

By: Fraser

S.B. No. 5

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 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 any state  
22       agency, a municipality, or local government other than as provided  
23       for in 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 or Public Utilities Commission  
8 representative that the device is causing harmful interference.  
9 Operation shall not resume until the condition causing the harmful  
10 interference has been corrected.

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

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

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

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

1 terminating between all holders of certificates of convenience and  
2 necessity in this state.

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

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

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

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

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

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

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

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

26 (a) Notwithstanding Section 14.008, a municipality or a  
27 municipally owned utility may not discriminate against a

1 certificated telecommunications provider [~~telecommunications~~  
2 ~~utility~~] regarding:

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

5 (2) access to a building; or

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

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

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

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

24 (A) money;

25 (B) services;

26 (C) use of facilities; or

27 (D) another kind of consideration.

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

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

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

27           (c) A certificate holder may meet the holder's provider of

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

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

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

19 SECTION 9. Section 55.015, Utilities Code, is amended by  
20 amending Subsections (a), (c), and (d) and adding Subsections  
21 (b-1), (d-1), and (d-2) to read as follows:

22 (a) The commission shall adopt rules prohibiting a  
23 certificated provider of local exchange telephone service  
24 [telecommunications provider] from discontinuing basic network  
25 services listed in Section 58.051 [local exchange telephone  
26 service] to a consumer who receives lifeline service because of  
27 nonpayment by the consumer of charges for other services billed by

1 the provider, including interexchange telecommunications [~~long~~  
2 ~~distance~~] service.

3 (b-1) The commission shall adopt rules requiring  
4 certificated providers of local exchange telephone service to  
5 implement procedures to ensure that all consumers are clearly  
6 informed both orally and in writing of the existence of the lifeline  
7 service program when they request or initiate service or change  
8 service locations or providers. On or before June 1, 2006, the  
9 commission shall enter into a memorandum of understanding with the  
10 Health and Human Services Commission and, to the maximum extent  
11 feasible, housing authorities in the principal cities of each  
12 metropolitan statistical area, to improve enrollment rates in the  
13 lifeline service program.

14 (c) A certificated provider of local exchange telephone  
15 service [~~telecommunications provider~~] may block a lifeline service  
16 participant's access to all interexchange telecommunications [~~long~~  
17 ~~distance~~] service except toll-free numbers when the participant  
18 owes an outstanding amount for that service. The provider  
19 [~~telecommunications provider~~] shall remove the block without  
20 additional cost to the participant on payment of the outstanding  
21 amount.

22 (d) A certificated provider of local exchange telephone  
23 service [~~telecommunications provider~~] shall offer a consumer who  
24 applies for or receives lifeline service the option of blocking all  
25 toll calls or, if technically capable, placing a limit on the amount  
26 of toll calls. The provider may not charge the consumer an  
27 administrative charge or other additional amount for the blocking

1 service.

2 (d-1) A certificated provider of local exchange telephone  
3 service shall provide access to lifeline service to a customer  
4 whose income is not more than 150 percent of the applicable income  
5 level established by the federal poverty guidelines or in whose  
6 household resides a person who receives or has a child who receives:

7 (1) Medicaid;

8 (2) food stamps;

9 (3) Supplemental Security Income;

10 (4) federal public housing assistance;

11 (5) Low Income Home Energy Assistance Program (LIHEAP)  
12 assistance; or

13 (6) health benefits coverage under the state child  
14 health plan under Chapter 62, Health and Safety Code.

15 (d-2) A certificated provider of local exchange telephone  
16 service shall provide consumers who apply for or receive lifeline  
17 service access to available vertical services or custom calling  
18 features, including caller ID, call waiting, and call blocking, at  
19 the same price as other consumers. Lifeline discounts shall only  
20 apply to that portion of the bill that is for basic network service.

21 SECTION 10. Subchapter H, Chapter 55, Utilities Code, is  
22 amended by adding Section 55.1735 to read as follows:

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



1 SECTION 11. Section 56.021, Utilities Code, is amended to  
2 read as follows:

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

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

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

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

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

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

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

25 (7) reimburse a designated provider under Subchapter  
26 F; ~~and~~

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

1 and

2 (9) finance the program established under Subchapter  
3 H.

4 SECTION 12. Section 56.025(a), Utilities Code, is amended  
5 to read as follows:

6 (a) In addition to the authority provided by Section 56.021,  
7 for each local exchange company that serves fewer than 31,000 [~~five~~  
8 ~~million~~] access lines and each cooperative, the commission:

9 (1) may adopt a mechanism necessary to maintain  
10 reasonable rates for local exchange telephone service; and

11 (2) shall adopt rules to expand the universal service  
12 fund in the circumstances prescribed by this section.

