

## BILL ANALYSIS

C.S.H.B. 789  
By: King, Phil  
Regulated Industries  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

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

### RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission in SECTIONS 115, 119, 121, 122, 125, 128, 131, and 132 of this bill.

### ANALYSIS

**HB 789** would rename Subtitle C, Title 2 of the Utilities Code from "telecommunications Utilities" to "Advanced Service Infrastructure and Intermodal Competition."

**HB 789** would amend Chapters 51 – 64 of Subtitle C of the Utilities Code as follows:

#### **Chapter 51. General Provisions**

Section 51.001 would be amended to change the state's policy to guarantee affordable basic telecommunications service for low-income customers, foster free-market intermodal competition, and encourage deployment of competitive broadband networks. Section 51.002 would be amended to change, delete and add certain definitions. New definitions would include "advanced services," "broadband networks," "interexchange telecommunications service," "information service," "network provider," "provider," "service provider," "telecommunications," and "telecommunications provider." Section 51.003 would be amended to establish that service providers and network service providers are subject to the Commission's jurisdiction, consistent with federal law.

Section 51.004 would be re-titled from "Pricing Flexibility" to "Deregulation Elections." An ILEC electing deregulation would be entitled to reduced regulation, but would be required to reduce switched access charges to interstate parity in two increments: by 50% of the difference between the interstate and intrastate level on September 1, 2005, and by the remaining 50% on January 1, 2007. The electing ILEC would be required to relinquish TUSF disbursements on January 1, 2006, and would be prohibited from increasing certain unspecified rates in exchanges receiving TUSF until all actions necessary to implement Section 56.029(b) have been met.

Section 51.009 would be amended to conform to the new definitions section, and include the new categories of "network provider" and "service provider" in the guidelines on municipal fees.

#### **Chapter 52. Commission Jurisdiction**

##### **Subchapter A. General Powers and Duties of Commission**

Section 52.002 would be amended to limit the Commission's regulatory authority as prescribed by this title. Subsection 52.002(a) is deleted. Section 52.003 would be amended to conform to the new definitions section by substituting the term "provider of local exchange telephone service" for the prior term, "telecommunications utility." Section 51.007 would be merged into Section 52.004, which would be re-titled "Cooperation with Municipalities" (from "Commission May Establish Separate Markets"), and would provide guidelines for Commission interaction with municipalities. Sections 51.006, 51.008, 51.010, and 52.001 – 52.005 would be deleted. Section 52.006 would be amended to encompass all telecommunications and information

services markets, regardless of technology, and to eliminate certain Commission reporting requirements.

#### **Subchapter B. Providers of Interexchange Telecommunications Services**

Subchapter B would be re-titled from “Incumbent Local Exchange Companies.” Sections 52.051 – 52.060 would be deleted. Amended Section 52.101 would apply only to providers of interexchange telecommunications. Amended Section 52.102 would delete all requirements previously listed for non-dominant utilities, replacing them with certain Commission jurisdiction over interexchange telecommunications providers. Section 52.103 would be amended to conform to new definitions for types of companies.

Sections 52.104 – 52.107 would be deleted. This would delete authority for Commission investigations of competition, requirements for access to certain services in local exchanges, quality of service requirements, and predatory pricing restrictions. Section 52.108 would be amended to eliminate provisions pertaining to statewide average rates, discriminatory practices, access charge reduction pass-through, and references to utilities other than providers of interexchange services.

#### **Subchapter C. Required Filings and Access Rate Prohibitions**

Subchapter C would be re-titled from “Telecommunications Utilities That Are Not Dominant Carriers,” and Sections 52.109 – 52.112, regarding availability of service, burden of proof, exempt utilities, and access charge reduction pass-through would be deleted. Amended Section 52.251 would delete reference to access charge reductions, and require a certificated provider to file a tariff or price list with the Commission showing each rate that is subject to the Commission’s jurisdiction or in effect for the provision of local exchange telephone service. Further, a provider electing under Chapter 53, 58 or 59 would be required to include rule references in its tariff filing.

Subchapter D. Certificate Holders and Sections 52.151 – 52.154, pertaining to applicability of the subchapter, limited regulatory authority, books and records, and overburdening by the Commission would be deleted. New Section 52.252 – Prohibition on Excessive Access Charges would replace existing Section 52.155, and would limit the levels of access charges from non-ILEC local exchange providers.

