

Amend CSSB 408 (House committee printing) by adding the following sections to the bill, numbered appropriately:

SECTION __. The heading to Subtitle C, Title 2, Utilities Code, is amended to read as follows:

SUBTITLE C. ADVANCED SERVICE INFRASTRUCTURE AND INTERMODAL COMPETITION [~~TELECOMMUNICATIONS UTILITIES~~]

SECTION __. Sections 51.001(a)-(f), Utilities Code, are amended to read as follows:

(a) Significant technological changes have occurred in telecommunications since the law from which this title is derived was originally adopted. To encourage and accelerate the development of a competitive and advanced services [~~telecommunications~~] environment and infrastructure, new rules, policies, and principles must be formulated consistent with the understanding that, as new technologies become available, all public policy must be driven by free market principles for the benefit of consumers in this state [~~and applied to protect the public interest. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law. It is the purpose of this subtitle to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services~~] consistent with the public interest.

(b) It is the policy of this state to:

(1) promote diversity of telecommunications and advanced services providers and interconnectivity;

(2) promote and encourage the development of competitive broadband networks;

(3) encourage a fully competitive telecommunications and advanced services marketplace; and

(4) [~~(3)~~] maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates.

(c) The policy goals described by Subsection (b) are best achieved by legislation that modernizes the state's regulatory

framework [~~telecommunications regulation~~] by:

(1) guaranteeing the affordability of basic telephone service for low-income persons in a competitively neutral manner; [~~and~~]

(2) fostering free market intermodal competition; and

(3) maintaining and enforcing effective remedies to discourage and redress anticompetitive conduct [~~in the telecommunications industry~~].

(d) The technological advancements, deployment of broadband network [~~advanced telecommunications~~] infrastructure, and increased customer choices for telecommunications and advanced services generated by a truly competitive market play a critical role in this state's [~~Texas'~~] economic future by raising living standards for Texans through:

(1) enhanced economic development; and

(2) improved delivery of education, health, and other public and private services.

(e) The strength of competitive forces varies widely between markets, products, and services. It is the policy of this state to require the commission to take action necessary to enhance competition by avoiding the imposition of unnecessary [~~adjusting~~] regulation in light of [~~to match~~] the degree of intramodal and intermodal competition in the marketplace to [+

[~~(1)~~] reduce the cost and burden of regulation[+] and to

[~~(2)~~] protect markets that are not competitive.

(f) It is the policy of this state to ensure that high quality telecommunications and advanced services are available, accessible, and usable by an individual with a disability, unless making the services available, accessible, or usable would:

(1) result in an undue burden, including unreasonable cost or technical infeasibility; or

(2) have an adverse competitive effect.

SECTION __. Section 51.002, Utilities Code, is amended to read as follows:

Sec. 51.002. DEFINITIONS. In this title [~~subtitle~~]:

(1) "Advanced service" means a service that may be

delivered only over a broadband network.

(2) "Basic local telecommunications service" means:

- (A) [~~flat rate~~] residential and business local exchange telephone service, including primary directory listings;
- (B) tone dialing service;
- (C) access to operator services;
- (D) access to directory assistance services;
- (E) access to 911 service provided by a local authority or dual party relay service;
- (F) the ability to report service problems seven days a week;
- (G) lifeline [~~and tel-assistance~~] services; and
- (H) any other service the commission determines after a hearing is a basic local telecommunications service.

(3) "Broadband network" means a wireline network that offers a minimum downstream speed of 200 kilobits a second and a minimum upstream speed of 128 kilobits a second to or from the premises of an end user. The term includes DSL, fiber-to-the-premises, and cable modem networks.

(4) [~~(2)~~] "Dominant carrier" means a provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within a certificated exchange area on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition, with respect to [+

~~[(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive, and~~

~~[(B)] interexchange~~ telecommunications services, the term does not include an interexchange carrier that

is not a certificated local exchange company.

(5) ~~[(3)]~~ "Incumbent local exchange company" means a local exchange company that held ~~[has]~~ a certificate of convenience and necessity on September 1, 2004 ~~[1995]~~.

(6) "Information service" has the meaning assigned by 47 U.S.C. Section 153.

(7) "Interexchange telecommunications service" means landline telecommunications service provided between a point located within a local access and transport area and a point located within another local access and transport area.

(8) "IntraLATA interexchange" or "intraLATA message toll" service means landline telecommunications service between a point located within an exchange in a local access and transport area, as defined by the Federal Communications Commission, and a point within another exchange located in the same local access and transport area.

(9) ~~[(4)]~~ "Local exchange company" means an entity ~~[a telecommunications utility]~~ that has a certificate and is providing ~~[of convenience and necessity or a certificate of operating authority to provide]~~ in this state:

- (A) local exchange telephone service;
- (B) basic local telecommunications service; or
- (C) switched access service.

(10) ~~[(5)]~~ "Local exchange telephone service" means telecommunications service provided ~~[within an exchange]~~ to establish connections between customer premises ~~[within the exchange]~~, including connections between a customer premises within a local access and transport area and an entity providing interexchange telecommunications service, using any landline technology or radio or wireless type facility components used to provide traditional landline service ~~[and a long distance provider serving the exchange]~~. The term includes basic network service as defined by Section 58.051, services classified as nonbasic network services by Section 58.151, ~~[tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service]~~ and interconnection with other service providers. The term does not

include the following services, whether offered on an intraexchange or interexchange basis:

- (A) central office based PBX-type services for systems of 75 stations or more;
- (B) billing and collection services;
- (C) high-speed private line services of 1.544 megabits or greater;
- (D) customized services;
- (E) private line or virtual private line services;
- (F) resold or shared local exchange telephone services if permitted by tariff;
- (G) dark fiber services;
- (H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
- (I) dedicated or virtually dedicated access services; or
- (J) an information service or any other service the commission determines is not a "local exchange telephone service."

(11) "Network provider" means an entity, whether or not certificated, that is not a service provider, as defined by this section, and that uses any technology to offer voice communication to the public over a wireline network that the provider or an affiliate of the provider owns or controls.

~~(12) [(6) "Long run incremental cost" has the meaning assigned by 16 T.A.C. Section 23.91 or its successor.~~

~~[(7)]~~ "Pricing flexibility" includes:

- (A) customer specific contracts;
- (B) packaging of services;
- (C) volume, term, and discount pricing;
- (D) zone density pricing, with a zone to be defined as an exchange; and
- (E) other promotional pricing.

(13) "Provider" means a network provider or a service provider.

(14) [~~(8)~~] "Public utility" or "utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(15) "Rural incumbent local exchange company" means an incumbent local exchange company that:

(A) is a cooperative corporation; or

(B) has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in this state on September 1, 2005.

(16) [~~(9)~~] "Separation" means the division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public [~~utility~~] service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(17) "Service provider" means a local exchange company or a provider of interexchange telecommunications service.

(18) "Telecommunications" has the meaning assigned by 47 U.S.C. Section 153.

(19) [~~(10)~~] "Telecommunications provider" means a person or entity that offers telecommunications to others for a fee[+]

[~~(A)~~ means+]

[~~(i)~~ a certificated telecommunications

utility;

~~[(ii) a shared tenant service provider;~~

~~[(iii) a nondominant carrier of telecommunications services;~~

~~[(iv) a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), except that the term does not include these entities for the purposes of Chapter 17, 55, or 64;~~

~~[(v) a telecommunications entity that provides central office based PBX-type sharing or resale arrangements;~~

~~[(vi) an interexchange telecommunications carrier;~~

~~[(vii) a specialized common carrier;~~

~~[(viii) a reseller of communications;~~

~~[(ix) a provider of operator services;~~

~~[(x) a provider of customer-owned pay telephone service; or~~

~~[(xi) a person or entity determined by the commission to provide telecommunications services to customers in this state; and~~

~~[(B) does not mean:~~

~~[(i) a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services; or~~

~~[(ii) a state agency or state institution of higher education, or a service provided by a state agency or state institution of higher education.~~

~~[(11) "Telecommunications utility" means:~~

~~[(A) a public utility;~~

~~[(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;~~

~~[(C) a specialized communications common carrier;~~

~~[(D) a reseller of communications;~~

~~[(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;~~

~~[(F) a provider of operator services as defined by Section 55.081, unless the provider is a subscriber to customer-owned pay telephone service; and~~

~~[(C) a separated affiliate or an electronic publishing joint venture as defined in Chapter 63.~~

~~[(12) "Tier 1 local exchange company" has the meaning assigned by the Federal Communications Commission].~~

SECTION __. Section 51.003, Utilities Code, is amended to read as follows:

Sec. 51.003. APPLICABILITY. (a) Except as otherwise expressly provided by this title, this title does not apply to:

(1) a company that as its only form of business:

(A) is a telecommunications manager; or

(B) administers central office based or customer based PBX-type sharing/resale arrangements;

(2) telegraph services;

(3) television or radio stations;

(4) community antenna television services; or

(5) a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), other than conventional rural radio-telephone services provided by a wire-line telephone company under the Public Mobile Service rules of the Federal Communications Commission (47 C.F.R. Part 22).

(b) A service provider or network provider is subject to the commission's jurisdiction except to the extent federal law specifically preempts the commission from exercising authority.

(c) A state agency, a state institution of higher education, or a service provided by a state agency or state institution of higher education is not a network provider, service provider, or telecommunications provider for purposes of this title.

SECTION __. Section 51.009, Utilities Code, is amended to

read as follows:

Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title, including Section 53.201, may be construed as in any way limiting the right of a network provider or service provider [~~public utility~~] to pass through a municipal fee the provider is required to pay, including an increase in a municipal fee. A municipality must provide 30-day public notice of the fee and/or increase and the notice should include that the network provider or service provider may pass through the fee to the customer.

(b) A network provider or service provider [~~public utility~~] that [~~traditionally~~] passes through municipal fees shall promptly pass through any municipal fee reduction.

SECTION __. Section 52.002, Utilities Code, is amended to read as follows:

Sec. 52.002. AUTHORITY TO REGULATE. [~~(a) To carry out the public policy stated by Section 52.001 and to regulate rates, operations, and services so that the rates are just, fair, and reasonable and the services are adequate and efficient, the commission has exclusive original jurisdiction over the business and property of a telecommunications utility in this state subject to the limitations imposed by this title.~~

[~~(b)~~] The commission's regulatory authority [~~as to a telecommunications utility other than a public utility~~] is only as prescribed by this title.

SECTION __. Section 52.003, Utilities Code, is amended to read as follows:

Sec. 52.003. COOPERATION WITH OTHER REGULATORY AUTHORITIES. In regulating the [~~rates, operations, and~~] services of a provider of local exchange telephone service [~~telecommunications utility~~] providing service in a municipality located on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the [~~utility~~] regulatory commission of the adjoining state or of the federal government and may hold a joint hearing or make a joint investigation with that commission.

SECTION __. Section 51.005, Utilities Code, is transferred to Subchapter A, Chapter 52, Utilities Code, redesignated as

Section 52.0041, and amended to read as follows:

Sec. 52.0041. COOPERATION WITH MUNICIPALITIES
~~[51.005. ASSISTANCE TO MUNICIPALITY]~~. (a) On request of a municipality, the commission may advise and assist the municipality with respect to a question or proceeding arising under this title. Assistance provided by the commission may include aid to a municipality on a matter pending before the commission or a court, such as making a staff member available as a witness or otherwise providing evidence to the municipality.

(b) A municipality has standing in each case before the commission that relates to a provider of local exchange telephone service providing retail service to the municipality. A municipality's standing is subject to the right of the commission to:

(1) determine standing in a case involving a retail service area dispute that involves two or more providers of local exchange telephone service; and

(2) consolidate municipalities on an issue of common interest.

(c) The governing body of a municipality participating in a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and

(2) assist the governing body with litigation before the commission or a court.

(d) A provider of local exchange telephone service in the ratemaking proceeding may not be required to reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (c) except to the extent the commission determines is reasonable.

SECTION __. Section 52.006, Utilities Code, is amended to read as follows:

Sec. 52.006. COMMISSION TO REPORT TO LEGISLATURE. (a) Before January 15 of each odd-numbered year, the commission shall report to the legislature on:

(1) the scope of competition in all ~~[regulated]~~

telecommunications and information services markets, regardless of technology used; and

(2) the effect of competition on customers [~~in both competitive and noncompetitive markets~~], with a specific focus on rural markets and underserved areas in urban markets.

(b) The report shall include[+]

[~~(1)~~] an assessment of the effect of competition on the rates and availability of all telecommunications and information services for residential and business customers, regardless of technology used[+]

[~~(2)~~] a summary of commission action over the preceding two years that reflects changes in the scope of competition in regulated telecommunications markets; and

[~~(3)~~] recommendations for legislation the commission determines is appropriate to promote the public interest in the context of a partially competitive telecommunications market].

(c) The commission, in its assessment under Subsection (b) [~~(b)(1)~~], shall specifically address any effects on universal service.

(d) Each network provider and service provider [~~A telecommunications utility~~] shall cooperate with the commission as reasonably necessary for the commission to satisfy the requirements of this section.

SECTION __. The heading to Subchapter C, Chapter 52, Utilities Code, is amended to read as follows:

SUBCHAPTER C. PROVIDERS OF INTEREXCHANGE TELECOMMUNICATIONS SERVICES [~~UTILITIES THAT ARE NOT DOMINANT CARRIERS~~]

SECTION __. Section 52.101, Utilities Code, is amended to read as follows:

Sec. 52.101. APPLICABILITY. This subchapter applies only to a provider of interexchange telecommunications services [~~utility that is not:~~

[~~(1)~~] a dominant carrier; or

[~~(2)~~] the holder of a certificate of operating authority or a service provider certificate of operating authority].