13 SECTION 13. Section 56.026, Utilities Code, is amended by  
14 adding Subsection (e) to read as follows:

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

17 SECTION 14. Subchapter B, Chapter 56, Utilities Code, is  
18 amended by adding Sections 56.029, 56.030, and 56.031 to read as  
19 follows:

20 Sec. 56.029. UNIVERSAL SERVICE FUND STUDY; ATTESTATION  
21 REQUIREMENT. (a) The commission shall conduct a review and  
22 evaluation of whether the universal service fund accomplishes the  
23 fund's purposes as prescribed by Section 56.021 and the  
24 commission's final orders issued in Docket No. 18515 and Docket No.  
25 18516. The evaluation shall determine whether the fund's purposes  
26 have been sufficiently achieved, whether the fund should be  
27 abolished or phased out, whether the fund should be brought within

1 the state treasury, and whether the entities receiving those funds  
2 are spending the money for its intended purposes. The evaluation  
3 must include a forward-looking, comprehensive assessment of the  
4 appropriate use of the money in the fund and the manner in which  
5 that money is collected and disbursed.

6 (b) Not later than January 1, 2006, the commission shall  
7 require telecommunications providers receiving disbursements under  
8 the universal service fund to provide to the commission the  
9 information that the commission determines is necessary to  
10 discharge the commission's duties under this section, including  
11 information necessary to review and evaluate how money is collected  
12 for the universal service fund and expended.

13 (c) Information provided under Subsection (b) is  
14 confidential and is not subject to disclosure under Chapter 552,  
15 Government Code.

16 (d) The commission may classify telecommunications  
17 providers as the commission considers appropriate for efficiency  
18 and may permit providers to share the cost of developing  
19 information the commission determines is necessary to discharge the  
20 commission's responsibilities under this section.

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

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

27 (2) include the commission's assessment of the

1 universal service fund, including:

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

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

7 (C) any recommendations the commission has in  
8 relation to accountability for use of the money in the fund,  
9 including the usefulness of the attestation required by Subsection  
10 (g); and

11 (3) include recommendations that ensure that a  
12 telecommunications provider's support from the universal service  
13 fund for a geographic area is consistent with Section 56.021 and the  
14 commission's final orders issued in Docket No. 18515 and Docket No.  
15 18516.

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

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

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

1 commission shall compile information necessary to determine  
2 whether the current funding mechanism for the universal service  
3 fund will be adequate in the future to sustain the purposes for  
4 which the fund was created considering the development of new  
5 technologies that are not subject to the existing funding mechanism  
6 and the shift in jurisdictional control from this state to the  
7 federal government. The commission shall also review and make  
8 recommendations on any mechanisms adopted under Section 56.025.  
9 Not later than January 5, 2007, the commission shall deliver to the  
10 legislature a report on these issues. If the commission determines  
11 that the existing funding mechanism is not adequate, or proposes to  
12 change the manner or level of current funding, the commission must  
13 include recommendations for alternative funding and basic service  
14 pricing methods that will be adequate and are consistent with a  
15 policy of technology and competitive neutrality in the assessment  
16 of fees and other state-imposed economic burdens.

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

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

27 Sec. 56.031. ADJUSTMENTS. The commission may revise the

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

8 SECTION 15. Subchapter B, Chapter 56, Utilities Code, is  
9 amended by adding Section 56.032 to read as follows:

10 Sec. 56.032. COMMISSION REVIEW AND EVALUATION OF DISTANCE  
11 LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN  
12 ENTITIES. (a) On or before October 1, 2005, the commission shall  
13 initiate a study for the purpose of evaluating a new funding  
14 mechanism to provide financial support to all telecommunications  
15 utilities that provide discounts or private network services at  
16 prescribed rates to the entities identified in Subchapter B,  
17 Chapter 57, Subchapter G, Chapter 58, and Subchapter D, Chapter 59.

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

27 (c) The commission shall conduct necessary proceedings to

1 evaluate the appropriate funding mechanism and the appropriate  
2 method for determining the amount of support to be made available to  
3 telecommunications utilities that provide discounts to entities  
4 listed in Subsection (b).

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

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

17 SECTION 16. Chapter 56, Utilities Code, is amended by  
18 adding Subchapter H to read as follows:

19 SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

20 Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The  
21 commission by rule shall establish a program to provide from the  
22 universal service fund financial assistance for a free telephone  
23 service for blind and visually impaired persons that offers the  
24 text of newspapers using synthetic speech. The commission may  
25 adopt rules to implement the program.

26 SECTION 17. Section 58.051, Utilities Code, is amended by  
27 amending Subsection (a) and adding Subsections (a-1), (c), and (d)

1 to read as follows:

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

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

7 (2) residential tone dialing service;

8 (3) lifeline and tel-assistance service;

9 (4) service connection for basic residential  
10 services;

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

13 (6) private pay telephone access service;

14 (7) call trap and trace service;

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

18 (9) mandatory residential extended area service  
19 arrangements; and

20 (10) mandatory residential extended metropolitan  
21 service or other mandatory residential toll-free calling  
22 arrangements[~~, and~~

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

24 (a-1) Notwithstanding Subsection (a) and Section 58.151,  
25 basic network services include residential caller identification  
26 services if the customer to whom the service is billed is at least  
27 65 years of age.