Subchapter E. Deregulation of Service, Sections 52.201 – 52.207, would be deleted. Subchapter F. Required Reports and Filings; Records, Sections 52.253 and 52.254, would be deleted. Section 52.255, regarding availability of records, would be amended to conform to the new definitions section by replacing the term “public utility” with “provider of local exchange telephone service.” Section 52.256 would be amended conform with the new definitions section by replacing the term “telecommunications utility” with the term “provider” throughout the section, and would delete the reporting requirement for a 5-year workforce diversity plan.

### **Chapter 53. Rates**

New Section 53.001(a) would apply the provisions of Chapter 53 to any ILEC electing under this chapter or failing to file an election pursuant to Section 51.004(1). Section 53.056(c) would be amended to accommodate the deletion of Section 52.252 while retaining the Commission’s ability to require a depreciation account for a public utility. Section 53.061(2) would be amended to accommodate the deletion of Section 52.254, and would provide that the Commission disallow for ratemaking purposes expenditures for business gifts, entertainment, advertising, public relations, or institutional and consumption-inducing purposes that the Commission determines are not in the public interest. Section 53.065(b) would be amended to reflect the deletion of Section 52.057, which removes the requirement that the Commission review an ILEC’s customer-specific contracts for high-speed services. Section 53.308(4) would be amended to reflect the deletion of Section 55.004, which had required ILECs to file tariffs for rule or practice changes for the Commission’s administrative review.

### **Chapter 54. Certificates**

#### **Subchapter A. General Provisions**

Section 54.001 would re-define each entity that, as of August 31, 2005, holds a certificate of convenience and necessity (CCN), certificate of authority (COA) or service provider certificate of authority (SPCOA) as a service provider certificate holder. Each person holding a CCN, COA

or SPCOA on August 31, 2005 would immediately receive a certificate as a network provider or a service provider, as appropriate. This section further would prohibit a network or service provider from providing service in Texas prior to obtaining a certificate. Section 54.002 would provide an exception to Section 54.001 only if the Federal Communications Commission (FCC) has precluded state certification requirements. Section 54.003 would add conforming definitions to apply the section to a network or service provider. Amended Section 54.004 would require the Commission to act on a certificate within 60 days after the date the application is filed, and Section 54.005 would establish guidelines for Commission revocation or amendment of certificates. Sections 54.006 – 54.008 would be deleted.

#### **Subchapter B. Municipalities**

Sections 54.051 – 54.159 would be deleted. Section 54.201 would prohibit a municipality from being granted a service provider certificate, and Section 54.202 would prohibit a municipality from directly or indirectly providing telecommunications or information services that would require a certificate, regardless of the technology platform used.

Section 54.2025 would be amended to allow only a municipality that operates a municipal electric system that is a member of a municipal power agency formed under Chapter 163 to lease dark fiber on a nondiscriminatory, nonpreferential basis, while the current version of the Section allows all municipalities to lease dark fiber. Section 54.203 would be amended to conform to the new definitions and replace “certificated telecommunications utility” with “certificate holder and person.” In addition, a municipality would be required to give the certificate holder 30 days’ notice and simultaneously specify the new location for the facility in the right-of-way.

Section 54.204 would be amended to conform to the new definitions and replace “certificated telecommunications utility” with “certificate holder and person.” Amended 54.204(c) would require, consistent with Section 57.002, a municipal utility to charge a certificate holder the lower of attachment fees that apply to networks or facilities carrying voice or to networks or facilities carrying other services, including cable television services. Section 54.205(b) would require the Commission to develop an appropriate, technology-neutral method for providers of voice and video services, including community antenna television services and commercial mobile service, to compensate municipalities for the use of the public rights-of way. Section 54.206 would allow any provider that is required to pay municipal fees pursuant to Section 54.204 or 54.205 to collect those fees through a pro rata charge to the customers within municipal boundaries.

#### **Subchapter C. Regulation of Services, Areas, and Facilities**

Section 54.251 would allow an ILEC that has the carrier of last resort obligations to meet those obligations using any technology available.