SECTION __. Section 52.102, Utilities Code, is amended to

read as follows:

Sec. 52.102. LIMITED REGULATORY AUTHORITY. [~~(a)~~] Except as otherwise provided by this subchapter and Subchapter~~[~~Subchapters] D, [~~and K,~~] Chapter 55, [~~and Section 55.011,~~] the commission has [~~only the following~~] jurisdiction over a provider of interexchange telecommunications services only to require compliance with [~~utility subject to~~] this subchapter[~~+~~

~~[(1) to require registration under Section 52.103,~~

~~[(2) to conduct an investigation under Section 52.104,~~

~~[(3) to require the filing of reports as the commission periodically directs,~~

~~[(4) to require the maintenance of statewide average rates or prices of telecommunications service,~~

~~[(5) to require a telecommunications utility that had more than six percent of the total intrastate access minutes of use as measured for the most recent 12-month period to pass switched access rate reductions under this title to customers as required by Section 52.112,~~

~~[(6) to require access to telecommunications service under Section 52.105, and~~

~~[(7) to require the quality of telecommunications service provided to be adequate under Section 52.106.~~

~~[(b) The authority provided by Subsection (a)(5) expires on the date on which Section 52.112 expires].~~

SECTION __. Section 52.103, Utilities Code, is amended to read as follows:

Sec. 52.103. REGISTRATION REQUIRED. (a) A provider of interexchange telecommunications service to customers residing in this state [~~utility~~] shall register with the commission not later than the 30th day after the date the provider [~~utility~~] commences service to the public.

(b) A provider of interexchange telecommunications service [~~utility~~] that registers under Subsection (a) shall file with the commission a description of:

(1) the location and type of service provided; and

(2) the price to the public of that service[~~, and~~

~~[(3) other registration information the commission~~

~~directs~~].

(c) A provider of [~~An~~] interexchange telecommunications service [~~utility~~] doing business in this state shall maintain on file with the commission tariffs or lists governing the terms of providing its services.

SECTION __. Section 52.108, Utilities Code, is amended to read as follows:

Sec. 52.108. OTHER PROHIBITED PRACTICES. The commission may enter any order necessary to protect the public interest if the commission finds after notice and hearing that a provider of interexchange telecommunications service [~~utility~~] has ceased providing[~~+~~

~~[(1) failed to maintain statewide average rates,~~

~~[(2) abandoned]~~ interexchange [~~message~~] telecommunications service to a local exchange area in which there is no competitive alternative [~~in a manner contrary to the public interest,~~

~~[(3) engaged in a pattern of preferential or discriminatory activities prohibited by Section 53.003, 55.005, or 55.006, or~~

~~[(4) failed to pass switched access rate reductions to customers under Chapter 56 or other law, as required by Section 52.112].~~

SECTION __. The heading to Subchapter F, Chapter 52, Utilities Code, is amended to read as follows:

SUBCHAPTER F. REQUIRED [~~REPORTS AND~~] FILINGS AND ACCESS RATE PROHIBITIONS [~~, RECORDS~~]

SECTION __. Section 52.251, Utilities Code, is amended to read as follows:

Sec. 52.251. TARIFF FILINGS. (a) An incumbent local exchange company [~~A public utility~~] shall file with the commission a tariff or price list showing each rate that is:

(1) subject to the commission's jurisdiction; or [~~and~~]

(2) in effect for the provision of local exchange telephone service [~~a utility service, product, or commodity offered by the utility~~].

(b) The incumbent local exchange company [~~public utility~~]

shall file as a part of the tariff required under Subsection (a) each term or condition [~~rule~~] that relates to or affects:

(1) a rate [~~of the utility~~]; or

(2) the [~~a utility~~] service, product, or commodity furnished [~~by the utility~~].

(c) A certificated provider of local exchange telephone service that is not an incumbent local exchange company shall file a price list as provided by Subsection (a).

SECTION __. Section 52.155, Utilities Code, is transferred to Subchapter F, Chapter 52, Utilities Code, redesignated as Section 52.2521, and amended to read as follows:

Sec. 52.2521 [~~52.155~~]. PROHIBITION OF EXCESSIVE ACCESS CHARGES. (a) A provider of local exchange telephone service that is not an incumbent local exchange company [~~telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority~~] may not charge a higher amount for a combined originating and [~~or~~] terminating intrastate switched access than the prevailing rates charged by the incumbent local exchange company [~~holder of the certificate of convenience and necessity~~] in whose territory the call originated or terminated unless:

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

(2) subject to commission review, the provider of local exchange telephone service [~~telecommunications utility~~] establishes statewide average composite originating and terminating intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all certificated providers [~~holders of certificates of convenience and necessity~~] in this state.

(b) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this section.

SECTION __. Section 52.255, Utilities Code, is amended to read as follows:

Sec. 52.255. AVAILABILITY OF RECORDS. Notwithstanding Section 14.152, a book, account, record, or memorandum of a provider of local exchange telephone service [~~public utility~~] may

be removed from this state if the book, account, record, or memorandum is returned to this state for any commission inspection authorized by this title.

SECTION __. Section 52.256(c), Utilities Code, is amended to read as follows:

(c) Each provider of local exchange telephone service [~~telecommunications utility~~] shall submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses. The report must include:

(1) the diversity of the provider's [~~telecommunications utility's~~] workforce as of the time of the report;

(2) the provider's [~~telecommunications utility's~~] level of contracting with small and historically underutilized businesses;

(3) the specific [~~progress made under the plan under Subsection (b);~~

~~(4) the specific]~~ initiatives, programs, and activities undertaken [~~under the plan~~] during the preceding year;

(4) [~~(5)~~] an assessment of the success of each of those initiatives, programs, and activities;

(5) [~~(6)~~] the extent to which the provider [~~telecommunications utility~~] has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses; and

(6) [~~(7)~~] the initiatives, programs, and activities the provider [~~telecommunications utility~~] will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

SECTION __. Subchapter A, Chapter 53, Utilities Code, is amended by adding Section 53.0001 to read as follows:

Sec. 53.0001. APPLICABILITY OF CHAPTER. This chapter applies only to an incumbent local exchange company that is not regulated under Chapter 58 or 59.

SECTION __. Section 53.056(c), Utilities Code, is amended

to read as follows:

(c) The rates and methods established under this section and the depreciation account required by the commission [~~Section 52.252~~] shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

SECTION __. Section 53.061(a), Utilities Code, is amended to read as follows:

(a) The commission may not allow as a cost or expense for ratemaking purposes:

(1) an expenditure for legislative advocacy; or

(2) an expenditure for business gifts and entertainment, advertising, or public relations, including expenditures for institutional and consumption-inducing purposes, [~~described by Section 52.254~~] that the commission determines to be not in the public interest.

SECTION __. Section 53.065(b), Utilities Code, is amended to read as follows:

(b) This section does not limit the ability of an incumbent local exchange company to contract for high-speed private line services of 1.544 megabits or greater [~~under Section 52.057~~].

SECTION __. Section 53.308, Utilities Code, is amended to read as follows:

Sec. 53.308. FEES AND ASSESSMENTS. The commission may prescribe and collect a fee or assessment from incumbent local exchange companies necessary to recover the cost to the commission and to the office of activities carried out and services provided under:

(1) this subchapter;

(2) Section 53.112; and

(3) Subchapter H [~~and~~

~~(4) Section 55.004~~].

SECTION __. Chapter 53, Utilities Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. SPECIAL PROVISIONS FOR RURAL INCUMBENT LOCAL EXCHANGE COMPANIES

Sec. 53.401. APPLICATION OF SUBCHAPTER. This subchapter applies only to a rural incumbent local exchange company.

Sec. 53.402. NEW SERVICES. (a) A rural incumbent local exchange company shall price each new service at or above the service's long run incremental cost. The commission shall allow the company to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(b) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by a rural incumbent local exchange company of a new service is in compliance with Subsection (a).

(c) If a complaint is filed under Subsection (b), the rural incumbent local exchange company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

Sec. 53.403. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this title, a rural incumbent local exchange company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packaging of any regulated service with any unregulated service or any service of an affiliate.

(b) A rural incumbent local exchange company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow

the company to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that a rural incumbent local exchange company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the 31st day after the date the company implements the rate.

Sec. 53.404. CUSTOMER PROMOTIONAL OFFERINGS. (a) A rural incumbent local exchange company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The company shall file with the commission a promotional offering that consists of:

(1) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) A rural incumbent local exchange company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) A rural incumbent local exchange company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

SECTION __. Section 54.001, Utilities Code, is amended to read as follows:

Sec. 54.001. CERTIFICATE REQUIRED. (a) Unless the entity qualifies for the exemption provided by Section 54.002, an entity [A person] may not provide a telecommunications service or an advanced service or otherwise conduct business in this state as a network provider or service provider without first obtaining a certificate issued by the commission under this chapter [~~local exchange telephone service, basic local telecommunications service, or switched access service unless the person obtains a:~~

[~~(1) certificate of convenience and necessity,~~

~~[(2) certificate of operating authority, or
[(3) service provider certificate of operating
authority].~~

(b) Effective October 1, 2005, an entity that holds a
certificate of convenience and necessity, certificate of operating
authority, or service provider certificate of operating authority
is considered to hold a service provider certificate unless the
certificate holder files with the commission before that date:

(1) a request for a network provider certificate; or
(2) a notice of certificate relinquishment declaring
that the entity is exempt under Section 54.002 and stating the
reasons the entity is exempt.

(c) An entity that holds a certificate of convenience and
necessity, certificate of operating authority, or service provider
certificate of operating authority on September 30, 2005, may
present that certificate to the commission and the commission shall
immediately issue to that entity a network provider or service
provider certificate, as appropriate. The new certificate is
effective October 1, 2005.

SECTION __. Section 54.002, Utilities Code, is amended to
read as follows:

Sec. 54.002. EXCEPTIONS ~~[TO CERTIFICATE REQUIREMENT FOR
SERVICE EXTENSION]~~. A network provider or service provider is ~~[(a)
A telecommunications utility is]~~ not required to obtain a
certificate if the Federal Communications Commission has exercised
lawful preemptive authority precluding state certification
requirements in relation to the provider ~~[of convenience and
necessity, a certificate of operating authority, or a service
provider certificate of operating authority for an:~~

~~[(1) extension into territory that is:
[(A) contiguous to the territory the
telecommunications utility serves,
[(B) not receiving similar service from another
telecommunications utility, and
[(C) not in another telecommunications utility's
certificated area,~~

~~[(2) extension in or to territory the~~

~~telecommunications utility serves or is authorized to serve under a certificate of public convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority, or~~

~~[(3) operation, extension, or service in progress on September 1, 1975.~~

~~[(b) An extension allowed by Subsection (a) is limited to a device used:~~

~~[(1) to interconnect existing facilities, or~~

~~[(2) solely to transmit telecommunications utility services from an existing facility to a customer of retail utility service].~~

SECTION __. Section 54.005(a), Utilities Code, is amended to read as follows:

(a) When an application for a network provider or service provider certificate is filed by an entity that did not possess a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority on September 30, 2005 ~~[is filed]~~, the commission shall:

(1) give notice of the application to interested parties; and

(2) if requested:

(A) set a time and place for a hearing; and

(B) give notice of the hearing.

SECTION __. Subchapter A, Chapter 54, Utilities Code, is amended by adding Section 54.0055 to read as follows:

Sec. 54.0055. GRANT OR DENIAL OF CERTIFICATE. (a) The commission must grant or deny an application for a certificate filed under Section 54.005 not later than the 60th day after the date the application is filed.

(b) The commission shall grant each certificate on a nondiscriminatory basis after considering the technical and financial qualifications of the applicant. An applicant may not receive a certificate if an officer or director of the applicant has ever been convicted of a felony.

SECTION __. Section 54.008, Utilities Code, is amended to read as follows:

Sec. 54.008. REVOCATION OR AMENDMENT OF CERTIFICATE. [~~(a)~~]
The commission shall [~~may~~] revoke or amend a certificate [~~of convenience and necessity, a certificate of operating authority or a service provider certificate of operating authority~~] after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.

~~[(b) The commission may require one or more public utilities to provide service in an area affected by the revocation or amendment of a certificate held by a public utility.]~~

SECTION __. Section 54.201, Utilities Code, is amended to read as follows:

Sec. 54.201. CERTIFICATION PROHIBITED. The commission may not grant to a municipality a network provider or service provider certificate[~~+~~

~~[(1) certificate of convenience and necessity,
[(2) certificate of operating authority; or
[(3) service provider certificate of operating authority].~~

SECTION __. Section 54.202, Utilities Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A municipality or municipally owned utility [~~municipal electric system~~] may not offer for sale to the public:

(1) a service for which a certificate [~~of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority~~] is required; or

(2) a nonswitched telecommunications service used to connect a customer's premises with:

(A) another customer's premises within the exchange; or

(B) a long distance provider that serves the exchange.

(c) Subsection (a) does not prevent a municipally owned utility from:

(1) providing a governmental function or a service to its customers that is enabled, enhanced, delivered to, or available

to the public using the Internet, including:

- (A) bill paying services;
- (B) emergency services;
- (C) constituent services;
- (D) utility meter reading; and
- (E) permitting; and

(2) providing access to its transmission and distribution facilities under a contract with another entity that allows the entity to offer to the entity's customers high speed data services using broadband over power line technology, provided, however, that the compensation owed to the municipally owned utility for such access shall, at a minimum, recover all costs including debt service incurred by the municipally owned utility in the provision of such access.

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

SECTION __. Subchapter E, Chapter 54, Utilities Code, is amended by adding Section 54.2022 to read as follows:

Sec. 54.2022. PROHIBITION ON MUNICIPAL CHARGES FOR WIRELESS BROADBAND SERVICES. (a) Notwithstanding any other law, a municipality may not charge for wireless broadband services, including wireless fidelity, or Wi-Fi, services, that the municipality may provide under this title, except as provided by Subsection (b).

(b) A municipality that charged for services described by Subsection (a) on January 1, 2005, may continue to charge for those services.