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

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

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

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

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

13       SECTION 18. Section 58.151, Utilities Code, is amended to  
14 read as follows:

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

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

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

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

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

4           (5) "1-plus" intraLATA message toll services;

5           (6) 0+ and 0- operator services;

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

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

10           (B) for an electing company subject to Section  
11 58.301, prices for residential call forwarding and other custom  
12 calling services shall be capped at the prices in effect on  
13 September 1, 1999, until the electing company implements the  
14 reduction in switched access rates described by Section 58.301(2);

15           (8) call return, caller identification, and call  
16 control options, except that, for an electing company subject to  
17 Section 58.301, prices for residential call return, caller  
18 identification, and call control options shall be capped at the  
19 prices in effect on September 1, 1999, until the electing company  
20 implements the reduction in switched access rates described by  
21 Section 58.301(2);

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

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

26           (11) integrated services digital network (ISDN)  
27 services, except that prices for Basic Rate Interface (BRI) ISDN

1 services, which comprise up to two 64 Kbps B-channels and one 16  
2 Kbps D-channel, shall be capped until September 1, 2005, at the  
3 prices in effect on September 1, 1999;

4 (12) new services;

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

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

11 (15) 800 and foreign exchange services;

12 (16) private line service;

13 (17) special access service;

14 (18) services from public pay telephones;

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

16 (20) 911 services provided to a local authority that  
17 are available from another provider;

18 (21) speed dialing;

19 (22) three-way calling; and

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

26 SECTION 19. Subsection (a), Section 58.258, Utilities Code,  
27 is amended to read as follows:

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

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

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

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

14 or

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

17 SECTION 21. Subsection (a), Section 59.077, Utilities Code,  
18 is amended to read as follows:

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

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

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

1 regardless of:

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

3 or

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

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

8 SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

9 Sec. 60.201. STATEMENT OF POLICY. It is the policy of this  
10 state that providers of telecommunications services operate in a  
11 manner that is consistent with minimum standards to provide  
12 customers with continued competitive choices.

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

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

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

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

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

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

27 (5) fail to fully disclose in a timely manner on

1 request all available information necessary to design equipment  
2 that will meet the specifications of the network; or

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

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

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

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

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

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

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

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

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

6           (1) 911 and E-911 service;

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

10          (3) operator call completion service.

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

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

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

1       (c) To facilitate access by subscribers of a provider of  
2 advanced services or local exchange telephone service to the  
3 signals of local broadcast stations, a station either shall be  
4 granted mandatory carriage or may request retransmission consent  
5 with the provider.

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

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

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

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

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

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



1 telephone service that delivers audio or video programming shall be  
2 subject to any applicable network non-duplication or syndicated  
3 exclusivity rules promulgated by the Federal Communications  
4 Commission to the extent applicable to cable systems as defined by  
5 the commission.

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

10 SECTION 25. Chapter 64, Utilities Code, is amended by  
11 adding Subchapter F to read as follows:

12 SUBCHAPTER F. TRUTH IN TELECOMMUNICATIONS BILLING

13 Sec. 64.251. DEFINITION. In this subchapter, "commercial  
14 mobile service provider" means a provider of commercial mobile  
15 service as defined by Section 332(d), Communications Act of 1934  
16 (47 U.S.C. Section 151 et seq.), Federal Communications Commission  
17 rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L.  
18 No. 103-66).

19 Sec. 64.252. BILLING STATEMENT. (a) A commercial mobile  
20 service provider or a provider of voice service, as defined in  
21 Section 283.002, Local Government Code, may include only the  
22 following in an end-user customer's bill:

23 (1) applicable charges for service and options  
24 requested by the end-user customer; and

25 (2) taxes imposed by a governmental entity  
26 specifically on the end-user customer.

27 (b) An end-user customer's bill may not contain a fee,

1 charge, or tax unless a contract provision, tariff, or state or  
2 federal law:

3 (1) requires the end-user customer to pay the fee,  
4 charge, or tax; or

5 (2) authorizes a commercial mobile service provider or  
6 a provider of voice service, as defined in Section 283.002, Local  
7 Government Code, to include the fee, charge, or tax in an end-user  
8 customer's bill.

9 (c) This section shall not apply to a billing utility, as  
10 defined in Section 64.002, that bills for goods or services  
11 provided by another entity.

12 (d) A violation of this section is a false, misleading, or  
13 deceptive act or practice within the meaning of Section 17.46,  
14 Business & Commerce Code, but shall only be actionable by the  
15 attorney general.

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

18 CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE

19 COMPANY MARKETS

20 SUBCHAPTER A. GENERAL PROVISIONS

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

26 Sec. 65.002. DEFINITIONS. In this chapter:

27 (1) "Deregulated company" means an incumbent local

1 exchange company for which all of the company's markets have been  
2 deregulated.

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

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

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

11 (A) residential tone dialing service;

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

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

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

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

27 (i) a service classified as a nonbasic

1 service under Section 58.151 or residential call waiting service;

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

4 (iii) another flat rate residential local  
5 exchange service delivered by landline; and

6 (F) residential caller identification services  
7 if the customer to whom the service is billed is at least 65 years of  
8 age.