Section 54.252 would provide that a holder of a CCN prior to September 1, 2005 may not discontinue, reduce, or impair local exchange telephone services to any part of its certificated service area except for nonpayment of charges, nonuse, or any other similar reason that occurs in the normal course of business. Section 54.253 would be amended to permit a certificate holder to refuse to serve a customer in its certificated area if the holder is prohibited from providing the service under Local Government Code Section 212.012 or 232.029. Sections 54.254 – 54.258 would be deleted. Sections 54.259 and 54.260 would be amended to comport with the new definitions by utility with certificate holder. Section 54.261 would be deleted.

#### **Subchapter D. Provider of Last Resort**

Amended Section 54.301 would redefine “exiting provider,” “provider of last resort (POLR),” and “successor provider.” Amended Sections 54.302 – 54.305 would conform with the new definitions, while retaining their existing intent.

### **Chapter 55. Regulation of Telecommunications Services**

#### **Subchapter A. General Provisions**

Section 55.001 would be amended to require a certificate holder pursuant to Chapter 54 to provide access to 911 services and dual party relay services. Sections 55.002 – 55.012 would be deleted. Amended Section 55.013 would conform with the new definitions and require that a network service provider may not discontinue service to a customer for nonpayment of charges for Interexchange Telecommunication Service. Section 55.014 would be deleted. Amended

Section 55.015 would conform with the new definitions and prohibit a provider from discontinuing basic network service to a Lifeline customer, and would amend the qualification requirements for Lifeline service. Section 55.016 would be deleted.

#### **Subchapter B. Extended Area Service**

Amended Section 55.021 would conform with the new definitions and apply the section to ILECs, rather than dominant carriers. Sections 55.024 – 55.025 would be deleted, removing current restrictions on charging for EAS.

#### **Subchapter C. Expanded Toll-Free Local Calling Areas**

Section 55.048 would be amended to allow the ILEC to impose a non-cost-based monthly fee on each residential and business customer in the petitioning exchange.

#### **Subchapter D. Operator Service Providers**

Sections 55.082 and 55.083 would be deleted. Section 55.085 would be amended to remove the requirement that a provider, at a caller's request, provide the fee or rate for the call. Section 55.087 would be amended to remove the requirement that an operator service provider (OSP) allow access to carriers in addition to the customer's local exchange carrier. Section 55.088 would be amended to remove the requirement that the Commission review the method by which a provider connects a customer to an OSP.

#### **Subchapter E. Pay Telephones**

Sections 55.101 – 55.172 would be deleted. Section 55.173 would be amended to exempt network providers and service providers from this section. Section 55.174 would be amended to allow providers to charge for local directory assistance. Section 55.177 – 55.178 would be deleted. Section 55.175 would be replaced with existing language in 55.178. Section 55.179 would be deleted. Amended Section 55.176 would authorize the Commission to disconnect pay telephone service for not more than one year for repeated violations of Commission rules.

#### **Subchapter F. Directory Listings**

Former Subchapter I would be renumbered Subchapter F, and Section 55.201 would be amended to conform with the new definitions. Section 55.202 would be deleted. Section 55.203 would be amended to prohibit the Commission from adopting rules that dictate the format or content of a directory.

#### **Subchapter G. Telecommunications Service by Certain Providers**

Section 55.251 would be amended to delete the current cap prohibiting hotels and motels from charging more than \$.050 for local calls, and to conform with the new definitions by replacing "telecommunications utility" with "service provider." Subchapter authorizing the Commission to enforce prohibitions against slamming would be deleted.

### **Chapter 56. Telecommunications Assistance and Universal Service Fund**

All of Chapter 56 would be amended to apply the new definitions of "local exchange carrier," which excludes VOIP, and "provider" and "network service provider," which include VOIP.

#### **Subchapter B. Universal Service Fund**

Amended Section 56.021 would retain the requirement that the Commission adopt and enforce rules requiring all providers, including VOIP, to establish a USF fund. Section 56.021(1) would be amended to require that USF support be provided for local exchange telephone service, which excludes VOIP, and Section 56.021(5) would provide that only local exchange companies, not telecommunications providers, be reimbursed for Lifeline customers. Section 56.021(6) would be amended to allow USF support for the Commission's new eligibility process established under Section 64.005 for local exchange telephone service discounts.