SECTION __. Sections 54.203(a)-(c), Utilities Code, are amended to read as follows:

(a) If an area is or will be included within a municipality as the result of annexation, incorporation, or another reason, each entity [~~telecommunications utility~~] that holds or is entitled to

hold a certificate under this title to provide service or operate a facility in the area before the inclusion has the right to continue to provide the service or operate the facility and extend service in the entity's [~~utility's~~] certificated area within the annexed or incorporated area under the rights granted by the certificate and this title.

(b) Notwithstanding any other law, a certificated provider [~~telecommunications utility~~] has the right to:

(1) continue and extend service within the provider's [~~utility's~~] certificated area; and

(2) use roads, streets, highways, alleys, and public property to furnish communications [~~retail utility~~] service.

(c) The governing body of a municipality may require a certificated provider [~~telecommunications utility~~] to relocate the provider's [~~utility's~~] facility at the provider's [~~utility's~~] expense to permit the widening or straightening of a street by:

(1) giving the provider [~~utility~~] 30 days' notice; and

(2) simultaneously specifying the new location for the facility along the right-of-way of the street.

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

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

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

(2) access to a building; or

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

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

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

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

- (A) money;
- (B) services;
- (C) use of facilities; or
- (D) another kind of consideration.

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

SECTION __. Section 54.206(a), Utilities Code, is amended to read as follows:

(a) A provider that is required to pay a municipal fee [~~holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority~~] has the right to collect a fee that a municipality imposes under Section 54.204 [~~or 54.205~~] through a pro rata charge to the customers in the boundaries of the municipality.

SECTION __. Section 54.251, Utilities Code, is amended to

read as follows:

Sec. 54.251. PROVISION OF SERVICE. [~~(a)~~] Except as provided by this subchapter and Subchapter G, an incumbent local exchange company has the obligation of a provider of last resort. The company may meet that obligation using any available technology [~~section, Section 54.252, Section 54.253, and Section 54.254, a telecommunications utility that holds a certificate of convenience and necessity or a certificate of operating authority shall:~~

~~[(1) offer all basic local telecommunications services to each customer in the utility's certificated area; and~~

~~[(2) provide continuous and adequate service in that area.~~

~~[(b) Except as specifically determined otherwise by the commission under this subchapter or Subchapter G, the holder of a certificate of convenience and necessity for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area].~~

SECTION __. Section 54.252, Utilities Code, is amended to read as follows:

Sec. 54.252. GROUNDS FOR REDUCTION OF SERVICE BY PREVIOUS HOLDER OF CERTIFICATE OF CONVENIENCE AND NECESSITY. [~~(a)~~] Except to the extent otherwise ordered by the commission in accordance with this subchapter, the holder of a certificate of convenience and necessity before October 1, 2005, may not discontinue, reduce, or impair local exchange telephone service to any part of the holder's certificated service area except for:

- (1) nonpayment of charges;
- (2) nonuse; or
- (3) another similar reason that occurs in the usual course of business.

~~[(b) A discontinuance, reduction, or impairment of service must be in compliance with and is subject to any condition or restriction the commission prescribes.]~~

SECTION __. Section 54.254, Utilities Code, is amended to read as follows:

Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A certificated

provider [~~holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority~~] shall refuse to serve a customer in the provider's [~~holder's~~] certificated area if the provider [~~holder~~] is prohibited from providing the service under Section 212.012 or 232.029, Local Government Code.

SECTION __. Section 54.259(a), Utilities Code, is amended to read as follows:

(a) If a certificated provider [~~telecommunications utility~~] holds a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality [~~and holds a certificate if required by this title~~], a public or private property owner may not:

(1) prevent the provider [~~utility~~] from installing on the owner's property a telecommunications service facility a tenant requests;

(2) interfere with the provider's [~~utility's~~] installation on the owner's property of a telecommunications service facility a tenant requests;

(3) discriminate against such a provider [~~utility~~] regarding installation, terms, or compensation of a telecommunications service facility to a tenant on the owner's property;

(4) demand or accept an unreasonable payment of any kind from a tenant or the provider [~~utility~~] for allowing the provider [~~utility~~] on or in the owner's property; or

(5) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, because of the provider [~~utility~~] from which the tenant receives a telecommunications service.

SECTION __. Section 54.260(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding Section 54.259, if a certificated provider [~~telecommunications utility~~] holds a municipal consent, franchise, or permit as determined to be the appropriate grant of authority by the municipality [~~and holds a certificate if required by this title~~], a public or private property owner may:

(1) impose a condition on the provider [~~utility~~] that is reasonably necessary to protect:

(A) the safety, security, appearance, and condition of the property; and

(B) the safety and convenience of other persons;

(2) impose a reasonable limitation on the time at which the provider [~~utility~~] may have access to the property to install a telecommunications service facility;

(3) impose a reasonable limitation on the number of such providers [~~utilities~~] that have access to the owner's property, if the owner can demonstrate a space constraint that requires the limitation;

(4) require the provider [~~utility~~] to agree to indemnify the owner for damage caused installing, operating, or removing a facility;

(5) require the tenant or the provider [~~utility~~] to bear the entire cost of installing, operating, or removing a facility; and

(6) require the provider [~~utility~~] to pay compensation that is reasonable and nondiscriminatory among such service providers [~~telecommunications utilities~~].

SECTION __. Section 54.301, Utilities Code, is amended to read as follows:

Sec. 54.301. DEFINITIONS. In this subchapter:

(1) "Exiting provider [~~utility~~]" means a certificated provider of local exchange telephone service [~~telecommunications utility~~] that:

(A) [~~holds a certificate of operating authority or a service provider certificate of operating authority,~~

~~[(B)]~~ is the dominant carrier as to local exchange telephone [~~predominant provider of basic local telecommunications~~] service in a defined geographic area and provides those services using the provider's [~~utility's~~] own facilities; and

~~(B)~~ [~~(C)~~] ceases operations in all or part of the provider's [~~utility's~~] certificated service area under Section [~~54.253 or~~] 54.303.

(2) "Provider of last resort" means a certificated provider of local exchange telephone service [~~certificated telecommunications utility~~] that must offer local exchange telephone [~~basic local telecommunications~~] service throughout a defined geographic area.

(3) "Successor provider [~~utility~~]" means a service provider or a network provider [~~telecommunications utility that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority, and~~] that is or is designated to become the provider of last resort for the defined geographic area previously served by an exiting provider [~~utility~~].

SECTION __. Sections 54.302(a) and (b), Utilities Code, are amended to read as follows:

(a) Notwithstanding any other provision of this title, if a certificated provider of local exchange telephone service [~~telecommunications utility~~] installs facilities to serve customers located in a defined geographic area to provide telecommunications services, including local exchange telephone [~~basic local telecommunications~~] service, before the previously designated provider of last resort [~~holder of the certificate of convenience and necessity~~] installs facilities to serve customers located in that defined geographic area, the previously designated provider of last resort [~~holder of the certificate of convenience and necessity~~] may petition the commission for an order relieving the previously designated provider [~~utility~~] of the provider's obligations [~~utility's designation~~] as the provider of last resort in that defined geographic area.

(b) The commission shall relieve the previously designated provider of last resort of the provider's obligations in that [~~holder of the certificate of convenience and necessity of the obligations of service as the provider of last resort for the~~] defined geographic area, and the commission shall designate the facilities-based certificated provider of local exchange telephone service [~~telecommunications utility~~] as the provider of last resort if the commission determines that:

(1) the previously designated provider of last resort

~~[holder of the certificate of convenience and necessity]~~ does not have facilities in place to provide ~~[basic]~~ local exchange telephone ~~[telecommunications]~~ service to all customers within that defined geographic area;

(2) a certificated provider of local exchange telephone service ~~[another certificated telecommunications utility]~~ has installed facilities adequate to provide that service throughout that area; and

(3) the public interest would be served by transferring the provider of last resort obligations for that area.

SECTION __. Section 54.303, Utilities Code, is amended to read as follows:

Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS PROVIDER ~~[UTILITY]~~ WHEN NO SUFFICIENT FACILITIES EXIST. (a) When the commission obtains notice ~~[as required under Section 54.253 or otherwise]~~ that a certificated provider of local exchange telephone service ~~[a utility]~~ intends to become an exiting provider ~~[utility]~~ and no other certificated provider of local exchange telephone service ~~[telecommunications utility]~~ has facilities sufficient to provide ~~[basic]~~ local exchange telephone ~~[telecommunications]~~ service in that defined geographic area, the commission shall open a contested case proceeding to determine:

(1) the identity of the successor provider ~~[utility]~~ under this section; and

(2) the amount of universal service funding under Subchapter G, Chapter 56, to be made available to the successor provider ~~[utility]~~.

(b) On designation of ~~[as]~~ the successor provider ~~[utility]~~ under this section, the commission, if applicable, shall provide to the successor provider ~~[utility]~~:

(1) a reasonable time, in accordance with industry practices and not subject to otherwise applicable commission service quality rules or standards, to modify, construct, or obtain facilities necessary to serve the customers of the exiting provider ~~[telecommunications utility]~~; and

(2) an exemption on a transitional basis from any obligation to unbundle the successor provider's ~~[utility's]~~ network

elements or to provide service for resale within that defined geographic area for nine months or another reasonable period the commission may authorize as necessary to modify the successor provider's [~~utility's~~] network to provide that unbundling or resale.

(c) A customer within the defined geographic area to be served by the successor provider [~~utility~~] is considered to have applied for service from the successor provider [~~utility~~] on the effective date of that designation by the commission. Each right, privilege, and obligation of being a customer of the successor provider [~~utility~~] applies to that customer and the customer is subject to the successor provider's [~~utility's~~] applicable terms of service as specified in an applicable tariff or contract.

SECTION __. Section 54.304, Utilities Code, is amended to read as follows:

Sec. 54.304. ABANDONMENT OR CESSATION BY FACILITIES-BASED PROVIDER; EMERGENCY RESTORATION. (a) The commission, on its own motion or on the petition of an interested party, may institute an expedited proceeding under this section if the commission finds that:

(1) a certificated provider of local exchange telephone service [~~holder of a certificate of operating authority or service provider certificate of operating authority is the predominant provider of basic local telecommunications service in a defined geographic area and the utility~~] provides that service using the provider's [~~utility's~~] own facilities;

(2) no other certificated provider [~~telecommunications utility~~] has facilities sufficient to provide [~~basic~~] local exchange telephone [~~telecommunications~~] service in that defined geographic area; and

(3) the certificated provider of local exchange telephone service [~~holder of the certificate of operating authority or service provider certificate of operating authority~~] has:

(A) ceased providing [~~basic~~] local exchange telephone [~~telecommunications~~] service to [~~the utility's~~] customers in that defined geographic area; or

(B) abandoned the operation of the provider's

~~[utility's]~~ facilities in the defined geographic area that are used to provide ~~[basic]~~ local exchange telephone ~~[telecommunications]~~ service.

(b) In a proceeding under this section, the commission may declare that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers ~~[of the utility]~~ and to expedite the restoration and continuation of ~~[basic]~~ local exchange telephone ~~[telecommunications]~~ service to those customers. An order issued by the commission under this subsection may include an order to:

(1) provide for a temporary arrangement for operation of the certificated provider's ~~[utility's]~~ facilities by an uncertificated entity that agrees to provide service;

(2) authorize one or more third parties to enter the premises of the abandoned facilities; or

(3) grant temporary waivers from quality of service requirements.

(c) The commission may designate a successor provider ~~[utility]~~ in accordance with Section 54.303 during a proceeding under this section.

SECTION __. Section 54.305(a), Utilities Code, is amended to read as follows:

(a) The commission, on written notice that a certificated provider ~~[telecommunications utility]~~ has filed a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy, may inform the appropriate court and parties of the commission's interest in obtaining notice of proceedings.

SECTION __. Subchapter A, Chapter 55, Utilities Code, is amended by adding Section 55.0011 to read as follows:

Sec. 55.0011. EMERGENCY SERVICE. A certificated provider shall provide access to 911 service provided by a local authority or dual party relay service.

SECTION __. Section 55.013, Utilities Code, is amended to read as follows:

Sec. 55.013. LIMITATIONS ON DISCONTINUANCE OF BASIC NETWORK ~~[LOCAL TELECOMMUNICATIONS]~~ SERVICE. (a) In this section, "basic network service" has the meaning assigned by Section 58.051.

(b) A provider of basic network [~~local telecommunications~~] service may not discontinue that service because of nonpayment by a residential customer of charges for interexchange telecommunications [~~long distance~~] service. Payment shall first be allocated to basic network [~~local telecommunications~~] service.

~~[(b) For purposes of allocating payment in this section, if the provider of basic local telecommunications service bundles its basic local telecommunications service with long distance service or any other service and provides a discount for the basic local telecommunications service because of that bundling, the rate of basic local telecommunications service shall be the rate the provider charges for stand-alone basic local telecommunications service.]~~

~~[(c) Notwithstanding Subsection (a), the commission shall adopt and implement rules, not later than January 1, 2000, to prevent customer abuse of the protections afforded by this section. The rules must include:~~

~~[(1) provisions requiring a provider of basic local telecommunications service to offer and implement toll blocking capability to limit a customer's ability to incur additional charges for long distance services after nonpayment for long distance services; and~~

~~[(2) provisions regarding fraudulent activity in response to which a provider may discontinue a residential customer's basic local telecommunications service.]~~

(c) ~~[(d)]~~ Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to establish a maximum price that a a [~~an incumbent~~] local exchange company may charge a [~~long distance service~~] provider of interexchange telecommunications service to initiate the toll blocking capability required to be offered under commission [~~the~~] rules [~~adopted under Subsection (c)]~~. The maximum price established under this subsection shall be observed by all providers of basic network [~~local telecommunications~~] service in the [~~incumbent~~] local exchange company's certificated service area. The [~~Notwithstanding Sections 52.102 and 52.152, the~~] commission has all jurisdiction necessary to enforce this section.