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

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

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

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

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

27 Sec. 65.005. CUSTOMER PROTECTION. This chapter does not

1 affect a customer's right to complain to the commission regarding a  
2 telecommunications provider.

3 [Sections 65.006-65.050 reserved for expansion]

4 SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26           (d) Regardless of the population in the area included in an  
27 incumbent local exchange company's markets, the commission shall

1 issue an order classifying the company as a transitioning company  
2 that is subject to Subchapter D if the commission determines that  
3 one or more, but not all, of the markets of the company should  
4 remain regulated on and after January 1, 2006.

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

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

26 Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS.

27 (a) Notwithstanding Section 65.052, an incumbent local exchange

1 company may elect to have all of the company's markets remain  
2 regulated on and after January 1, 2006.

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

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

13 Sec. 65.054. PETITION FOR DEREGULATION. (a) After July 1,  
14 2007, a company may petition the commission to deregulate a market  
15 that the commission previously determined should remain regulated.

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

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

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



1 regulation.

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

4 [Sections 65.056-65.100 reserved for expansion]

5 SUBCHAPTER C. DEREGULATED COMPANY

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

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

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

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

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

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

26 (B) Section 55.012; and

27 (C) Chapter 60; and

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

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

12           [Sections 65.103-65.150 reserved for expansion]

13                   SUBCHAPTER D. TRANSITIONING COMPANY

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

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

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

26                   (2) introduce a new service in a market in the manner  
27 provided by Section 58.153 one day after providing an informational

1 notice as required by that section.

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

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

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

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

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

24 (c) In each deregulated market, a transitioning company  
25 shall make available to all residential customers uniformly  
26 throughout that market the same price, terms, and conditions for  
27 all basic and non-basic services, consistent with any pricing

1 flexibility available to such company on or before August 31, 2005.

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

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

7 (2) establish a retail rate for a basic or non-basic  
8 service in a deregulated market that is subsidized either directly  
9 or indirectly by a basic or non-basic service provided in an  
10 exchange that is not deregulated; or

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

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

15 [Sections 65.154-65.200 reserved for expansion]

16 SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

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

24 (b) After reducing the rates under Subsection (a), a  
25 deregulated 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. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY  
7 TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES.

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

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

17 (2) on July 1, 2007, reduce both the company's  
18 originating and terminating per minute of use switched access rates  
19 in each market by an amount equal to 33 percent of the difference in  
20 the rates in effect on June 30, 2006, and the company's respective  
21 federal originating and terminating per minute of use switched  
22 access rates; and

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

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

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

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

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

26               (2) an amount derived by multiplying that difference  
27 by a percentage derived by dividing the number of the company's

1 markets that are not regulated on July 1, 2006, by the total number  
2 of the company's markets on December 30, 2005.

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

7 (1) 25 percent of the difference in the company's rates  
8 in effect on June 30, 2006, and the company's respective federal  
9 originating and terminating per minute of use switched access rates  
10 in effect on that date; or

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

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

19 (1) 25 percent of the difference in the company's rates  
20 in effect on June 30, 2006, and the company's respective federal  
21 originating and terminating per minute of use switched access rates  
22 in effect on that date; or

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

27 (e) On July 1, 2009, and each succeeding year thereafter on

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

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

25 Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY  
26 DESIGNATED TRANSITIONING COMPANY. (a) Notwithstanding any other  
27 provision of this title, a company that is classified as a



1 transitioning company after January 1, 2006, shall reduce both the  
2 company's originating and terminating per minute of use switched  
3 access rates in each market in accordance with this section.

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

8 (1) 25 percent of the difference in the company's rates  
9 in effect on the day before the date the company was classified, and  
10 the company's respective federal originating and terminating per  
11 minute of use switched access rates in effect on that date; or

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

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

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

26 (2) an amount derived by multiplying that difference  
27 by a percentage derived by dividing the number of the company's

1 markets that were deregulated in the prior 12 months by the total  
2 number of the company's markets on December 30, 2005.

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

8 (1) 25 percent of the difference in the company's rates  
9 in effect on the day before the date the company was classified, and  
10 the company's respective federal originating and terminating per  
11 minute of use switched access rates in effect on that date; or

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

16 (e) On the third anniversary of the date the company is  
17 classified as a transitioning company and each anniversary  
18 thereafter, the company shall reduce both the company's originating  
19 and terminating per minute of use switched access rates in each  
20 market by an amount derived by multiplying the difference in the  
21 company's rates in effect on the day before the date the company was  
22 classified as a transitioning company, and the company's respective  
23 federal originating and terminating per minute of use switched  
24 access rates in effect on that date by a percentage derived by  
25 dividing the number of the company's markets that were deregulated  
26 in the prior 12 months by the total number of the company's markets  
27 on December 30, 2005, except that a transitioning company shall be

1 required to reduce both the company's originating and terminating  
2 per minute of use switched access charges to parity with the  
3 company's respective federal originating and terminating per  
4 minute of use switched access charges if more than 75 percent of the  
5 transitioning company's markets are not regulated on July 1 of 2009  
6 or any succeeding year.