Section 56.022 would be amended to retain the requirement that the USF be funded through a nondiscriminatory, uniform charge applied to all providers, including VOIP. Amended Section 56.023 would retain Commission authority only for local exchange telephone service, which would not include VOIP. Section 56.023(e) regarding successor utilities would be deleted. Section 56.024 would be amended to remove the confidential protection of a report submitted to the Commission by a provider regarding its assessment and disbursement of USF.

Section 56.025 would be deleted, removing a special USF program available to small rural ILECs. Section 56.026 would be amended to apply to local exchange companies, would provide that entities providing unbundled network elements (UNEs) be fully compensated for their costs, and would prohibit Chapter 58 electing providers from receiving USF to offset reductions in access charges. Section 56.028 would be deleted, removing the IntraLATA service piece of the current USF, which provides USF support to non-electing ILECs for intraLATA interexchange high-capacity service.

New Section 56.029 would require that the Commission, not later than October 1, 2005, commence a review and evaluation of the USF. The review would consist of a comprehensive assessment of the appropriate use of the USF and the method of collecting and distributing the USF. By January 1, 2006, the Commission must have entered the appropriate orders to collect data from each company electing under Section 51.004(2) on the amount of USF received, the number of customers and all known competitors providing basic local exchange service. For Chapter 53, 58 and 59 electing companies, the study must also include additional cost and expenditure data. No later than September 1, 2006, the Commission would be required to conclude the study and determine whether any company has received USF funds exceeding its cost of providing basic local telecommunications service by more than 5% in two of the last three years, and whether any company has used USF funds for any purpose other than providing basic local telecommunications service. If the Commission finds that either one of these is the case, the overall USF and funds available to the carrier would be reduced. This new section is potentially inconsistent with Section 51.004(2) (a), which provides that a Chapter 51 electing ILEC would relinquish its eligibility to receive USF as of January 1, 2006. Further, the Commission would be required to deliver its report on the results of this study to the Legislature by September 1, 2006, along with recommendations regarding how the USF should be collected, disbursed, and used.

Sections 56.106, 56.107, 56.110, 56.155, 56.202 and 56.203 would be amended to reflect the new definitions, and would apply to all providers. Section 56.204(b) would be deleted, which would prohibit the Commission from accepting a petition for service to an uncertificated area from fewer than five people. Subchapter C, Sections 56.251 through 56.254, which currently provide a mechanism for successor utilities to receive USF, would be deleted.

## **Chapter 57. Deployment Incentives**

### **Subchapter A. Broadband Deployment**

New Subchapter A, Broadband Deployment, would replace former Chapter 57, Subchapter A, "Distance Learning and Other Advanced Services," which currently requires dominant carriers, such as ILECs, to provide discounts to schools and libraries for distance learning and information sharing services. Sections 57.021-.25 regarding Distance Learning, including requirements to tariff and provide discounted rates for distance learning services, would be deleted.

Amended Section 57.001 would make it the state's policy to facilitate and promote the deployment of an advanced broadband infrastructure to spur economic development throughout the state, primarily by encouraging private investment and through innovation and competition among all the state's communication providers.

New Section 57.002 (1)(a) would require an ILEC to provide broadband service upon bona fide request in rural areas, defined in new Section 57.002(1)(d) as a community outside of an MSA, or within an MSA with fewer than 20,000 people not adjacent to the primary MSA city. For a bona fide request with a minimum of 50 customers, the ILEC would be required to offer the advanced services within 15 months after receiving the request at prices, terms and conditions reasonably comparable to similar advanced services provided in non-rural areas. Further, upon a bona fide retail request for those services, an ILEC would be required to provide caller ID and custom calling features within 15 months after receiving the request at prices, terms and conditions reasonably comparable to similar services provided in urban areas. An ILEC would not be required to provide service in a rural area in which it does not provide local exchange service, or provide service in a rural area unless it provides the service in a non-rural area. Pursuant to new Section 57.002(e), as of September 1, 2005, an ILEC that deploys broadband networks and provides advanced services in a non-rural area would be required to deploy its network and provide those services throughout the entire non-rural area at reasonably

comparable prices, terms and conditions. The ILEC would be required to provide a map and build-out schedule of its construction plans to the governing body of each non-rural area.