~~[(c) A provider of basic local exchange telecommunications service shall comply with the requirements of this section not later than March 1, 2000.]~~

SECTION __. Section 55.014(b), Utilities Code, is amended to read as follows:

(b) This section applies to a company electing under Chapter 58 or a certificated provider of local exchange telephone service that is not an incumbent local exchange company ~~[company that holds a certificate of operating authority or service provider certificate of operating authority]~~.

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

(a) The commission shall adopt rules prohibiting a certificated provider of local exchange telephone service ~~[telecommunications provider]~~ from discontinuing basic network ~~[local exchange telephone]~~ service, as that term is defined by Section 58.051, to a consumer who receives lifeline service because of nonpayment by the consumer of charges for other services billed by the provider, including interexchange telecommunications ~~[long distance]~~ service.

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

(c) A certificated provider of local exchange telephone service ~~[telecommunications provider]~~ may block a lifeline service participant's access to all interexchange telecommunications ~~[long distance]~~ service except toll-free numbers when the participant owes an outstanding amount for that service. The provider ~~[telecommunications provider]~~ shall remove the block without

additional cost to the participant on payment of the outstanding amount.

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

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

- (1) Medicaid;
- (2) food stamps;
- (3) Supplemental Security Income;
- (4) federal public housing assistance;
- (5) Low Income Home Energy Assistance Program (LIHEAP)

assistance; or

(6) health insurance benefits through the Children's Health Insurance Program (CHIP).

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

SECTION __. Section 55.021, Utilities Code, is amended to read as follows:

Sec. 55.021. EXTENDED AREA SERVICE. After notice and a hearing, the commission may order one or more incumbent local exchange companies [~~that are dominant carriers~~] to provide:

(1) mandatory extended area service in accordance with Section 55.022; or

(2) optional extended area service [~~in accordance with~~

~~Section 55.023]~~.

SECTION __. Section 55.048, Utilities Code, is amended to read as follows:

Sec. 55.048. CHARGES. (a) The incumbent local exchange company may impose a monthly fee against each residential and business customer in the petitioning exchange [~~shall recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area under this subchapter through a request other than a revenue requirement showing by imposing a monthly fee under Subsection (b) or (c), or both]~~.

(b) [~~The company may impose a monthly fee against each residential and business customer in the petitioning exchange. The fee may not exceed \$3.50 a line for a residential customer and \$7 a line for a business customer unless the customer's toll-free local calling area includes more than five exchanges. The company may impose an additional monthly fee of \$1.50 for each exchange in excess of five. This subsection applies regardless of the number of petitions required to obtain access to the exchanges. A company may impose a fee under this subsection only until the company's next general rate case.~~

[~~(c)~~] The company may impose a monthly fee against each of the company's local exchange service customers in this state. This fee is in addition to the company's local exchange rates.

[~~(d) The company may not recover regulatory case expenses under this subchapter by imposing a surcharge on the subscribers of the petitioning exchange.~~]

SECTION __. Section 55.084(c), Utilities Code, is amended to read as follows:

(c) The information must state:

(1) the provider's name;

(2) [~~that the operator service provider will provide rate information on a caller's request,~~

[~~(3)~~] that a caller, on the caller's request, will be informed of the method of access to the local exchange carrier operator; and

(3) [~~(4)~~] that a complaint about the service may be made to the provider or to the commission at the designated

telephone number.

SECTION __. Section 55.085, Utilities Code, is amended to read as follows:

Sec. 55.085. CONNECTION ANNOUNCEMENT. Before connecting a call, the operator service provider shall[+]

~~[(1)] announce the provider's name[+ and~~

~~[(2) at the caller's request, quote the rate and any other fee or surcharge that applies to the call and is charged by the provider].~~

SECTION __. The heading to Section 55.087, Utilities Code, is amended to read as follows:

Sec. 55.087. ACCESS TO LOCAL EXCHANGE COMPANY [~~AND OTHER UTILITIES REQUIRED~~].

SECTION __. Section 55.087(a), Utilities Code, is amended to read as follows:

(a) The commission by rule shall require an operator service provider to include in its contract with each entity through which it provides operator service a provision that requires each telephone subscribed to its service to allow access to[+]

~~[(1)] the local exchange carrier operator serving the exchange from which the call is made[+ and~~

~~[(2) other telecommunications utilities].~~

SECTION __. Section 55.088(a), Utilities Code, is amended to read as follows:

(a) Any entity [~~A dominant or nondominant telecommunications utility~~] that provides operator service shall ensure that a caller has access to a live operator at the beginning of the [~~a live or mechanized operator-assisted~~] call through a method designed to be easily and clearly understandable and accessible to the caller.

SECTION __. Section 55.089(a), Utilities Code, is amended to read as follows:

(a) If the commission determines that an operator service provider has violated [~~or is about to violate~~] this subchapter, the commission, after notice and evidentiary hearing, may take action to stop, correct, or prevent the violation.

SECTION __. Section 55.173(b), Utilities Code, is amended

to read as follows:

(b) This section does not apply to a provider who holds a certificate as a network provider or service provider [~~of convenience and necessity~~].

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

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

SECTION __. Section 55.178(d), Utilities Code, is amended to read as follows:

(d) The commission has jurisdiction over a provider to the extent necessary to enforce this section regardless of whether a provider is a telecommunications provider [~~utility~~] regulated under this title.

SECTION __. Sections 55.201(a) and (b), Utilities Code, are amended to read as follows:

(a) Each certificated provider of [~~company that provides~~] local exchange telephone service that provides service in overlapping certificated areas shall negotiate the terms of printed directory listings and directory assistance in those areas.

(b) On complaint by a certificated provider of local exchange service [~~the incumbent local exchange company or the holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority~~], the commission may:

- (1) resolve a dispute between the parties; and
- (2) issue an order setting the terms of the directory listings or directory assistance, if necessary.

SECTION __. Section 55.203(c), Utilities Code, is amended to read as follows:

(c) The commission may not adopt a rule that dictates the format or content of a telephone directory or otherwise prescribes in relation to a directory a requirement that is in addition to or exceeds a requirement prescribed by this subchapter [~~by rule may~~

specify:

~~[(1) the format of the listing, and~~

~~[(2) criteria for inclusion of agencies, services, and officials].~~

SECTION __. Section 55.252, Utilities Code, is amended to read as follows:

Sec. 55.252. 900 SERVICE USED BY PROBATIONERS OR PAROLEES.

(a) This section applies only to a certificated provider ~~[telecommunications utility]~~ that transports or provides an intrastate 900 service that is:

(1) covered by a contract authorized by Chapter 76 or 508, Government Code; and

(2) used by a defendant under the supervision of a community supervision and corrections department or the pardons and paroles division of the Texas Department of Criminal Justice to:

(A) pay a fee or cost; or

(B) comply with telephone reporting requirements.

(b) A certificated provider ~~[telecommunications utility]~~ may adjust or authorize the adjustment of an end-user's bill for 900 service described by Subsection (a) only with the consent of the contracting community supervision and corrections department or the contracting pardons and paroles division of the Texas Department of Criminal Justice.

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

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

(1) assist telecommunications providers in providing ~~[basic]~~ local exchange telephone ~~[telecommunications]~~ service at reasonable rates in high cost rural areas;

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

(3) finance the specialized telecommunications

assistance program established under Subchapter E;

(4) reimburse the department, the Department of Assistive and Rehabilitative Services [~~Texas Commission for the Deaf and Hard of Hearing~~], and the commission for costs incurred in implementing this chapter [~~and Chapter 57~~];

(5) reimburse a certificated provider of local exchange telephone service [~~telecommunications carrier~~] providing lifeline service under Section 55.015 [~~as provided by 47 C.F.R. Part 54, Subpart E, as amended~~];

(6) finance the implementation and administration of an integrated eligibility process created under Section 64.005 [~~17.007~~] for customer service discounts relating to local exchange telephone service [~~telecommunications services~~], including outreach expenses the commission determines are reasonable and necessary;

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

(8) reimburse a successor provider [~~utility~~] under Subchapter G; and

(9) finance the program established under Subchapter H.

SECTION __. Sections 56.023(a), (b), (c), and (e), Utilities Code, are amended to read as follows:

(a) The commission shall:

(1) in a manner that assures reasonable rates for [~~basic~~] local exchange telephone [~~telecommunications~~] service, adopt eligibility criteria and review procedures, including a method for administrative review, the commission finds necessary to fund the universal service fund and make distributions from that fund;

(2) determine which local exchange companies [~~telecommunications providers~~] meet the eligibility criteria;

(3) determine the amount of and approve a procedure for reimbursement to certificated providers of local exchange telephone service [~~telecommunications providers~~] of revenue lost in providing lifeline service under Section 55.015 [~~tel-assistance service under Subchapter C~~];

(4) establish and collect fees from the universal service fund necessary to recover the costs the department and the commission incur in administering this chapter [~~and Chapter 57~~]; and

(5) approve procedures for the collection and disbursement of the revenue of the universal service fund.

(b) The eligibility criteria must require that local exchange companies [~~a telecommunications provider, in compliance with the commission's quality of service requirements~~]:

(1) offer service to each consumer within the company's certificated area and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F; and

(2) render continuous and adequate service within the company's certificated area and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F.

(c) A local exchange company designated under Subchapter F to provide services to permanent residential or business premises within an uncertificated area and that complies with Subsection (b) shall receive universal service fund distributions to assist the provider in providing those services. In addition, the commission shall designate the provider as an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, for those permanent residential or business premises.

(e) A successor provider [~~utility~~], as that term is defined by Section 54.301, that is or becomes an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, is entitled to receive universal service fund distributions for costs in accordance with Subchapter G.

SECTION __. Section 56.025, Utilities Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) This section applies only to a rural incumbent local exchange company.

(a-1) In addition to the authority provided by Section 56.021, for each [~~local exchange~~] company [~~that serves fewer than~~

~~five million access lines~~], the commission:

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

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

(c) The commission shall implement a mechanism to replace the reasonably projected change in revenue caused by a Federal Communications Commission order, rule, or policy that changes:

(1) the federal universal service fund revenue of a ~~[local exchange]~~ company; or

(2) costs or revenue assigned to the intrastate jurisdiction.

SECTION __. Section 56.026, Utilities Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) An incumbent local exchange company governed under Chapter 58 is not entitled to receive disbursements from the universal service fund to compensate for reductions in access charges made after August 31, 2005.

SECTION __. Section 56.028, Utilities Code, is amended to read as follows:

Sec. 56.028. UNIVERSAL SERVICE FUND REIMBURSEMENT FOR CERTAIN INTRALATA SERVICE. (a) On request of a rural ~~[an]~~ incumbent local exchange company that is not an electing company under Chapters 58 and 59, the commission shall provide reimbursement through the universal service fund for reduced rates for intraLATA interexchange high capacity (1.544 Mbps) service for:

(1) an educational institution as defined by Section 59.071;

(2) a library as defined by Section 59.071;

(3) a nonprofit telemedicine center, as defined by Section 59.071;

(4) a public or not-for-profit hospital; or

(5) a federally qualified health care center ~~[entities described in Section 58.253(a)]~~.

(b) The amount of reimbursement shall be the difference between the company's tariffed rate for that service as of January 1, 1998, and the lowest rate offered for that service by any local

exchange company electing incentive regulation under Chapter 58.

SECTION __. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.0285 to read as follows:

Sec. 56.0285. REIMBURSEMENT OF FEDERALLY QUALIFIED HEALTH CENTERS. (a) The health centers defined in Section 58.2535 are entitled to receive from the universal service fund the equivalent of a rebate equal to the difference between the company's tariffed rate for interexchange high capacity service (at or in excess of 1.544 Mbps) as of January 1, 1998, and the lowest rate offered for that service by any local exchange company electing incentive rate regulation under Chapter 58.

(b) This section shall govern to the extent there is a conflict with any other provision of the Utilities Code.

SECTION __. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.029 to read as follows:

Sec. 56.029. TEXAS UNIVERSAL SERVICE FUND STUDY; ATTESTATION REQUIREMENT. (a) The commission shall contract with an independent person to conduct a review and evaluation of whether the universal service fund accomplishes the fund's purposes as prescribed by Section 56.021 and the commission's final orders issued in Docket No. 18515 and Docket No. 18516. The evaluation shall determine whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether those receiving said funds are expending the dollars for their intended purposes. The evaluation must include a forward-looking, comprehensive assessment of the appropriate use of the money in the fund and the manner in which that money is collected and disbursed. The commission shall pay for the review and evaluation from the universal service fund.

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

(1) the commission:

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

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

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

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

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

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

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

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

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

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

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

telecommunications provider receiving the money; and

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

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

(f-1) The evaluation shall determine whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether those receiving said funds are expending the dollars for their intended purposes.

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

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

SECTION __. Section 56.106(a), Utilities Code, is amended to read as follows:

(a) The commission shall set appropriate assessments for

all telecommunications providers [~~utilities~~] to fund the telecommunications relay access service.

SECTION __. Section 56.107, Utilities Code, is amended to read as follows:

Sec. 56.107. UNIVERSAL SERVICE FUND SURCHARGE. (a) A telecommunications provider [~~utility~~] may recover the provider's [~~utility's~~] universal service fund assessment for the telecommunications relay access service through a surcharge added to [~~the utility~~] customers' bills.

(b) The commission shall specify how each telecommunications provider [~~utility~~] is to determine the amount of the surcharge.

(c) If a telecommunications provider [~~utility~~] imposes the surcharge, the bill shall list the surcharge as the "universal service fund surcharge."

SECTION __. Section 56.110(a), Utilities Code, is amended to read as follows:

(a) An advisory committee to assist the commission in administering this subchapter is composed of the following persons appointed by the commission:

(1) two persons with disabilities that impair the ability to effectively access the telephone network other than disabilities described by Subdivisions (2)-(7);

(2) one deaf person recommended by the Texas Deaf Caucus;

(3) one deaf person recommended by the Texas Association of the Deaf;

(4) one person with a hearing impairment recommended by Self-Help for the Hard of Hearing;

(5) one person with a hearing impairment recommended by the AARP [~~American Association of Retired Persons~~];

(6) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(7) one person with a speech impairment and one person with a speech and hearing impairment recommended by the Coalition of Texans with Disabilities;

(8) two representatives of telecommunications

providers [~~utilities~~], one representing a nonlocal exchange company [~~utility~~] and one representing a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(9) two persons, at least one of whom is deaf, with experience in providing relay services recommended by the Department of Assistive and Rehabilitative Services [~~Texas Commission for the Deaf and Hard of Hearing~~]; and

(10) two public members recommended by organizations representing consumers of telecommunications services.