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. 65.205. MAINTENANCE OF REDUCTION OR PARITY.

17 (a) After a deregulated or transitioning company reduces the  
18 company's rates under this subchapter, the company may not increase  
19 those rates above the applicable rates prescribed by this  
20 subchapter.

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

25 (c) Notwithstanding Subsections (a) and (b), a deregulated  
26 or transitioning company may decrease the company's per minute of  
27 use switched access rates to amounts that are less than the

1 applicable rates prescribed by this subchapter.

2 [Sections 65.206-65.250 reserved for expansion]

3 SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

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

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

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

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

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

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

16 (5) the chief executive of the Office of Public  
17 Utility Counsel.

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

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

24 (b) The commission shall:

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

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

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

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

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

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

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

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

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

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

1           CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

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

5           Sec. 66.002. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

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

26 (ii) non-cable services or non-video  
27 services revenues received by any affiliate or any other person in



1 exchange for supplying goods or services used by the holder of a  
2 state-issued certificate of franchise authority to provide cable  
3 service or video service;

4 (iii) refunds, rebates, or discounts made  
5 to subscribers, leased access providers, advertisers, or a  
6 municipality;

7 (iv) any revenues from services classified  
8 as non-cable service or non-video service under federal law  
9 including without limitation revenue received from  
10 telecommunications services; revenue received from information  
11 services (but not excluding cable services or video services); and  
12 any other revenues attributed by the holder of a state-issued  
13 certificate of franchise authority to non-cable service or  
14 non-video service in accordance with Federal Communications  
15 Commission or commission rules, regulations, standards, or orders;

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

25 (vi) the sale of cable services or video  
26 services for resale in which the purchaser is required to collect  
27 this chapter's fees from the purchaser's customer. Nothing under

1 this chapter is intended to limit state's rights pursuant to 47  
2 U.S.C. Section 542(h);

3 (vii) the provision of cable services or  
4 video services to customers at no charge, as required or allowed by  
5 this chapter, including without limitation the provision of cable  
6 services or video services to public institutions, as required or  
7 permitted in this chapter, including without limitation public  
8 schools or governmental entities, as required or permitted in this  
9 chapter;

10 (viii) any tax of general applicability  
11 imposed upon the holder of a state-issued certificate of franchise  
12 authority or upon subscribers by a city, state, federal, or any  
13 other governmental entity and required to be collected by the  
14 holder of a state-issued certificate of franchise authority and  
15 remitted to the taxing entity (including, but not limited to, sales  
16 and use tax, gross receipts tax, excise tax, utility users tax,  
17 public service tax, communication taxes, and fees not imposed by  
18 this chapter);

19 (ix) any forgone revenue from the holder of  
20 a state-issued certificate of franchise authority's provision of  
21 free or reduced cost cable services or video services to any person  
22 including without limitation employees of the holder of a  
23 state-issued certificate of franchise authority, to the  
24 municipality and other public institutions or other institutions as  
25 allowed in this chapter; provided, however, that any forgone  
26 revenue which the holder of a state-issued certificate of franchise  
27 authority chooses not to receive in exchange for trades, barters,

1 services, or other items of value shall be included in gross  
2 revenue;

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

7 (xi) directory or Internet advertising  
8 revenue including, but not limited to, yellow pages, white pages,  
9 banner advertisement, and electronic publishing; and

10 (xii) reimbursement by programmers of  
11 marketing costs incurred by the holder of a state-issued franchise  
12 for the introduction of new programming that exceed the actual  
13 costs.

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

20 (7) "Incumbent cable service provider" means the cable  
21 service provider serving the largest number of cable subscribers in  
22 a particular municipal franchise area on September 1, 2005.

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

27 (9) "Video programming" means programming provided

1 by, or generally considered comparable to programming provided by,  
2 a television broadcast station, as set forth in 47 U.S.C. Section  
3 522(20).

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

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

15 Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE  
16 OR VIDEO SERVICE. (a) An entity or person seeking to provide cable  
17 service or video service in this state after September 1, 2005,  
18 shall file an application for a state-issued certificate of  
19 franchise authority with the commission as required by this  
20 section. An entity providing cable service or video service under a  
21 franchise agreement with a municipality is not subject to this  
22 subsection with respect to such municipality until the franchise  
23 agreement expires, except as provided by Section 66.004.

24 (a-1) The commission shall notify an applicant for a  
25 state-issued certificate of franchise authority whether the  
26 applicant's affidavit described by Subsection (b) is complete  
27 before the 15th business day after the applicant submits the

1 affidavit.

2 (b) The commission shall issue a certificate of franchise  
3 authority to offer cable service or video service before the 17th  
4 business day after receipt of a completed affidavit submitted by  
5 the applicant and signed by an officer or general partner of the  
6 applicant affirming:

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

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

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

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

26 (5) the location of the applicant's principal place of  
27 business and the names of the applicant's principal executive

1 officers.