New Sections 57.002 (2)(a) and (b) would subject broadband providers to the same regulations, fees, taxes and assessments as cable and VOIP providers. New Section 57.002 (3) would enable the Commission to fine any provider up to \$25,000/day for failure to comply with this section.

#### **Subchapter B. Telecommunications Infrastructure Fund (TIF)**

Sections 57.043(b) and 57.048 (a), (b) and (e) would be amended to conform to the new definitions, and would continue to assess TIF on all providers. Subchapter D, Interactive Multimedia Communication, Sections 57.071 and 57.072 would be deleted to remove the requirement that the Commission review LEC cost-based rates for interactive multimedia communications.

### **Chapter 58. Incentive Regulation for Incumbent Local Exchange Companies**

#### **Subchapter A. General Provisions**

Chapter 58 would be re-titled from Incentive Regulation. Section 58.001 would be amended to provide that the policy of this state is to regulate the telecommunications industry in a technology-neutral manner, through adherence to free-market principles. Sections 58.002 – 58.004 would be deleted. Subchapter B, Sections 58.021 – 58.022, would be deleted. Sections 58.023 – 58.027 would become part of Subchapter A. Section 58.023 and would be amended to apply to companies electing under Chapter 65, and to change the term “nonbasic services” to “nonbasic network services.” Section 58.024, regarding service reclassification, would be deleted. Section 58.025 would be amended to state that a company electing under Chapter 53 is not subject to a rate-of-return proceeding. Section 58.026 would be amended to eliminate the Commission’s authority to determine the proper rate for a consumer, if a tariff does not apply. Section 58.027 would eliminate the provision that the chapter does not restrict the Commission’s authority to enforce a quality of service standard, and would provide the chapter does not restrict the Commission’s authority to enforce consumer protections under Chapter 64. Section 58.028, regarding review and report of effects of election, would be deleted.

#### **Subchapter C. Basic Network Services**

Section 58.051 would be amended to re-define what services would be included within basic network services, eliminating certain services previously included. Sections 58.052 – 58.060 would be deleted, removing Commission regulation of rates and services. Section 58.061 would be amended to change a reference regarding effect on certain charges, from Section 55.024 to Subchapter C, Chapter 55. Section 58.062, regarding switched access rates and Section 58.063, regarding pricing and packaging flexibility, would be deleted.

#### **Subchapter D. Nonbasic Network Services**

Subchapter D. would be un-repealed, and re-titled from “Nonbasic Services” to “Nonbasic Network Services” to conform to the new definitions. Section 58.151 would be amended to add to the list of what services would be considered nonbasic, including, but not limited to, any basic network service when ordered and received with any other basic network service or a nonbasic network service. References in this section to price caps would be deleted. Section 58.152 would be amended to establish that an ILEC electing under this Chapter may set the retail price for any nonbasic network service at any price at or above long run incremental cost, and that prior to September 1, 2011, may not raise its retail price for any basic network service more than 20% higher than the price being charged for the same basic network service as of January 1, 2005. Section 58.153 would be amended to change informational notice filing requirements from ten days notice to one day. All other requirements within this section would be deleted. Section 58.155, regarding interconnection, would be amended to state that an ILEC electing under this Chapter would be subject to interconnection obligations set forth in Chapter 60, Subchapter G.

#### **Subchapter F. General Infrastructure Commitment**

Subchapter F, Sections 58.201 – 58.206, regarding infrastructure commitments for high-speed services and network upgrades, would be deleted.

### **Subchapter G. Switched Access Services**

Subchapter G. would be re-titled from “Infrastructure Commitment to Certain Entities” to “Switched Access Services.” Sections 58.251 – 58.267 pertaining to existing infrastructure commitments would be deleted. Section 58.301 would be amended to implement a new schedule for access reductions for electing ILECs. On September 1, 2005, electing companies would be required to reduce intrastate switched access rates by one-half of the difference between current levels and interstate levels. Effective January 1, 2007, electing companies would reduce intrastate access rates to parity with interstate switched access rates.