SECTION __. Section 56.155, Utilities Code, is amended to read as follows:

Sec. 56.155. RECOVERY OF SPECIALIZED TELECOMMUNICATIONS DEVICE ASSISTANCE PROGRAM SURCHARGE. (a) The commission shall allow a telecommunications provider [~~utility~~] to recover the universal service fund assessment related to the specialized telecommunications assistance program through a surcharge added to [~~the utility's~~] customers' bills.

(b) The commission shall specify how each telecommunications provider [~~utility~~] must determine the amount of the surcharge and by rule shall prohibit a telecommunications provider [~~utility~~] from recovering an aggregation of more than 12 months of assessments in a single surcharge. The rules must require a telecommunications provider [~~utility~~] to apply for approval of a surcharge before the 91st day after the date the period during which the aggregated surcharges were assessed closes.

(c) If a telecommunications provider [~~utility~~] chooses to impose the surcharge, the telecommunications provider [~~utility~~] shall include the surcharge in the "universal service fund surcharge" listing as provided by Section 56.107.

SECTION __. Section 56.202(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding Section 54.001, the commission may designate a local exchange company [~~telecommunications provider under this section~~] to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a local exchange company [~~holder of a~~

~~certificate of convenience and necessity~~].

SECTION __. Section 56.203, Utilities Code, is amended to read as follows:

Sec. 56.203. PETITION FOR SERVICE. Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a certificated provider of local exchange telephone service ~~[holder of a certificate of convenience and necessity]~~ may petition the commission to designate a telecommunications provider to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.

SECTION __. Section 56.251, Utilities Code, is amended to read as follows:

Sec. 56.251. DEFINITION. In this subchapter, "successor provider ~~[utility]~~" has the meaning assigned by Section 54.301.

SECTION __. Section 56.252, Utilities Code, is amended to read as follows:

Sec. 56.252. TELECOMMUNICATIONS PROVIDERS ~~[UTILITIES]~~ ELIGIBLE TO RECEIVE FUNDING UNDER THIS SUBCHAPTER. A telecommunications provider ~~[utility]~~ may receive funding under this subchapter only if:

(1) the telecommunications provider ~~[utility]~~ is eligible to receive universal service funding under Section 56.023(b); and

(2) the telecommunications provider ~~[utility]~~ is designated as a successor provider ~~[utility]~~ under Section 54.303.

SECTION __. Section 56.253, Utilities Code, is amended to read as follows:

Sec. 56.253. DETERMINATION OF SUCCESSOR PROVIDER'S ~~[UTILITY'S]~~ COSTS TO BE RECOVERED. (a) At the time the commission designates the successor provider ~~[utility]~~ under Section 54.303, the commission shall determine the extent to which the provider ~~[utility]~~ should recover the costs the provider ~~[utility]~~ will incur in accepting and establishing service to the affected service area.

(b) In making the determination under Subsection (a), the commission shall consider relevant information, including the

costs of acquiring and restoring or upgrading the provider's [~~utility's~~] facilities in the geographic area as necessary to make those facilities compatible with the facilities in the provider's [~~utility's~~] other certificated service areas and to comply with commission quality of service standards.

SECTION __. Section 56.254, Utilities Code, is amended to read as follows:

Sec. 56.254. RECOVERY OF COSTS. The commission order designating the successor provider [~~utility~~] under Section 54.303 shall authorize the provider [~~utility~~] to recover the costs determined under Section 56.253. The costs may be amortized and recovered from the state universal service fund, together with interest at the prevailing commercial lending rate:

(1) not later than the first anniversary of the date of the order if the costs are not more than \$1 million;

(2) not later than the second anniversary of the date of the order if the costs are more than \$1 million but no more than \$2 million; and

(3) not later than the third anniversary of the date of the order if the costs are more than \$2 million.

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

SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

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

SECTION __. The heading to Chapter 57, Utilities Code, is amended to read as follows:

CHAPTER 57. DEPLOYMENT INCENTIVES [~~DISTANCE LEARNING AND OTHER ADVANCED SERVICES~~]

SECTION __. The heading to Subchapter A, Chapter 57, Utilities Code, is amended to read as follows:

SUBCHAPTER A. BROADBAND DEPLOYMENT [~~GENERAL PROVISIONS~~]

SECTION __. Subchapter A, Chapter 57, Utilities Code, is

amended by adding Section 57.002 to read as follows:

Sec. 57.002. STATEMENT OF STATE GOAL. (a) It is the goal of this state to facilitate and promote the deployment of an advanced broadband network infrastructure to spur economic development throughout this state, including rural areas of this state.

(b) This state should be among the leaders in achieving the goal described by Subsection (a). The primary means of achieving this goal is through encouraging private investment in this state's broadband network infrastructure by creating incentives for that investment and promoting the development of competition.

(c) The most effective way to bring the benefits of an advanced broadband network infrastructure to communities in this state, including rural communities, is through innovation and competition among all communications providers in this state. Competition will provide residents of this state with a choice of providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms try to satisfy customer needs.

SECTION __. The heading to Chapter 58, Utilities Code, is amended to read as follows:

CHAPTER 58. INCENTIVE REGULATION FOR INCUMBENT LOCAL EXCHANGE COMPANIES

SECTION __. Section 58.001, Utilities Code, is amended to read as follows:

Sec. 58.001. POLICY. It is the policy of this state to regulate the telecommunications industry in a technology-neutral manner through adherence to free market principles. [~~Considering the status of competition in the telecommunications industry, it is the policy of this state to:~~

~~[(1) provide a framework for an orderly transition from the traditional regulation of return on invested capital to a fully competitive telecommunications marketplace in which all telecommunications providers compete on fair terms;~~

~~[(2) preserve and enhance universal telecommunications service at affordable rates;~~

~~[(3) upgrade the telecommunications infrastructure of this state;~~

~~[(4) promote network interconnectivity, and
[(5) promote diversity in the supply of
telecommunications services and innovative products and services
throughout the entire state, including urban and rural areas.]~~

SECTION __. Section 58.002, Utilities Code, is amended to read as follows:

Sec. 58.002. ELECTION [DEFINITION]. (a) In this section, "good cause" includes only matters beyond the control of the company.

(b) An incumbent local exchange company may elect to be subject to this chapter by notifying the commission in writing of its election.

(c) The commission may allow an electing company to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause [In this chapter, "electing company" means an incumbent local exchange company that elects to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter].

SECTION __. Subchapter A, Chapter 58, Utilities Code, is amended by adding Section 58.005 to read as follows:

Sec. 58.005. RATES FOR BASIC NETWORK SERVICES; APPLICABILITY OF PROVISIONS OF SUBTITLE. (a) Notwithstanding any other provision of this title, an incumbent local exchange company may not raise the company's retail price for basic network service to a price that is above the price the company charged on January 1, 2005, for basic network service that included the same components before January 1, 2008.

(b) Except as provided by Subsection (a), on the date the incumbent local exchange company reduces the company's intrastate switched access rates on a combined originating and terminating basis to parity with interstate switched access rates, as required by Section 58.301(3), and certifies to the commission that the company has made that reduction, the company is subject only to the following provisions of this subtitle:

(1) Sections 52.101-52.108;

(2) Section 52.251(a);

- (3) Section 52.255;
- (4) Sections 54.001-54.005;
- (5) Sections 54.203-54.206;
- (6) Sections 54.251-54.254;
- (7) Sections 54.259 and 54.260;
- (8) Sections 54.301-54.304;
- (9) Sections 55.0011, 55.013, 55.014, and 55.015;
- (10) Section 55.1735;
- (11) Sections 55.201-55.203;
- (12) Section 55.252;
- (13) Sections 56.001 and 56.002;
- (14) Sections 56.021-56.024;
- (15) Section 56.026;
- (16) Section 56.029;
- (17) Sections 56.101-56.109;
- (18) Sections 56.151-56.155;
- (19) Subchapter G, Chapter 56;
- (20) Chapter 57;
- (21) Subchapter G of this chapter;
- (22) Sections 58.301 and 58.302; and
- (23) Chapters 60 and 64.

SECTION __. Section 58.023, Utilities Code, is amended to read as follows:

Sec. 58.023. APPLICABILITY OF CHAPTER; SERVICE CLASSIFICATION. (a) This chapter applies only to an incumbent local exchange company that is subject to this chapter.

(b) The [On election, the] services provided by an incumbent local exchange [electing] company are classified into two categories:

(1) basic network service [~~services~~] governed by Subchapter C; and

(2) nonbasic network services governed by Subchapter E.

SECTION __. Section 58.025, Utilities Code, is amended to read as follows:

Sec. 58.025. COMPLAINT OR HEARING. Except as otherwise specifically provided by this title, an incumbent local exchange

company that is not regulated under Chapter 53 is not subject to a traditional rate of return [~~(a) An electing company is not, under any circumstances, subject to a~~] complaint, hearing, or determination regarding the reasonableness of the company's:

- (1) rates;
- (2) overall revenues;
- (3) return on invested capital; or
- (4) net income.

~~[(b) This section does not prohibit a complaint, hearing, or determination on an electing company's implementation and enforcement of a competitive safeguard required by Chapter 60.]~~

SECTION __. Section 58.026, Utilities Code, is amended to read as follows:

Sec. 58.026. CONSUMER COMPLAINTS REGARDING TARIFFS. (a) This chapter does not restrict:

- (1) a consumer's right to complain to the commission about the application of an ambiguous tariff; or
- (2) the commission's right to determine[+
[~~(A)~~] the proper application of that tariff[~~, or~~
[~~(B)~~ the proper rate if that tariff does not apply].

(b) This chapter [~~section~~] does not permit the commission to:

- (1) lower a tariff rate [~~except as specifically provided by this title~~];
- (2) change the commission's interpretation of a tariff; or
- (3) extend the application of a tariff to a new class of customers.

SECTION __. Section 58.027, Utilities Code, is amended to read as follows:

Sec. 58.027. CONSUMER COMPLAINTS REGARDING SERVICES[+
~~ENFORCEMENT OF STANDARDS~~]. This chapter does not restrict:

- (1) a consumer's right to complain to the commission about quality of service; or
- (2) the commission's right to enforce a quality of service standard.

SECTION __. Section 58.051, Utilities Code, is amended to read as follows:

Sec. 58.051. SERVICES INCLUDED. (a) "Basic [~~Unless reclassified under Section 58.024, the following services are basic~~] network service" means [~~services:~~

~~[(1)]~~ flat rate residential local exchange telephone service delivered by landline, but only if the service is ordered and received independent of:

(1) a nonbasic network service;

(2) a package of services that includes nonbasic network services or other services; or

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

(b) "Basic network service" includes only: [~~including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;~~]

(1) [~~(2)] residential tone dialing service;~~

(2) [~~(3)] lifeline [and tel-assistance] service;~~

(3) [~~(4)] service connection for basic network service [~~residential services];~~~~

(4) [~~(5)] direct inward dialing service for basic residential service [~~services];~~~~

(5) [~~(6) private pay telephone access service;~~

(7)] call trap and trace service;

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

(7) at the election of the incumbent local exchange company, [~~(9)] mandatory residential extended area service arrangements, [~~(~~~~

(10)] mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements, mandatory expanded local calling service arrangements, or another service required under a tariff and applicable to a customer who subscribes to or may subscribe to basic network service [~~and~~

(11) residential call waiting service.

~~[(b) Electing companies shall offer each basic network service as a separately tariffed service in addition to any packages or other pricing flexibility offerings that include those basic network services].~~

(c) The commission may not:

(1) impose on an incumbent local exchange company a mandatory extended or expanded calling plan that was not in existence on September 1, 2005; or

(2) require a company to create a stand-alone basic network service in any exchange that did not have that service on January 1, 2005.

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

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

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

(2) may not be aggregated under Subsection (d);

(3) is not subject to Section 58.005(a); and

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

SECTION __. Section 58.061, Utilities Code, is amended to read as follows:

Sec. 58.061. EFFECT ON CERTAIN CHARGES. This subchapter does not affect a charge permitted under:

~~(1) [Section 55.024,~~

~~[(2)] Subchapter C, Chapter 55; or~~

(2) [(3)] Subchapter B, Chapter 56.

SECTION __. Section 58.063, Utilities Code, is amended to read as follows:

Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding any other provision of this title ~~[Section 58.052(b) or Subchapter F, Chapter 60]~~, an electing company may exercise pricing flexibility for basic network services, including

the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packaging of any regulated service with any unregulated service or any service of an affiliate. [~~The company may exercise pricing flexibility in accordance with this section 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.~~]

(b) An electing company shall set the price of a package of services containing basic local telecommunications service [~~network services~~] and nonbasic network services at any level at or above the lesser of:

(1) the sum of the long run incremental costs of any basic local telecommunications service [~~network services~~] and nonbasic network services contained in the package; or

(2) the sum of the tariffed prices of any basic local telecommunications service [~~network services~~] contained in the package and the long run incremental costs of nonbasic network services contained in the package.