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

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

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

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

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

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

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

23 (a) A cable service provider or a video service provider that  
24 currently has or had previously received a franchise to provide  
25 cable service or video service with respect to such municipalities  
26 is not eligible to seek a state-issued certificate of franchise  
27 authority under this chapter as to those municipalities until the

1 expiration date of the existing franchise agreement, except as  
2 provided by Subsections (b) and (c).

3 (b) Beginning September 1, 2005, a cable service provider or  
4 video service provider that is not the incumbent cable service  
5 provider and serves fewer than 40 percent of the total cable  
6 customers in a particular municipal franchise area may elect to  
7 terminate that municipal franchise and seek a state-issued  
8 certificate of franchise authority by providing written notice to  
9 the commission and the affected municipality before January 1,  
10 2006. The municipal franchise is terminated on the date the  
11 commission issues the state-issued certificate of franchise  
12 authority.

13 (c) A cable service provider that serves fewer than 40  
14 percent of the total cable customers in a municipal franchise area  
15 and that elects under Subsection (b) to terminate an existing  
16 municipal franchise is responsible for remitting to the affected  
17 municipality before the 91st day after the date the municipal  
18 franchise is terminated any accrued but unpaid franchise fees due  
19 under the terminated franchise. If the cable service provider has  
20 credit remaining from prepaid franchise fees, the provider may  
21 deduct the amount of the remaining credit from any future fees or  
22 taxes it must pay to the municipality, either directly or through  
23 the comptroller.

24 (d) For purposes of this section, a cable service provider  
25 or video service provider will be deemed to have or have had a  
26 franchise to provide cable service or video service in a specific  
27 municipality if any affiliates or successor entity of the cable or

1 video provider has or had a franchise agreement granted by that  
2 specific municipality.

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

8 (f) Except as provided in this chapter, nothing in this  
9 chapter is intended to abrogate, nullify, or adversely affect in  
10 any way the contractual rights, duties, and obligations existing  
11 and incurred by a cable service provider or a video service provider  
12 before the enactment of this chapter, and owed or owing to any  
13 private person, firm, partnership, corporation, or other entity  
14 including without limitation those obligations measured by and  
15 related to the gross revenue hereafter received by the holder of a  
16 state-issued certificate of franchise authority for services  
17 provided in the geographic area to which such prior franchise or  
18 permit applies. All liens, security interests, royalties, and  
19 other contracts, rights, and interests in effect on September 1,  
20 2005, shall continue in full force and effect, without the  
21 necessity for renewal, extension, or continuance, and shall be paid  
22 and performed by the holder of a state-issued certificate of  
23 franchise authority, and shall apply as though the revenue  
24 generated by the holder of a state-issued certificate of franchise  
25 authority continued to be generated pursuant to the permit or  
26 franchise issued by the prior local franchising authority or  
27 municipality within the geographic area to which the prior permit



1 or franchise applies. It shall be a condition to the issuance and  
2 continuance of a state-issued certificate of franchise authority  
3 that the private contractual rights and obligations herein  
4 described continue to be honored, paid, or performed to the same  
5 extent as though the cable service provider continued to operate  
6 under its prior franchise or permit, for the duration of such  
7 state-issued certificate of franchise authority and any renewals or  
8 extensions thereof, and that the applicant so agrees. Any person,  
9 firm, partnership, corporation, or other entity holding or claiming  
10 rights herein reserved may enforce same by an action brought in a  
11 court of competent jurisdiction.

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

20 (b) The franchise fee payable under this section is to be  
21 paid quarterly, within 45 days after the end of the quarter for the  
22 preceding calendar quarter. Each payment shall be accompanied by a  
23 summary explaining the basis for the calculation of the fee. A  
24 municipality may review the business records of the cable service  
25 provider or video service provider to the extent necessary to  
26 ensure compensation in accordance with Subsection (a). Each party  
27 shall bear the party's own costs of the examination. A municipality

1 may, in the event of a dispute concerning compensation under this  
2 section, bring an action in a court of competent jurisdiction.

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

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

7 (a) Until the expiration of the incumbent cable service provider's  
8 agreement, the holder of a state-issued certificate of franchise  
9 authority shall pay a municipality in which it is offering cable  
10 service or video service the same cash payments on a per subscriber  
11 basis as required by the incumbent cable service provider's  
12 franchise agreement. The holder of a state-issued certificate of  
13 franchise authority shall report quarterly to the municipality the  
14 total number of subscribers served within the municipality. The  
15 amount paid by the holder of a state-issued certificate of  
16 franchise authority shall be calculated quarterly by the  
17 municipality by multiplying the amount of cash payment under the  
18 incumbent cable service provider's franchise agreement by a number  
19 derived by dividing the number of subscribers served by a video  
20 service provider or cable service provider by the total number of  
21 video or cable service subscribers in the municipality. Such pro  
22 rata payments are to be paid quarterly to the municipality within 45  
23 days after the end of the quarter for the preceding calendar  
24 quarter.