## **Chapter 59. Infrastructure Plan**

### **Subchapter B. Infrastructure Incentives**

Section 59.024 would be amended to eliminate references to Sections 55.024 and 58.059. Section 59.029 would be amended to eliminate a reference to investments required by Section 59.052. Section 59.031 would be amended to eliminate a reference to Section 59.027 and Subchapter F, Chapter 60, and to eliminate language describing what is included in pricing flexibility. Subchapter C, Sections 59.051 – 59.054, regarding infrastructure commitment, infrastructure goals, waivers of infrastructure requirements, and progress reports, would be deleted. Sections 59.055 – 59.055 would become part of Subchapter B. Section 59.055 would be amended to change the reference to what would be former Section 59.052.

### **Subchapter D. Infrastructure Commitment to Certain Entities**

Section 59.071 would be amended to add examples of what constitutes an “educational institution” and would eliminate the prior method of defining such institutions by reference to Section 57.021. The Commission notes that this Subchapter should be renumbered “Subchapter C” to reflect the deletion of the existing Subchapter C.

## **Chapter 60. Fair Competition and Competitive Safeguards**

Chapter 60 of the Public Utilities Regulatory Act would be renamed from “Competitive Safeguards.”

### **Subchapter A. General Provisions**

Section 60.001 would state that, if each component service for purposes of reporting to taxing authorities is set at or above long-run incremental cost (LRIC), the rate is not predatory, anticompetitive, or improperly subsidized, and that, if a rate, term, condition or practice is offered or applicable to all customers within the same customer class (e.g. residential vs. business) within an MSA, it is not unreasonably preferential, prejudicial or discriminatory. This section would require the Commission to adopt and enforce a Code of Conduct applicable to all providers, to ensure the integrity of business practices in carrier-to-carrier, marketing and advertising practices. Section 60.001(e) would allow any party to elect to resolve carrier-to-carrier disputes through binding arbitration before an independent arbitration panel instead of arbitration at the PUC.

Section 60.003 would grant the Commission necessary authority to enforce remedies under this Chapter, and require the Commission to resolve filed complaints within 270 days, with any appeal to the Court of Appeals in Travis County. In addition, this section provides for administrative penalties up to \$100,000 per day for each violation, which would apply day for day for the violation’s duration.

### **Subchapters B – D.**

Subchapter B (Unbundling, Sections 60.021 – 60.023), Subchapter C (Resale, Sections 60.041 – 60.045) and Subchapter D (Imputation, Sections 60.061 – 60.065) would be deleted.

### **Subchapter E. Telecommunications Number Portability**

Section 60.082 would be modified to require Commission rules to be consistent with FCC rules and not impose obligations beyond those required under federal law. Interim measures for number portability in 60.083 and 60.084 would be removed. The Commission notes that this Subchapter should be renumbered Subchapter B to reflect the deletion of existing Subchapters B – D.

### **Subchapter F. Pricing**

Subchapter F, Sections 60.101 – 60.102, would be deleted.

### **Subchapter G. Interconnection**

Section 60.121 would modify the definition of “interconnection” to apply to network and service providers, and would define “interoperability” as the standards necessary to ensure that network and service providers conduct their business in a way that enables consumers to efficiently communicate with each other and to choose their choice of provider and service without unreasonable disruption and delay.

Section 60.122 would retain the Commission’s exclusive jurisdiction to determine interconnection rates and conditions, but the Commission would no longer have exclusive jurisdiction to resolve disputes regarding breach of interconnection obligations. Section 60.123 would be amended to prohibit this subchapter from applying to commercial mobile radio service (CMRS) or interexchange telecommunications service. This type of traffic is exempt from such requirements under federal law.

Section 60.124 would be modified to require each Service or Network Provider to maintain an interoperable network, and allow a network or service provider to interconnect at least at a single point of interconnection within a LATA, which point would be technically feasible, efficient from a network and economic standpoint, and transparent to the consumer. Section 60.125 would be amended to provide that, except where mutually agreed by the parties, intraLATA toll would be at parity with interstate switched access rates, transit traffic would be set at the rate approved by the Commission in Docket No. 28821, and all other traffic would be exchanged at 0.00075 per minute. Other rates, including rates for facilities necessary for interconnecting, would be based on total long-run incremental cost (TELRIC). Under 60.125(c), the Commission would approve a negotiated interconnection agreement if it finds the agreement to be in the public interest and nondiscriminatory. Section 60.125(d) would provide the Commission with all authority necessary to promulgate rules and conduct proceedings to implement and enforce this section.