~~[(c) Except as provided by Section 58.003, an electing company may flexibly price a package that includes a basic network service in any manner provided by Section 51.002(7).]~~

SECTION __. The heading to Subchapter E, Chapter 58, Utilities Code, is amended to read as follows:

SUBCHAPTER E. NONBASIC NETWORK SERVICES

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

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

(1) basic network service when ordered and received with another basic network service or with a nonbasic network service;

(2) flat rate business local exchange telephone

service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone charges [~~, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999~~];

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

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

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

(6) [~~(5)~~] "1-plus" intraLATA message toll services;

(7) [~~(6)~~] 0+ and 0- operator services;

(8) [~~(7)~~] call waiting, call forwarding, and custom calling [~~, except that:~~

~~[(A) residential call waiting service shall be classified as a basic network service; and~~

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

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

(10) [~~(9)~~] central office based PBX-type services;

(11) [~~(10)~~] billing and collection services, which include only [~~including~~] installment billing and late payment charges for retail customers of the billing provider [~~electing~~

company];

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

(13) [~~(12)~~] new services;

(14) [~~(13)~~] directory assistance services, except that an electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at no charge;

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

(16) [~~(15)~~] 800 and foreign exchange services;

(17) [~~(16)~~] private line service;

(18) [~~(17)~~] special access service;

(19) [~~(18)~~] services from public pay telephones;

(20) [~~(19)~~] paging services and mobile services (IMTS);

(21) [~~(20)~~] 911 services provided to a local authority that are available from another provider;

(22) [~~(21)~~] speed dialing;

(23) [~~(22)~~] three-way calling; and

(24) [~~(23)~~] all other local exchange telephone services subject to the commission's jurisdiction that are not specifically included as components of [~~classified as~~] basic network service as defined by [~~services in~~] Section 58.051 or as switched access services[, ~~except that nothing in this section shall preclude a customer from subscribing to a local flat rate residential or business line for a computer modem or a facsimile machine~~].

SECTION __. Section 58.152, Utilities Code, is amended to read as follows:

Sec. 58.152. PRICES. [~~(a)~~] An incumbent local exchange company [~~electing company~~] may set the retail price for any nonbasic network service at any level at or above long run incremental cost [~~the lesser of the:~~

~~[(1) service's long run incremental cost in accordance with the imputation rules prescribed by or under Subchapter D, Chapter 60; or~~

~~[(2) price for the service in effect on September 1, 1999.~~

~~[(b) Subject to Section 51.004, an electing company may use pricing flexibility for a nonbasic service. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packages that include basic network services].~~

SECTION __. Section 58.153, Utilities Code, is amended to read as follows:

Sec. 58.153. NEW SERVICES. ~~[(a)]~~ Subject to the pricing conditions prescribed by Section 58.152, a local exchange ~~[58.152(a), an electing]~~ company may introduce a new service at any time ~~[10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.~~

~~[(b) An electing company serving more than five million access lines in this state shall provide notice to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company of any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers. Changes requiring notice under this subsection include the introduction of any new nonbasic services, any new features or functions of basic or nonbasic services, promotional offerings of basic or nonbasic services, or the discontinuation of then-current features or services. The electing company shall provide the notice:~~

~~[(1) if the electing company is required to give notice to the commission, at the same time the company provides that notice; or~~

~~[(2) if the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.]~~

~~[(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange company of a new service is in compliance with Section 58.152(a). The commission shall allow the company to continue to provide the service while the complaint is pending.]~~

~~[(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with Section 58.152(a). If the complaint is finally resolved in favor of the complainant, the company:~~

~~[(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or~~

~~[(2) may, at the company's option, discontinue the service.]~~

~~[(c) The notice requirement prescribed by Subsection (b) expires September 1, 2003].~~

SECTION __. Section 58.155, Utilities Code, is amended to read as follows:

Sec. 58.155. INTERCONNECTION. An incumbent local exchange company is subject to the interconnection obligations prescribed by Subchapter G, Chapter 60 ~~[Because interconnection to competitive providers and interconnection for commercial mobile service providers are subject to the requirements of Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), as amended, and Federal Communications Commission rules, including the commission's authority to arbitrate issues, interconnection is not addressed in this subchapter or Subchapter B].~~

SECTION __. Section 58.253(a), Utilities Code, as amended by Chapters 959, 1220, 1255, and 1350, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) On customer request, an electing company shall provide private network services to:

- (1) an educational institution;
- (2) a library as defined in Section 57.021 [~~57.042(6)(A) and (B)~~];
- (3) a nonprofit telemedicine center;
- (4) a public or not-for-profit hospital; or
- (5) [~~a project funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, except for a telepharmacy system; or~~
[~~(6)~~] a legally constituted consortium or group of entities listed in this subsection.

SECTION __. Subchapter G, Chapter 58, Utilities Code, is amended by adding Section 58.2535 to read as follows:

Sec. 58.2535. FEDERALLY QUALIFIED HEALTH CENTERS. (a) In addition to the entities to which an incumbent local exchange company is required to provide private network services under this subchapter, the company shall provide those services to a federally qualified health center, as defined by 42 U.S.C. Section 1396d(1)(2)(B) and to an organization that receives a grant under 42 U.S.C. Section 254b.

(b) For purposes of this subchapter, a reference to an entity described by Section 58.253(a) includes an entity described by Subsection (a).

SECTION __. Section 58.301, Utilities Code, is amended to read as follows:

Sec. 58.301. SWITCHED ACCESS RATE REDUCTION. An incumbent local exchange company [~~electing company with greater than five million access lines in this state~~] shall reduce its switched access rates on a combined originating and terminating basis as follows:

- (1) effective January 1, 2006, the [electing] company shall reduce intrastate switched access rates on a combined originating and terminating basis to an amount not to exceed four cents for each minute of use, except that a company may not, in any event, be required to reduce its intrastate switched access rates on a combined originating and terminating basis by more than two

cents for each minute of use [~~in effect on September 1, 1999, by one cent a minute~~]; [~~and~~]

(2) effective January 1, 2007, the company shall reduce intrastate switched access rates on a combined originating and terminating basis to an amount not to exceed 2.5 cents for each minute of use, except that a company may not, in any event, be required to reduce its intrastate switched access rates on a combined originating and terminating basis by more than four cents for each minute of use below the rate in effect on December 31, 2005; and

(3) effective January 1, 2008, the [electing] company shall reduce intrastate switched access rates on a combined originating and terminating basis to parity with interstate switched access rates [~~by an additional two cents a minute on the earlier of:~~

~~[(A) July 1, 2000; or~~

~~[(B) the date the electing company, or its affiliate formed in compliance with 47 U.S.C. Section 272, as amended, actually begins providing interLATA services in this state in accordance with the authorization required by 47 U.S.C. Section 271, as amended].~~

SECTION __. Section 58.302, Utilities Code, is amended to read as follows:

Sec. 58.302. SWITCHED ACCESS RATE CAP. On or after January 1, 2008, an incumbent local exchange [~~(a) An electing~~] company may not increase the per minute rates for switched access services on a combined originating and terminating basis above the interstate rates for switched access service [~~lesser of:~~

~~[(1) the rates for switched access services charged by that electing company on September 1, 1999, as may be further reduced on implementation of the universal service fund under Chapter 56; or~~

~~[(2) the applicable rate described by Section 58.301 as may be further reduced on implementation of the universal service fund under Chapter 56.~~

~~[(b) Notwithstanding Subchapter F, Chapter 60, but subject to Section 60.001, an electing company may, on its own initiative,~~

~~decrease a rate charged for switched access service to any amount above the long run incremental cost of the service].~~

SECTION __. Section 59.002(1), Utilities Code, is amended to read as follows:

(1) "Electing company" means an incumbent local exchange company that elects to be subject to ~~[for an infrastructure commitment and corresponding regulation under]~~ this chapter.

SECTION __. Subchapter A, Chapter 59, Utilities Code, is amended by adding Section 59.003 to read as follows:

Sec. 59.003. APPLICABILITY OF CHAPTER. This chapter applies only to an incumbent local exchange company that is subject to this chapter.

SECTION __. Section 59.021(a), Utilities Code, is amended to read as follows:

(a) An incumbent local exchange company may elect to ~~[make an infrastructure commitment and to]~~ be subject to ~~[corresponding regulation under]~~ this chapter if the company:

(1) serves less than five percent of the access lines in this state; and

(2) has not elected incentive regulation under Chapter 58.

SECTION __. Section 59.024(a), Utilities Code, is amended to read as follows:

(a) Except for the charges permitted under Subchapter C, Chapter 55, and Subchapter B, Chapter 56, ~~[and Section 55.024,]~~ an electing company may not, before the end of the company's election period under this chapter, increase a rate previously established for that company under this title unless the commission approves the proposed change as authorized under Subsection (c) or (d).

SECTION __. Section 59.029(b), Utilities Code, is amended to read as follows:

(b) In computing the average under Subsection (a), the electing company shall exclude~~+~~

~~[(1)]~~ extraordinary investments made during the five-year period~~+, and~~

~~[(2) investments required by Section 59.052].~~

SECTION __. Section 59.030(a), Utilities Code, is amended to read as follows:

(a) An electing company may introduce a new service ~~[10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company]~~.

SECTION __. Section 59.031(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding any other provision of this title ~~[Section 59.027(b) or Subchapter F, Chapter 60]~~, an electing company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. ~~[The electing company may exercise pricing flexibility 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.]~~ Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 ~~[51.002(7)]~~ and includes packaging of regulated services with unregulated services or any service of an affiliate.

SECTION __. Section 59.055, Utilities Code, is amended to read as follows:

Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing the infrastructure goals prescribed by former Section 59.052, as enacted by Section 49, Chapter 231, Acts of the 74th Legislature, Regular Session, 1995, and as codified by Section 1, Chapter 166, Acts of the 75th Legislature, Regular Session, 1997, in determining whether an electing company is entitled to:

- (1) a rate increase under this chapter; or
- (2) increased universal service funds under Subchapter B, Chapter 56.

SECTION __. Sections 59.071(1) and (2), Utilities Code, are amended to read as follows:

(1) "Educational institution" includes:

(A) an accredited primary or secondary school;

(B) an institution of higher education as defined by Section 61.003, Education Code;

(C) a private institution of higher education accredited by a recognized accrediting agency as defined by Section 61.003, Education Code;

(D) the Texas Education Agency and its successors and assigns;

(E) a regional education service center established and operated in accordance with Chapter 8, Education Code; or

(F) the Texas Higher Education Coordinating Board and its successors and assigns [~~has the meaning assigned by Section 57.021~~].

(2) "Library" means:

(A) a public library or regional library system as defined by Section 441.122, Government Code; or

(B) a library operated by an institution of higher education or a school district [~~has the meaning assigned by Section 57.042~~].

SECTION __. The heading to Chapter 60, Utilities Code, is amended to read as follows:

CHAPTER 60. FAIR COMPETITION AND COMPETITIVE SAFEGUARDS

SECTION __. Section 60.001, Utilities Code, is amended to read as follows:

Sec. 60.001. FAIR COMPETITION. (a) A rate, term, condition, or practice of a provider may not be:

(1) unreasonably preferential, prejudicial, or discriminatory;

(2) improperly subsidized either directly or indirectly; or

(3) predatory or anticompetitive.

(b) This chapter may not be construed to require unbundling to an extent greater than is required by federal law.

(c) This title does not prohibit a volume discount, other discount, or pricing flexibility that is based on a reasonable business purpose. A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(d) This title allows an offer that is based on a reasonable business purpose, including an offer made at any time to a selected customer or group of customers in response to a competitor's offer or a former customer's acceptance of a competitor's offer, if the price of the offer meets the requirements of this section.

(e) This title may not be construed as conferring jurisdiction on the commission to regulate video or data services in this state. ~~[To the extent necessary to ensure that competition in telecommunications is fair to each participant and to accelerate the improvement of telecommunications in this state, the commission shall ensure that the rates and rules of an incumbent local exchange company:~~

~~[(1) are not unreasonably preferential, prejudicial, or discriminatory; and~~

~~[(2) are applied equitably and consistently.]~~

SECTION __. Subchapter A, Chapter 60, Utilities Code, is amended by adding Sections 60.0013 and 60.0016 to read as follows:

Sec. 60.0013. CODE OF CONDUCT. (a) The commission shall adopt and enforce a code of conduct to ensure integrity of business practices in carrier-to-carrier, marketing, and advertising practices. The code of conduct must apply to all providers on an equal and nondiscriminatory basis and may not address any matter that is contained in or relates to an agreement for interconnection.

(b) A provider shall comply with the code of conduct.

Sec. 60.0016. ARBITRATION OF COMPLAINTS. (a) In this section, "dispute resolution organization" means a private for-profit or nonprofit corporation, political subdivision, or other entity, or a combination of these, that offers alternative dispute resolution services to the public.

(b) A complaint that a provider has violated this subchapter shall be referred to binding arbitration at the mutual election of

both parties to the dispute, but only if the election for arbitration occurs before a filing is made to the commission in relation to that dispute. If the parties elect arbitration, the dispute shall be expeditiously adjudicated by binding arbitration before a panel of three independent arbitrators. Each party shall select one member of the panel, and the two selected members shall select the third member. If the first two arbitrators cannot agree on the third member, the two arbitrators shall request a list of candidates from an independent dispute resolution organization, and the third member shall be elected in accordance with the published procedures of that organization.

(c) The arbitration shall be conducted in accordance with the rules of an independent dispute resolution organization unless the parties mutually agree to conduct the arbitration in a different manner.

(d) The panel shall issue the panel's final decision not later than the 180th day after the date arbitration is requested. The decision of the arbitration panel is final. A party may file an application with a district court in Travis County for confirmation of the decision. The award is entitled to confirmation unless the court determines the decision should be vacated or modified. The court shall conduct a review de novo based on the record developed before the arbitrators.

(e) The panel shall allocate between the parties the fees and expenses of the parties and panel in a manner consistent with the decision and relief granted.

SECTION __. Section 60.003, Utilities Code, is amended to read as follows:

Sec. 60.003. COMMISSION AUTHORITY. (a) The commission has all necessary authority to ~~[may]~~:

(1) establish procedures and resolve disputes arising under this chapter and to provide, enforce, or request appropriate remedies, including injunctive relief ~~[with respect to a policy stated in this subchapter or Subchapters B-H]~~; and

(2) allow a provider serving fewer than one million access lines in this state to establish a service's long run incremental cost by adopting, at that provider's option, the cost

studies of a larger provider for that service that have been accepted by the commission [~~resolve a dispute that arises under a policy described by Subdivision (1)~~].