25 (b) On the expiration of the incumbent cable service  
26 provider's agreement, the holder of a state-issued certificate of  
27 franchise authority shall pay a municipality in which it is

1 offering cable service or video service one percent of the  
2 provider's gross revenues, as defined by this chapter, or at the  
3 municipality's election, the per subscriber fee that was paid to  
4 the municipality under the expired incumbent cable service  
5 provider's agreement, in lieu of in-kind compensation and grants.  
6 Payments under this subsection shall be paid in the same manner as  
7 outlined in Section 66.005(b).

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

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

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

25 (2) cable services to community public buildings, such  
26 as municipal buildings and public schools, shall continue to be  
27 provided to the same extent provided immediately prior to the date

1 of the termination until January 1, 2008, after which a provider  
2 that provides the services may deduct from the franchise fee to be  
3 paid to the municipality an amount equal to the actual incremental  
4 cost of the services if the municipality requires the services  
5 after that date. Such cable service generally refers to the  
6 existing cable drop connections to such facilities and the tier of  
7 cable service provided pursuant to the franchise at the time of the  
8 termination.

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

12 Sec. 66.008. CUSTOMER SERVICE STANDARDS. The holder of a  
13 state-issued certificate of franchise authority shall comply with  
14 customer service requirements consistent with 47 C.F.R. Section  
15 76.309(c) until there are two or more providers offering service,  
16 excluding direct-to-home satellite service, in the relevant  
17 municipality.

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

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

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

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

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

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

18        (e) In the event a municipality has not utilized the minimum  
19 number of access channels as permitted by Subsection (c), access to  
20 the additional channel capacity allowed in Subsection (c) shall be  
21 provided upon 90 days' written notice if the municipality meets the  
22 following standard: if a municipality has one active PEG channel  
23 and wishes to activate an additional PEG channel, the initial  
24 channel shall be considered to be substantially utilized when 12  
25 hours are programmed on that channel each calendar day. In  
26 addition, at least 40 percent of the 12 hours of programming for  
27 each business day on average over each calendar quarter must be

1 nonrepeat programming. Nonrepeat programming shall include the  
2 first three video-castings of a program. If a municipality is  
3 entitled to three PEG channels under Subsection (c) and has in  
4 service two active PEG channels, each of the two active channels  
5 shall be considered to be substantially utilized when 12 hours are  
6 programmed on each channel each calendar day and at least 50 percent  
7 of the 12 hours of programming for each business day on average over  
8 each calendar quarter is nonrepeat programming for three  
9 consecutive calendar quarters.

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

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

1 provider to deliver services.

2 (h) Where technically feasible, the holder of a  
3 state-issued certificate of franchise authority and an incumbent  
4 cable service provider shall use reasonable efforts to interconnect  
5 their cable or video systems for the purpose of providing PEG  
6 programming. Interconnection may be accomplished by direct cable,  
7 microwave link, satellite, or other reasonable method of  
8 connection. Holders of a state-issued certificate of franchise  
9 authority and incumbent cable service providers shall negotiate in  
10 good faith and incumbent cable service providers may not withhold  
11 interconnection of PEG channels.

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

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

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

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

1           (2) access to a building; or

2           (3) a municipal utility pole attachment term.

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

4           (a) A municipality may enforce police power-based regulations in  
5 the management of a public right-of-way that apply to the holder of  
6 a state-issued certificate of franchise authority within the  
7 municipality. A municipality may enforce police power-based  
8 regulations in the management of the activities of the holder of a  
9 state-issued certificate of franchise authority to the extent that  
10 they are reasonably necessary to protect the health, safety, and  
11 welfare of the public. Police power-based regulation of the holder  
12 of a state-issued certificate of franchise authority's use of the  
13 public right-of-way must be competitively neutral and may not be  
14 unreasonable or discriminatory. A municipality may not impose on  
15 activities of the holder of a state-issued certificate of franchise  
16 authority a requirement:

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

19           (2) regarding the filing of reports and documents with  
20 the municipality that are not required by state or federal law and  
21 that are not related to the use of the public right-of-way except  
22 that a municipality may request maps and records maintained in the  
23 ordinary course of business for purposes of locating the portions  
24 of a communications network that occupy public rights-of-way. Any  
25 maps or records of the location of a communications network  
26 received by a municipality shall be confidential and exempt from  
27 disclosure under Chapter 552, Government Code, and may be used by a



1 municipality only for the purpose of planning and managing  
2 construction activity in the public right-of-way. A municipality  
3 may not request information concerning the capacity or technical  
4 configuration of the holder of a state-issued certificate of  
5 franchise authority's facilities;

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

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

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

26 (b) Notwithstanding any other law, a municipality may  
27 require the issuance of a construction permit, without cost, to the

1 holder of a state-issued certificate of franchise authority that is  
2 locating facilities in or on a public right-of-way in the  
3 municipality. The terms of the permit shall be consistent with  
4 construction permits issued to other persons excavating in a public  
5 right-of-way.