Section 60.126 would add language to mirror the Federal Telecommunications Act’s requirement that a party to interconnection negotiations may file for resolution of disputes issues between 135-180 days of receipt of the negotiation request, which dispute must be resolved by the Commission within 270 days of the receipt of the request. Section 60.127 would add language to mirror a provider’s right under federal law to adopt any interconnection agreement approved by the Commission.

Section 60.128 would be renamed “Consumer Oriented Standards,” and would require the Commission to adopt rules applicable to all interconnecting entities which ensure that E911 systems, customer migration processes, operator services, directory listings and other consumer friendly services are efficient and secure for consumers.

New section 60.130 would be added to entitle facilities-based VOIP providers to interconnection, including using the Commission as a forum for mediating or arbitrating interconnection agreements, upon first certifying agreement to comply with Title 47 USC section 251(a).

The Commission notes that this Subchapter should be renumbered Subchapter C to reflect the deletion of existing Subchapters B – D.

### **Subchapter H. Network Provider and Service Provider Requirements**

Subchapters H and I would be combined and Subchapter H would be retitled from “Expanded Interconnection.” Section 60.141 would be deleted. Section 60.161 would be amended to apply to network and service providers, instead of solely to the incumbent local exchange company. Section 60.161(1) would expand the obligation to provide non-discriminatory access to apply to providing: interconnection; traffic exchange terms and conditions; or facility use, rates, terms and conditions for purposes of exchanging traffic between and among providers. New 60.161(7) would require a network provider and a service provider to disclose fully information necessary to determine compliance with interconnection and traffic exchange obligations. The remainder of Chapter 60 would be deleted, including: Section 60.162 (Expanded Interconnection); 60.163 (Infrastructure Sharing); 60.164 (Permissible Joint Marketing); and 60.165 (Affiliate Rule). The Commission notes that this Subchapter should be renumbered Subchapter D to reflect the deletion of existing Subchapters B – D.



### **Chapter 61. Information Technology Services**

Chapter 61, Sections 61.001 – 61.043, which prohibited a LEC with more than 5 million access lines from providing customized business services or products such as management consulting and IT process or systems development, integration or management, except through an affiliate, would be deleted.

### **Chapter 62. Broadcaster Safeguards**

Chapter 62, Sections 62.001 – 62.136, which, among other things, defines CPNI (62.021) and governs its usage (62.022) and establishes requirements for ILEC affiliate recordkeeping (62.044), would be deleted.

### **Chapter 63. Electronic Publishing**

Chapter 63, Sections 63.001 – 63.063, which prohibits the use of an ILEC's basic telephone service to sell news, entertainment or related materials, would be deleted.

### **Chapter 64. Customer Protection**

#### **Subchapter A. General Provisions**

Section 64.001 would be modified to clarify that the Commission's authority to establish customer protection standards applies only to retail customers. Section 64.002 would add definitions for "billing provider" and would be amended to apply the definitions for "network provider", "service provider", and provider to conform with the new definitions.

Section 64.003(d) would limit the Commission's customer awareness efforts to English and Spanish.

Section 64.004 would modify customer protection standards to apply to buyers of services from providers subject to this title, rather than to buyers of telecommunications services. Customer information concerning rates, terms and conditions would need to be provided only in English and Spanish, rather than "any language deemed necessary." Section 64.004(7) would add customers' right to accuracy of metering, as well as billing. New Section 64.004(e) would require the Commission to adopt rules to provide automatic enrollment of eligible service customers for lifeline telephone service available to low-income households. New Section 64.004(f) would require that the rules adopted to allow low-income customers to receive affordable telecommunications services and obtain bill payment assistance, would be required to provide full, concurrent reimbursement for the costs of any such programs and reimbursement for the difference between such an affordable rate package and rates otherwise applicable. Section 64.004(g) would require the Commission's rules to be identical to any existing federal rules or requirements and in no case more burdensome or stringent.

New 64.005 would require the Commission to develop rules for an integrated eligibility process for customer service discounts.