(b) Notwithstanding Section 15.023(b), the commission may impose an administrative penalty of not more than \$10,000 a day for each violation of this subchapter. The commission may impose the penalty for each day the violation continues. The administrative penalty is in addition to any other remedy provided by law. [~~The commission shall adopt procedures for a proceeding under Subchapters B and C. A procedure may:~~

~~[(1) limit discovery; and~~

~~[(2) for purposes of cross-examination align any party, other than the office, with another party that has a similar position.]~~

(c) The commission must resolve a complaint filed with the commission under this chapter not later than the 270th day after the date the complaint is filed. [~~In adopting a procedure under this section and in resolving a dispute, the commission shall consider the action's effect on:~~

~~[(1) consumers;~~

~~[(2) competitors; and~~

~~[(3) the incumbent local exchange company.]~~

(d) An appeal from a commission order issued under this chapter, other than an order issued in relation to interconnection under Subchapter G, may be appealed directly to the court of appeals for the Third Court of Appeals District. [~~The commission, by order or rule, may not implement a requirement that is contrary to a federal law or rule.~~]

SECTION __. Subchapter A, Chapter 60, Utilities Code, is amended by adding Section 60.0035 to read as follows:

Sec. 60.0035. APPLICABILITY TO CERTAIN PROVIDERS. This chapter may not be construed to impose under state law any obligation described by 47 U.S.C. Section 251(c) on an entity that is not subject to that obligation under federal law.

SECTION __. Section 60.082(b), Utilities Code, is amended to read as follows:

(b) The commission rules shall be consistent [~~may not be~~

~~inconsistent]~~ with the rules and regulations of the Federal Communications Commission regarding telecommunications number portability and may not impose any obligations beyond the obligations required by federal law.

SECTION __. Section 60.121, Utilities Code, is amended to read as follows:

Sec. 60.121. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Interconnection" means the linking of two networks for the mutual exchange of traffic.

(2) "Interoperable" means operable using standards that ensure that network providers and service providers conduct their business in a manner that enables consumers to:

(A) communicate with each other efficiently; and

(B) exercise their choice of provider and service without unreasonable disruption and delay~~[, "interconnection" means, for calls that originate and terminate in this state, the termination of local intraexchange traffic of another local exchange company or holder of a service provider certificate of operating authority within the local calling area of the terminating local exchange company or certificate holder].~~

SECTION __. Section 60.122, Utilities Code, is amended to read as follows:

Sec. 60.122. EXCLUSIVE JURISDICTION. (a) To the extent not preempted by federal law, the [The] commission has exclusive jurisdiction to determine interconnection rates and terms and conditions for interconnection in accordance with this title.

(b) The commission has all necessary authority to adopt rules and conduct proceedings to implement this subchapter.

(c) The commission has all necessary jurisdiction to resolve disputes regarding breach of interconnection obligations. The commission's jurisdiction under this subsection is not exclusive ~~[for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority].~~

SECTION __. Section 60.123, Utilities Code, is amended to read as follows:

Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. This

subchapter does not apply to a rate for the existing termination of commercial mobile radio service (CMRS) [~~cellular~~] or interexchange traffic. This chapter may not be construed to impose an obligation on a provider if the provider is exempt from that requirement under federal law.

SECTION __. Section 60.124, Utilities Code, is amended to read as follows:

Sec. 60.124. INTEROPERABLE NETWORKS REQUIRED. (a) The commission shall require each network provider and service [~~telecommunications~~] provider to maintain interoperable networks.

(b) A network provider or service provider is entitled to interconnect in a manner that is efficient for the mutual exchange of traffic, from a network and economic standpoint.

(c) The commission shall [~~may~~]:

(1) adopt rules, including generic rules that are responsive to changes in federal law or a development in the [~~local exchange~~] market; and

(2) set policies consistent with federal law governing interconnection arrangements.

SECTION __. Section 60.125, Utilities Code, is amended to read as follows:

Sec. 60.125. DETERMINATION OF INTERCONNECTION RATES. (a) Unless the parties have agreed on rates in an interconnection agreement under Subsection (b) and the agreement is approved by the commission under Subsection (c), the rates for traffic exchanged under an interconnection agreement shall be just, reasonable, and nondiscriminatory. The parties may agree to exchange traffic under an interconnection agreement on a bill and keep basis, but the commission may not require the parties to exchange traffic on that basis. This section does not preclude any right to interconnection under federal law at rates or on terms or conditions granted by federal law.

(b) Providers [~~Telecommunications providers~~] shall negotiate network interconnectivity[~~, charges,~~] and terms and conditions of interconnectivity. The providers may negotiate network interconnectivity rates.

(c) [~~(b)~~] If interconnectivity[~~, charges,~~] and terms and

conditions or rates of interconnectivity are successfully negotiated, the commission shall approve the interconnection agreement if the commission finds the agreement is in the public interest and is nondiscriminatory [~~rates~~].

(d) The commission has all necessary authority to adopt rules and conduct proceedings as necessary to implement and enforce this section.

~~[(c) If telecommunications providers do not enter into a mutually agreed compensation rate under this section, each provider shall reciprocally terminate the other provider's traffic at no charge for the first nine months after the date the first call is terminated between the providers.]~~

~~[(d) During the nine-month period prescribed by Subsection (c), the commission shall complete a proceeding to establish reciprocal interconnection rates and terms. The commission shall establish reciprocal interconnection rates and terms based solely on the commission proceeding.]~~

~~[(e) In establishing the initial interconnection rate, the commission may not require cost studies from the new entrant.]~~

~~[(f) On or after the third anniversary of the date the first call is terminated between the providers, the commission, on receipt of a complaint, may require cost studies by a new entrant to establish interconnection rates.]~~

SECTION __. Section 60.126, Utilities Code, is amended to read as follows:

Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE RESOLUTION. A party negotiating an interconnection agreement under Section 60.125(b) may file a request for the commission to resolve a disputed issue not earlier than the 135th day or later than the 160th day after the date a party receives a request for negotiation. The commission shall [may] resolve the [a] dispute not later than the 270th day after the date the request for negotiation was received by a party [filed by a party to a negotiation under Section 60.125(a)].

SECTION __. Section 60.127, Utilities Code, is amended to read as follows:

Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES. A

provider may adopt in its entirety any interconnection agreement reached by another provider and approved by the commission under this chapter. ~~[(a) An incumbent local exchange company may adopt the interconnection rates the commission approves for a larger incumbent local exchange company without additional cost justification.~~

~~[(b) If an incumbent local exchange company does not adopt the interconnection rates of a larger company or negotiates under Section 60.125(a), the company is governed by Sections 60.125(c)-(f).~~

~~[(c) If the incumbent local exchange company adopts the interconnection rates of another incumbent local exchange company, the new entrant may adopt those rates as the new entrant's interconnection rates.~~

~~[(d) If the incumbent local exchange company elects to file its own tariff, the new entrant must also file its own interconnection tariff.]~~

SECTION __. Subchapter G, Chapter 60, Utilities Code, is amended by adding Section 60.129 to read as follows:

Sec. 60.129. CONSUMER-ORIENTED STANDARDS. (a) The commission shall adopt rules applicable to all interconnecting entities that ensure the following services are efficient and secure for consumers:

- (1) E-911 systems;
- (2) number portability and other customer migration processes;
- (3) telephone directory listings and publication;
- (4) directory assistance; and
- (5) other consumer-friendly services.

(b) Rules adopted under Subsection (a) must provide for the payment of compensation to an incumbent local exchange company for loading or storing customer information, except that the rules may not provide for the payment of compensation for the preparation and transfer of files from a service order system to be used in the creation of 911 call routing data and 911 automatic location identification data. The rules may not require unbundling of a provider's network elements.

SECTION __. The heading to Subchapter I, Chapter 60, Utilities Code, is amended to read as follows:

SUBCHAPTER I. NETWORK PROVIDER AND SERVICE PROVIDER [~~LOCAL EXCHANGE COMPANY~~] REQUIREMENTS

SECTION __. Section 60.161, Utilities Code, is amended to read as follows:

Sec. 60.161. NETWORK PROVIDER AND SERVICE PROVIDER [~~INCUMBENT LOCAL EXCHANGE COMPANY~~] REQUIREMENTS. A network provider or service provider [~~An incumbent local exchange company~~] may not unreasonably:

(1) discriminate against another provider in providing interconnection, traffic exchange terms and conditions, or facility use, rates, terms, and conditions to exchange traffic between and among providers [~~by refusing access to the local exchange~~];

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

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

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

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

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

(7) fail to fully disclose information necessary to determine compliance with a requirement prescribed by this section.

SECTION __. Section 60.164, Utilities Code, is amended to read as follows:

Sec. 60.164. PERMISSIBLE JOINT MARKETING. The [~~Except as prescribed in Chapters 61, 62, and 63, the~~] commission may not adopt any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal law or applicable rules or orders of the

Federal Communications Commission.

SECTION __. Section 60.165, Utilities Code, is amended to read as follows:

Sec. 60.165. AFFILIATE RULE. The [~~Except as prescribed in Chapters 61, 62, and 63, the~~] commission may not adopt any rule or order that would prescribe for any local exchange company any affiliate rule, including any accounting rule, any cost allocation rule, or any structural separation rule, that is more burdensome than federal law or applicable rules or orders of the Federal Communications Commission. Notwithstanding any other provision in this title, the commission may not attribute or impute to a local exchange company a price discount offered by an affiliate of the local exchange company to the affiliate's customers. This section does not limit the authority of the commission to consider a complaint brought under Subchapter A, Chapter 52, Section 53.003, or this chapter.

SECTION __. Section 64.001(b), Utilities Code, is amended to read as follows:

(b) The purpose of this chapter is to establish retail customer protection standards and confer on the commission authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices. The commission has authority governing those matters only as expressly provided by this chapter.

SECTION __. Sections 64.002(1), (2), and (4), Utilities Code, are amended to read as follows:

(1) "Billing agent" means any entity that submits charges to the billing provider [~~utility~~] on behalf of itself or any provider of a product or service.

(2) "Billing provider" [~~utility~~] means any service [~~telecommunications~~] provider or network provider, as defined by Section 51.002, that issues a bill directly to a customer for any telecommunications product or service.

(4) "Customer" means any person in whose name [~~telephone~~] service from a network provider or service provider is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal

capacity to be billed for telecommunications [~~telephone~~] service.

SECTION __. Section 64.003, Utilities Code, is amended to read as follows:

Sec. 64.003. CUSTOMER AWARENESS. (a) The commission shall promote public awareness of changes in the telecommunications markets, provide customers with information necessary to make informed choices about available options, and ensure that customers have an adequate understanding of their rights.

(b) The commission shall compile a report on customer service at least once each year showing the comparative customer information [~~from reports given to the commission it deems necessary~~].

(c) The commission shall adopt and enforce rules to require service providers and network providers [~~a certificated telecommunications utility~~] to give clear, uniform, and understandable information to customers about rates, terms, services, and customer rights as directed by this chapter [~~, and other necessary information as determined by the commission~~].

(d) Customer awareness efforts by the commission shall be conducted in English and Spanish [~~and any other language as necessary~~].

SECTION __. Section 64.004, Utilities Code, is amended by amending Subsections (a), (b), and (d), and adding Subsections (f)-(h) to read as follows:

(a) All buyers of [~~telecommunications~~] services from network providers and service providers subject to this subtitle are entitled to:

(1) protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including protection from being billed for services that were not authorized or provided;

(2) choice of a [~~telecommunications service~~] provider and to have that choice honored;

(3) information in English and Spanish [~~and any other language as the commission deems necessary~~] concerning rates, key terms, and conditions;

(4) protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income

level, or source of income and from unreasonable discrimination on the basis of geographic location;

(5) impartial and prompt resolution of disputes with a [~~certificated telecommunications utility and disputes with a telecommunications service~~] provider related to unauthorized charges and switching of service;

(6) privacy of customer consumption and credit information;

(7) accuracy of metering and billing;

(8) bills presented in a clear, readable format and easy-to-understand language;

(9) information in English and Spanish [~~and any other language as the commission deems necessary~~] concerning low-income assistance programs and deferred payment plans;

(10) all consumer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and

(11) apply for programs that assist [~~that offer~~] eligible low-income customers in receiving [~~an~~] affordable telecommunications services or provide [~~rate package and~~] bill payment assistance [~~programs~~] designed to reduce uncollectible accounts.

(b) The commission may adopt and enforce rules as necessary or appropriate to carry out this section, including rules [~~for minimum service standards for a certificated telecommunications utility~~] relating to customer deposits and the extension of credit, switching fees, termination of service, [~~an~~] affordable services [~~rate package~~], and bill payment assistance programs for low-income customers. The commission may waive language requirements for good cause.

(d) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, or deceptive [~~, and anticompetitive~~] business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(f) The commission shall adopt rules to provide automatic

enrollment of eligible customers for lifeline telephone service available to low-income households. Each state agency, on the request of the commission, shall assist in the adoption and implementation of those rules.

(g) Notwithstanding any other provision of this title, the rules adopted under Subsection (b) shall provide for full and concurrent reimbursement to network providers and service providers for the costs of any programs provided under Subsection (a)(11) and for reimbursement to providers for the difference between any affordable rate package provided under Subsection (a)(11) and any rates otherwise applicable.

(h) If federal rules or requirements exist in relation to issues governed by this chapter, the commission's rules must be identical to those federal rules or requirements and may not be in any manner more burdensome or stringent on a provider of services than the federal rules or requirements.

SECTION __. Subchapter A, Chapter 64, Utilities Code, is amended by adding Section 64.005 to read as follows:

Sec. 64.005. ELIGIBILITY PROCESS FOR CUSTOMER SERVICE DISCOUNTS. The commission by rule shall provide for an integrated eligibility process for customer service discounts.