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

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

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

27 Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY;

1 NOTICE OF LIABILITY. (a) The holder of a state-issued certificate  
2 of franchise authority shall indemnify and hold a municipality and  
3 its officers and employees harmless against any and all claims,  
4 lawsuits, judgments, costs, liens, losses, expenses, fees  
5 (including reasonable attorney's fees and costs of defense),  
6 proceedings, actions, demands, causes of action, liability, and  
7 suits of any kind and nature, including personal or bodily injury  
8 (including death), property damage, or other harm for which  
9 recovery of damages is sought, that is found by a court of competent  
10 jurisdiction to be caused solely by the negligent act, error, or  
11 omission of the holder of a state-issued certificate of franchise  
12 authority or any agent, officer, director, representative,  
13 employee, affiliate, or subcontractor of the holder of a  
14 state-issued certificate of franchise authority or their  
15 respective officers, agents, employees, directors, or  
16 representatives, while installing, repairing, or maintaining  
17 facilities in a public right-of-way. The indemnity provided by  
18 this subsection does not apply to any liability resulting from the  
19 negligence of the municipality or its officers, employees,  
20 contractors, or subcontractors. If the holder of a state-issued  
21 certificate of franchise authority and the municipality are found  
22 jointly liable by a court of competent jurisdiction, liability  
23 shall be apportioned comparatively in accordance with the laws of  
24 this state without, however, waiving any governmental immunity  
25 available to the municipality under state law and without waiving  
26 any defenses of the parties under state law. This subsection is  
27 solely for the benefit of the municipality and the holder of a

1 state-issued certificate of franchise authority and does not create  
2 or grant any rights, contractual or otherwise, for or to any other  
3 person or entity.

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

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

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

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

26 (3) submitting reports within 30 days on the customer  
27 service standards referenced in Section 66.008 if the provider is

1 subject to those standards and has continued and unresolved  
2 customer service complaints indicating a clear failure on the part  
3 of the holder of a state-issued certificate of franchise authority  
4 to comply with the standards.

5 Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose  
6 of this section is to prevent discrimination among potential  
7 residential subscribers.

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

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

19 (d) The holder of a state-issued certificate of franchise  
20 authority shall have a reasonable period of time to become capable  
21 of providing cable service or video service to all households  
22 within the designated franchise area as defined in Section  
23 66.003(b)(4) and may satisfy the requirements of this section  
24 through the use of an alternative technology that provides  
25 comparable content, service, and functionality.

26 (e) Notwithstanding any provision of this chapter, the  
27 commission has the authority to make the determination regarding

1 the comparability of the technology and the service provided.  
2 Notwithstanding any provision of this chapter, the commission has  
3 the authority to monitor the deployment of cable services, video  
4 services, or alternate technology.

5 Sec. 66.015. COMPLIANCE. (a) Should the holder of a  
6 state-issued certificate of franchise authority be found by a court  
7 of competent jurisdiction to be in noncompliance with the  
8 requirements of this chapter, the court shall order the holder a  
9 state-issued certificate of franchise authority, within a  
10 specified reasonable period of time, to cure such noncompliance.  
11 Failure to comply shall subject the holder of the state-issued  
12 franchise of franchise authority to penalties as the court shall  
13 reasonably impose, up to and including revocation of the  
14 state-issued certificate of franchise authority granted under this  
15 chapter.

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

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

25 (b) Nothing in this chapter shall limit the ability of a  
26 municipality under existing law to receive compensation for use of  
27 the public rights-of-way from entities determined not to be subject

1 to all or part of this chapter, including but not limited to  
2 provider of Internet protocol cable or video services, unless such  
3 payments are expressly prohibited by federal law.

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

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

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

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

18 (4) other relevant issues.

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

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

23 SECTION 28. Section 283.002, Local Government Code, is  
24 amended by amending Subdivision (2) and adding Subdivision (7) to  
25 read as follows:

26 (2) "Certificated telecommunications provider" means  
27 a person who has been issued a certificate of convenience and

1 necessity, certificate of operating authority, or service provider  
2 certificate of operating authority by the commission to offer local  
3 exchange telephone service or a person who provides voice service.

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

10 SECTION 29. The following provisions of the Utilities Code  
11 are repealed:

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

13 (2) Chapters 61 and 63.

14 SECTION 30. The Public Utility Commission of Texas shall  
15 conduct a study to determine whether Title 2, Utilities Code,  
16 adequately preserves customer choice in the Internet-enabled  
17 applications employed in association with broadband service and  
18 shall report its conclusions and recommendations to the legislature  
19 not later than January 1, 2007. The study must include  
20 consultation with and comment from all interested parties.

21 SECTION 31. If any provision of this Act or its application  
22 to any person or circumstance is held invalid, the invalidity does  
23 not affect other provisions or applications of this Act that can be  
24 given effect without the invalid provision or application, and to  
25 this end the provisions of this Act are declared to be severable.

26 SECTION 32. This Act takes effect September 1, 2005, if it  
27 receives a vote of two-thirds of all the members elected to each



S.B. No. 5

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.