#### **Subchapter B. Customer's Right to Choice**

Subchapter C, relating to a customer's right to choice, is amended and, due to the fact that current Subchapter B would be deleted, this Subchapter would become the new Subchapter B in Chapter 64. Sections 64.101 and 64.102 would be amended to remove references to "telecommunications," as applied to service providers to conform with the new definitions. Subchapter D, Sections 64.151 – 64.158, relating to customer protection against unauthorized charges (a.k.a. "cramming") would be deleted.

### **EFFECTIVE DATE**

The Act would take effect on September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

Section 1 and Section 2 have been broken down into 139 separate sections. Chapter 51 scope has been modified to include expanded definitional language, policy goals and general word changes. Prior Chapter 51 election options have been altered to reflect a consolidated Chapter 58

process for reduced access charges, basic network service price caps, commission oversight and additional administrative procedures.

Chapter 52 was modified in scope to include grammatical changes and modifications to text and section provisions. Chapter 53 was modified in scope to include text, grammatical and definitional changes including but not limited to classification of rural incumbent local exchange companies, rural incumbent local exchange company obligations under this chapter, pricing and packaging flexibility, customer complaint proceedings and commission filings and procedures.

Chapter 54 was modified in scope to include changes in grammatical statements, word usage and text meaning. Chapter 55 was modified in scope to include changes in grammatical statements, word usage and text meaning. Chapter 56 was modified in scope to include changes in grammatical statements, word usage and text meaning including but not limited to changes in requirements for the study of universal service in Texas. The commission is required to provide for a process for third party bidding to contract with a private agency to support the study. Providers are required to comply with requests and make information available for the study. Upon completion, the study is delivered by the third party to the commission and presented to the legislature prior to the 80<sup>th</sup> session.

Chapter 57 was modified in scope to include changes in grammatical statements, word usage and text meaning. Chapter 57 eliminates required broadband build-out in rural areas under the advanced service rule via a bona fide request. Treatment of the Texas Infrastructure Fund (TIF) was modified to allow all providers to pass through charges to consumers once the fund reaches its stated monetary goal. Commission fine structure was eliminated per 57.002 (3). Chapter 57 outlines rules, goals and policies for the prohibition on disparate treatment of all providers.

Chapter 58 was modified in scope to include changes in grammatical statements, word usage, text meaning and policy goals. The definition of basic network service seeks to re-define what services would be included within basic network services. The definition of non-basic network service is modified to reflect current services and changes. Structured reductions in access fees have been amended to reflect new structural processes. Applicable statutes, sections and provisions of current law are applied to companies subject to this chapter. Changes in effective dates are made to reflect applicability of this chapter. Pricing and packaging flexibility is modified to reflect competitive price floors for certain services. Price caps are placed on basic network services for a sum certain, date and time.

Chapter 60 was modified in scope to include changes in grammatical statements, word usage, text meaning and policy goals. Chapter 60 was modified in scope to include changes in grammatical statements, word usage, text meaning and policy goals. Chapter 60 includes enhanced language applicable to fair competition and industry safeguards against anticompetitive or predatory conduct. Chapter 60 allows for a modified version of “winback” reflective of current market forces. Chapter 60 modifies processes for dispute resolution, filing of claims and decisions based upon market concerns. Chapter 60 clarifies commission authority regarding dispute resolution and penalty procedures. Chapter 60 modifies interconnection requirements, terms and components to ensure consistent application with federal law and delegates commission authority with regard to post interconnection dispute resolution. Chapter 60 protects against discrimination of providers with respect to interconnection rights and obligations.

Chapter 64 was modified in scope to include changes in grammatical statements, word usage, text meaning and policy goals. Section 135 amends Chapter 282, Local Government Code, by adding Section 282.004 regarding the relocation of communication facilities located in the public right of way requiring communications providers to pay for relocation of facilities. Section 136 is added to amend Section 37.02 (a), Business and Commerce Code, to reflect restrictions on the ability of solicitors to contact consumers. Section 246.001 (6), Local Government Code, is amended to reflect the meaning of the word “telecommunications utility”. Section 1(10), Article 18.21, Code of Criminal Procedure, is amended to reflect the meaning of “trap and trace device”. Section 137 is created to reflect the list of repealed sections of current law.