SECTION __. (a) Subchapter A, Chapter 64, Utilities Code, is amended by adding Section 64.006 to read as follows:

Sec. 64.006. NOTICE REGARDING ACCESS TO EMERGENCY SERVICES.

(a) As used in this section:

(1) The term "VoIP service" means voice communications to residential or business customers over a broadband network using Internet Protocol.

(2) The term "VoIP provider" means an entity that offers VoIP service for a fee.

(3) The term "E-911" refers to the system for processing emergency calls as defined in Section 772.001, Health and Safety Code, as may be subsequently amended.

(b) A VoIP provider may not enter into a contract to provide VoIP service unless the entity provides clear and conspicuous notice to customers disclosing whether or not the service provides access to E-911.

(c) A VoIP provider which does not provide access to E-911 or which requires a customer to take steps to activate access to E-911 may not enter into a contract to provide VoIP service unless the VoIP provider provides clear and conspicuous notice of the following:

(1) the specific steps the customer must take to activate that service; and

(2) an explanation of all material differences between E-911 service and the provider's system for accessing emergency services.

(d) The notice required by Subsection (c) must:

(1) be a separate document; and

(2) conspicuously state that the customer acknowledges that the customer will not be able to use the service to access E-911, or that the customer must separately activate access to that service in order to receive it.

(e) At least annually, a VoIP provider shall send to each customer to whom it provides VoIP service a notice that includes the information required by Subsection (c). The entity shall provide the notice as a separate document.

(f) Except as specifically preempted by federal law, the commission has all jurisdiction necessary to enforce this section. In addition, a violation of this chapter is a false, misleading, or deceptive act or practice and is actionable by the attorney general under Subchapter E, Chapter 17, Business & Commerce Code.

(b) This section applies to a contract entered into or renewed on or after the effective date of this section. A contract entered into or renewed before that date is governed by the law in effect on the date the contract was entered into or renewed, and that law is continued in effect for that purpose.

(c) This section does not affect litigation pending on the effective date of this section.

SECTION __. Section 64.101, Utilities Code, is amended to read as follows:

Sec. 64.101. POLICY. It is the policy of this state that all customers be protected from the unauthorized switching of a [~~telecommunications~~] service provider selected by the customer to

provide service.

SECTION __. Section 64.102, Utilities Code, is amended to read as follows:

Sec. 64.102. RULES RELATING TO CHOICE. The commission shall adopt and enforce rules that:

(1) ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders, including negative option marketing, sweepstakes, and contests that cause customers to unknowingly change their telecommunications service provider;

(2) provide for clear, easily understandable identification, in each bill sent to a customer, of all [~~telecommunications~~] service providers submitting charges on the bill;

(3) ensure that every service provider submitting charges on the bill is clearly and easily identified on the bill along with its services, products, and charges;

(4) provide that unauthorized changes in service be remedied at no cost to the customer within a period established by the commission;

(5) require refunds or credits to the customer in the event of an unauthorized change; and

(6) provide for penalties for violations of commission rules adopted under this section, including fines and revocation of certificates or registrations[~~, by this action denying the certificated telecommunications utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008~~].

SECTION __. Chapter 240, Local Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. COMMUNICATION FACILITIES

Sec. 240.081. DEFINITIONS. In this subchapter:

(1) "Communication facility structure" means:

(A) an antenna support structure for a mobile or land-based telecommunication facility, or a whip antenna, panel antenna, microwave dish, or receive-only satellite dish;

(B) a cell enhancer and related equipment for wireless transmission from a sender to one or more receivers for a mobile telephone, or a mobile radio system facility, commercial radio service, or other service or receiver; or

(C) a monopole tower, a steel lattice tower, or any other communication tower.

(2) "Residential subdivision" means a subdivision:

(A) for which a plat is recorded in the county real property records;

(B) in which the majority of the lots are subject to deed restrictions limiting the lots to residential use; and

(C) that includes at least five lots that are designated as homestead property.

Sec. 240.082. APPLICABILITY. (a) This subchapter applies only to real property that is located in the unincorporated area of a county with a population of 1.4 million or more and located within one-quarter mile of a residential subdivision.

(b) This subchapter does not apply to:

(1) a communication facility structure built to replace an existing communication facility structure if:

(A) the replacement communication facility structure is constructed within 300 feet of the existing communication facility structure;

(B) the replacement communication facility structure is the same size and constructed for the same purpose as the existing communication facility structure; and

(C) the existing communication facility structure is removed not later than the 14th day after the date the replacement communication facility structure begins operation; or

(2) a communication antenna, antenna facility, or antenna tower or support structure located in a residential area that is used by an amateur radio operator:

(A) exclusively for amateur radio communication or public safety services; and

(B) who is licensed by the Federal Communications Commission.

Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) The

commissioners court of a county subject to this subchapter may by order regulate the location of a communication facility structure.

(b) The regulations may include a requirement for a permit for the construction or expansion of the communication facility structure and may impose fees on regulated persons to recover the cost of administering the regulations.

Sec. 240.084. COUNTY PERMIT. (a) This section applies only to the issuance of a permit to construct or improve a communication facility structure under a regulation adopted under this subchapter.

(b) The commissioners court must, not later than the 45th day after the date the application for the permit is filed:

(1) grant or deny the permit application;

(2) provide written notice to the applicant stating the reason the commissioners court has not acted on the permit application; or

(3) enter into an agreement with the applicant establishing a date by which the commissioners court will grant or deny the permit application.

(c) If the commissioners court provides notice to the applicant under Subsection (b)(2), the commissioners court must grant or deny the permit application not later than the 30th day after the date the applicant received the notice.

(d) If the commissioners court fails to act on a permit application within the 30-day period prescribed by Subsection (c) or under the terms of an agreement under Subsection (b)(3), the commissioners court:

(1) may not collect any permit fees associated with the permit application; and

(2) shall refund to the applicant any permit fees associated with the application that have been previously collected.

Sec. 240.085. NOTICE BY SIGN. (a) Not later than the 60th day before the date a permit application is filed under Section 240.084, the applicant for a permit for a location not previously licensed or permitted shall prominently post an outdoor sign at the proposed location:

(1) stating that a communication facility structure is proposed for the location; and

(2) providing the name and business address of the applicant.

(b) The sign must be at least 24 by 36 inches in size and must be published in lettering at least two inches in size. The county in which the proposed communication facility structure is to be located may require the sign to be published in English and in a language other than English if it is likely that a substantial number of residents in the area speak a language other than English as their familiar language.

Sec. 240.086. VARIANCES. (a) A person who proposes to construct or increase the height of a communication facility structure in violation of a regulation adopted by order by a county subject to this subchapter may apply to the commissioners court for a variance from the regulation.

(b) The commissioners court shall hold a public hearing on the proposed variance. The commissioners court may authorize a variance from a regulation if the commissioners court finds that:

(1) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and

(2) granting the relief sought would:

(A) result in substantial justice;

(B) not be contrary to the public interest; and

(C) be in accordance with the spirit of the regulation and this subchapter.

(c) The commissioners court may impose any reasonable conditions on the variance that the commissioners court considers necessary to accomplish the purposes of this subchapter.

(d) Before the 10th day before the date the commissioners court holds a public hearing on the variance request, written notice of the public hearing shall be provided to each owner of property located within one-quarter mile of the proposed location of the communication facility structure. The notice must include:

(1) the date, time, and place of the public hearing;

(2) the proposed location, height, and use of the

proposed communication facility structure; and

(3) the name and telephone number of a person interested persons may contact to receive information regarding the construction of the proposed communication facility structure.

Sec. 240.087. ADDITIONAL FILING REQUIREMENTS REGARDING CONSTRUCTION. Before the 90th day before the date construction begins, a person proposing to construct a communication facility structure in the unincorporated area of a county subject to this subchapter that is taller than 60 feet shall file with the county official designated by the commissioners court:

(1) a statement informing the county that the construction is proposed and providing the date on or after which the construction will begin;

(2) copies of any necessary permits from the Federal Communications Commission;

(3) any necessary engineered drawings that have been approved by the Federal Aviation Administration;

(4) the correct phone number and address of each entity involved in the construction; and

(5) a plat or map of the specific proposed location of the communication facility structure.

Sec. 240.088. OFFENSE. (a) A person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) An offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) An offense under this section is a Class C misdemeanor.

Sec. 240.089. INJUNCTION. The county attorney or an attorney representing the county may file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. The court may grant appropriate relief.

SECTION __. (a) Section 37.02(a), Business & Commerce Code, is amended to read as follows:

(a) A telephone solicitor may not make a consumer telephone call to a consumer unless:

(1) the telephone solicitor identifies himself or

herself by name and identifies the business on whose behalf the telephone solicitor is calling and the purpose of the call immediately after making contact with the consumer to whom the call is made;

(2) the telephone solicitor makes the call after 12 noon or before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m. on a weekday or a Saturday; and

(3) for those calls in which an automated dial announcing device is used, the device must disconnect the consumer's telephone line within the period provided by Section 55.126, Utilities Code, as that section existed on August 31, 2005, after termination of the call by either the telephone solicitor or the consumer.

(b) Section 46.011(a), Business & Commerce Code, is amended to read as follows:

(a) In this section, "telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code, as that section existed on August 31, 2005.

(c) Section 246.001(6), Local Government Code, is amended to read as follows:

(6) "Telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code, as that section existed on August 31, 2005.

(d) Section 1(10), Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(10) "Trap and trace device" means a device or process that records an incoming electronic or other impulse that identifies the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, if the information does not include the contents of the communication. The term does not include a device or telecommunications network used in providing:

(A) a caller identification service authorized by the Public Utility Commission of Texas under Subchapter E, Chapter 55, Utilities Code, as that subchapter existed on August 31, 2005;

(B) the services referenced in Section 55.102(b), Utilities Code, as that section existed on August 31, 2005; or

(C) a caller identification service provided by a commercial mobile radio service provider licensed by the Federal Communications Commission.

SECTION __. (a) The Public Utility Commission of Texas shall conduct a study for presentation to the 80th Legislature on issues regarding the provision of wireless broadband communications services by municipalities, including wireless fidelity, or Wi-Fi, services.

(b) A municipality may not offer to the public, directly or indirectly, wireless broadband communications services, including wireless fidelity, or Wi-Fi, services, unless the municipality was providing the service on or before September 1, 2006, or unless the municipality has filed with the commission before June 15, 2006, a statement of intent to provide the services that meets the requirements of Subsection (c) of this section.

(c) A statement of intent described by Subsection (b) of this section must be presented to the commission for approval as a part of the study conducted under this section and must include information sufficient for the commission to determine that the municipality has a plan for providing the services and has the fiscal and managerial capacity to provide the intended services.

(d) The commission shall present the report and approved statements of intent to the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee of the house of representatives and senate that has jurisdiction over matters related to communications services and municipal government. The report must be presented not later than September 1, 2006.

(e) The report may include discussion on any issue related to the provision of wireless broadband communications services by municipalities, including wireless fidelity, or Wi-Fi, services, that the commission considers important for consideration by the legislature. The report must include the commission's recommendations for legislation and commentary on issues the

commission considers important for the legislature's consideration.

SECTION __. (a) The following provisions of the Utilities Code are repealed on the effective date of this Act:

- (1) Section 51.001(g);
- (2) Section 51.004;
- (3) Sections 51.006-51.008;
- (4) Section 51.010;
- (5) Section 52.001;
- (6) Sections 52.004 and 52.005;
- (7) Subchapter B, Chapter 52;
- (8) Sections 52.104-52.107;
- (9) Sections 52.109-52.112;
- (10) Sections 52.151-52.154;
- (11) Subchapter E, Chapter 52;
- (12) Sections 52.252-52.254;
- (13) Section 52.256(b);
- (14) Sections 54.003 and 54.004;
- (15) Sections 54.006 and 54.007;
- (16) Subchapters B-D, Chapter 54;
- (17) Section 54.2025;
- (18) Section 54.253;
- (19) Sections 54.255-54.258;
- (20) Section 54.261;
- (21) Section 55.001;
- (22) Sections 55.002-55.012;
- (23) Section 55.016;
- (24) Sections 55.024 and 55.025;
- (25) Sections 55.082 and 55.083;
- (26) Sections 55.088(b) and (c);
- (27) Sections 55.101(3) and (4);
- (28) Sections 55.102 and 55.103;
- (29) Sections 55.105-55.110;
- (30) Subchapter F, Chapter 55;
- (31) Section 55.172;
- (32) Sections 55.175-55.177;
- (33) Section 55.179;

- (34) Section 55.201(c);
- (35) Section 55.202;
- (36) Sections 55.203(d)-(g);
- (37) Section 55.251;
- (38) Subchapter K, Chapter 55;
- (39) Sections 56.026(a) and (d);
- (40) Section 56.204(b);
- (41) Section 57.001;
- (42) Subchapter D, Chapter 57;
- (43) Sections 58.003-58.022;
- (44) Section 58.024;
- (45) Section 58.028;
- (46) Sections 58.052-58.060;
- (47) Subchapter F, Chapter 58;
- (48) Section 59.023(b);
- (49) Section 59.024(e);
- (50) Sections 59.051-59.054;
- (51) Section 59.076;
- (52) Section 59.078(b);
- (53) Section 60.002;
- (54) Sections 60.004-60.006;
- (55) Subchapters B-D, Chapter 60;
- (56) Sections 60.083 and 60.084;
- (57) Subchapter F, Chapter 60;
- (58) Section 60.128;
- (59) Subchapter H, Chapter 60;
- (60) Sections 60.162 and 60.163;
- (61) Chapter 61;
- (62) Chapter 63;
- (63) Sections 64.002(3), (5), and (6); and
- (64) Subchapter B, Chapter 64.

(b) Section 56.026(c), Utilities Code, is repealed September 1, 2007.

(c) Subchapter C, Chapter 57, Utilities Code, is repealed.

SECTION __. The repeal of Section 54.2025, Utilities Code, by this Act, shall not take effect until September 30, 2006.