapter 60; and

4 (3) may not increase the company's rates for
5 stand-alone residential local exchange voice service before the
6 date the commission order issued under Section 56.029(c) takes
7 effect, regardless of whether the company is an electing company
8 under Chapter 58.

9 (b) In each market, a deregulated company shall make
10 available to all customers uniformly throughout that market the
11 same price for all services and products. For the purposes of this
12 subsection, the requirement for the same price for all services and
13 products excludes promotional offers made to former customers in
14 which the promotional price and terms have a duration of 6 months or
15 less.

16 [Sections 65.103-65.150 reserved for expansion]

17 SUBCHAPTER D. TRANSITIONING COMPANY

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

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

27 (1) exercise pricing flexibility in a market in the

1 manner provided by Section 58.063 one day after providing an
2 informational notice as required by that section; and

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

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

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

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

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

19 (2) for basic local telecommunications service, at any
20 price higher than the lesser of the service's long run incremental
21 cost or the tariffed price on the date that market was deregulated,
22 provided that the company may not increase the company's rates for
23 stand-alone residential local exchange voice service before the
24 date the commission order issued under Section 56.029(c) takes
25 effect, regardless of whether the company is an electing company
26 under Chapter 58.

27 (c) In each deregulated market, a transitioning company

1 shall make available to all customers uniformly throughout that
2 market the same price for all services and products. For the
3 purposes of this subsection, the requirement for the same price for
4 all services and products excludes promotional offers made to
5 former customers in which the promotional price and terms have a
6 duration of 6 months or less.

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

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

12 (2) establish a retail rate that is subsidized either
13 directly or indirectly by a regulated monopoly service or a service
14 provided in an exchange that is not deregulated; or

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

17 [Sections 65.154-65.200 reserved for expansion]

18 SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

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

26 (b) After reducing the rates under Subsection (a), a
27 deregulated company shall maintain parity with the company's

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

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

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

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

19 (2) on July 1, 2007, 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; and

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

1 originating and terminating per minute of use switched access
2 rates.

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

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

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

24 (1) 25 percent of the difference in the company's rates
25 in effect on June 30, 2006, and the company's respective federal
26 originating and terminating per minute of use switched access rates
27 in effect on that date; or

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

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

9 (1) 25 percent of the difference in the company's rates
10 in effect on June 30, 2006, and the company's respective federal
11 originating and terminating per minute of use switched access rates
12 in effect on that date; or

13 (2) an amount derived by multiplying that difference
14 by a percentage derived by dividing the number of the company's
15 markets that are not regulated on July 1, 2007, by the total number
16 of the company's markets on December 30, 2005.

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

21 (1) 25 percent of the difference in the company's rates
22 in effect on June 30, 2006, and the company's respective federal
23 originating and terminating per minute of use switched access rates
24 in effect on that date; or

25 (2) an amount derived by multiplying that difference
26 by a percentage derived by dividing the number of the company's
27 markets that are not regulated on July 1, 2008, by the total number

1 of the company's markets on December 30, 2005.

2 (e) On July 1, 2009, the transitioning company shall reduce
3 both the company's originating and terminating per minute of use
4 switched access rates in each market to parity with the company's
5 respective federal originating and terminating per minute of use
6 switched access rates.

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

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

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

26 (1) 25 percent of the difference in the company's rates
27 in effect on the day before the date the company was classified, and

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

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

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

13 (1) 25 percent of the difference in the company's rates
14 in effect on the day before the date the company was classified, and
15 the company's respective federal originating and terminating per
16 minute of use switched access rates in effect on that date; or

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

22 (d) On the second anniversary of the date the company is
23 classified as a transitioning company, the 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 the day before the date the company was classified, and
2 the company's respective federal originating and terminating per
3 minute of use switched access rates 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 are not regulated on the second anniversary of the date
7 the company is classified as a transitioning company by the total
8 number of the company's markets on December 30, 2005.

9 (e) On the third anniversary of the date the company is
10 classified as a transitioning company, the company shall reduce
11 both the company's originating and terminating per minute of use
12 switched access rates in each market to parity with the company's
13 respective federal originating and terminating per minute of use
14 switched access rates.

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

9 CHAPTER 66. STATEWIDE CABLE AND VIDEO FRANCHISE

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

14 (b) The legislature finds that the Public Utility
15 Commission shall be designated as the franchising authority for a
16 statewide franchise.

17 SECTION 28. The following provisions of the Utilities Code
18 are repealed:

- 19 (1) Sections 57.048(c) and (d);
20 (2) Subchapters B-F, Chapter 62; and
21 (3) Chapters 61 and 63.

22 SECTION 29. If on August 31, 2005, the assessment
23 prescribed by Section 57.048, Utilities Code, is imposed at a rate
24 of less than 1.25 percent, the comptroller shall, on September 1,
25 2005, reset the rate of the assessment to 1.25 percent.

26 SECTION 30. This Act takes effect September 1, 2005, if it
27 receives a vote of two-thirds of all the members elected to each

1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for effect on that
3 date, this Act takes effect on the 91st day after the last day of the
4 legislative session.