

BILL ANALYSIS

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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 17 (Sections 65.003, 65.052, and 65.055, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 52.155, Utilities Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits certain telecommunications utilities from charging a higher amount for originating or terminating intrastate switched access than the prevailing rates charged by the holder of the certificate of convenience and necessity or the holder of a certificate of operating authority issued under Chapter 65 in whose territory the call originated or terminated except under certain conditions.

(c) Provides that notwithstanding Subsection (a), Chapter 65 governs the switched access rates of a company that holds a certificate of operating authority issued under, Chapter 65.

SECTION 2. Amends Subchapter D, Chapter 52, Utilities Code, by adding Section 52.156, as follows:

Section 52.156. RETAIL RATES, TERMS, AND CONDITIONS. Sets forth certain prohibited activities for a telecommunications utility.

SECTION 3. Amends Section 54.251, Utilities Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Makes a conforming change.

(c) Authorizes a certificate holder to meet the holder's provider of last resort obligations using any available technology. Authorizes the Public Utility Commission of Texas (commission), notwithstanding any provision of Chapter 56 (Telecommunications Assistance and Universal Service Fund), to adjust disbursements from the universal service fund to companies using certain alternative technologies to meet provider of last resort obligations. Requires, as determined by the commission, the certificate holder to meet minimum quality of service standards comparable to those established for traditional wireline or landline technologies.

SECTION 4. Amends Subchapter G, Chapter 54, Utilities Code, by adding Section 54.3015, as follows:

Sec. 54.3015. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies to a holder of a certificate of operating authority issued under Chapter 65 in the same manner and to the same extent this subchapter applies to a holder of a certificate of convenience and necessity.

SECTION 5. Amends Subchapter H, Chapter 55, Utilities Code, by adding Section 55.1735, as follows:

Sec. 55.1735. **CHARGE FOR PAY PHONE ACCESS LINE.** Prohibits the charge or surcharge a local exchange company imposes for an access line to provide pay telephone service in an exchange from exceeding a specific amount.

SECTION 6. Amends Section 56.025, Utilities Code, by adding Subsection (g) to provide that this section expires August 31, 2007.

SECTION 7. Amends Section 56.026, Utilities Code, by adding Subsection (e) to provide that this subsection and Subsections (c) and (d) expire August 31, 2007.

SECTION 8. Amends Subchapter B, Chapter 56, Utilities Code, by adding Sections 56.029 and 56.030, as follows:

Sec. 56.029. **COMMISSION REVIEW AND EVALUATION OF SUPPORT ACCOUNTS; ORDER.** Requires the commission, on or before October 1, 2005, to initiate a review and evaluation of the monthly per line support amount available from the Texas High Cost Universal Service Plan (THCUSP) and from the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILECSP).

(b) Sets forth certain requirements of the commission's review and evaluation.

(c) Requires the commission, on or before November 15, 2006, to issue an order establishing the appropriate monthly per line support amount to be made available from THCUSP and SRILECSP. Provides that the order takes effect September 1, 2007. Requires the commission to deliver the order to the lieutenant governor and the speaker of the house of representatives on the date the commission issues the order.

(d) Authorizes the commission to revise the monthly line support amounts made available from THCUSP and SRILECSP at any time after September 1, 2007, after notice and an opportunity for a hearing.

(e) Provides that this subsection and Subsections (a), (b), and (c) expire September 1, 2007.

Sec. 56.030. **AFFIDAVITS OF COMPLIANCE.** Requires a telecommunications provider that receives disbursements from the universal service fund to file with the commission an affidavit certifying that the provider is in compliance with certain requirements on or before September 1 of each year.

SECTION 9. Amends Section 57.048, Utilities Code, by adding Subsections (f)-(i), as follows:

(f) Authorizes a certificated telecommunications utility, notwithstanding any other provision of this title, to recover from the utility's customers an assessment imposed on the utility under this subchapter after the total amount deposited to the credit of the fund, is equal to a certain amount. Authorizes a certificated telecommunications utility to recover only the amount of the assessment imposed after the total amount deposited to the credit of the fund reaches a certain amount. Authorizes the utility to recover the assessment through a monthly billing process.

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

(h) Requires a certificated telecommunications utility that wants to recover the assessment under Subsection (f), not later than February 15 of each year, to file an affidavit stating certain information with the commission.

(i) Requires the commission to maintain the confidentiality of information it receives under this section that is claimed to be confidential for competitive purposes.

SECTION 10. Amends Section 57.051, Utilities Code, to extend the Sunset date of the Telecommunications Fund, rather than the Telecommunications Fund Board, to September 1, 2011.

SECTION 11. Amends Section 58.258(a), Utilities Code, to prohibit an electing company's rates for private network services from being increased before January 1, 2012, rather than on or before the sixth anniversary of the company's date of election.

SECTION 12. Amends Subchapter G, Chapter 58, Utilities Code, by adding Section 58.268, as follows:

Sec. 58.268. CONTINUATION OF OBLIGATION. Requires an electing company, not withstanding any other provision of this title, to comply with this subchapter until January 1, 2012, regardless of certain factors.

SECTION 13. Amends Section 59.077(a), Utilities Code, to prohibit an electing company's rates for private network services from being increased before January 1, 2012, rather than on or before the sixth anniversary of the company's date of election.

SECTION 14. Amends Subchapter D, Chapter 59, Utilities Code, by adding Section 59.083, as follows:

Sec. 59.083. CONTINUATION OF OBLIGATION. Requires an electing company, not withstanding any other provision of this title, to comply with this subchapter until January 1, 2012, regardless of certain factors.

SECTION 15. Amends Chapter 60, Utilities Code, by adding Subchapter J, as follows:

SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

Sec. 60.201. STATEMENT OF POLICY. Provides that it is the state's policy that providers of telecommunication services operate consistent with the minimum standards to provide customers with continued competitive choice for providers.

Sec. 60.202. APPLICABILITY OF SUBCHAPTER. Provides that a provision of this subchapter applies only to the extent the provision has not been preempted by a federal law or a rule, regulation, or order of the Federal Communications Commission (FCC).

Sec. 60.203. MINIMUM SERVICE REQUIREMENTS. Sets forth unreasonable actions in which telecommunications providers may not engage.

Sec. 60.204. INTERCONNECTION. (a) Requires a telecommunications provider to provide interconnection with other telecommunications providers' networks for the transmission and routing of telephone exchange service and exchange access.

(b) Requires a telecommunications provider to provide interconnection at any technically feasible point within the provider's network and at rates, terms and conditions that are just, reasonable, and nondiscriminatory. Sets forth certain quality standards for the connection.

Sec. 60.205. NUMBER PORTABILITY. Requires all telecommunications providers to provide number portability in accordance with federal requirements.

Sec. 60.206. DUTY TO NEGOTIATE. Requires all telecommunications providers to negotiate the terms and conditions of any agreements in good faith.

Sec. 60.207. DIALING PARITY. Requires all telecommunications providers to provide dialing parity to competing telecommunications providers of telephone exchange service and telephone toll service. Requires all telecommunications providers to provide nondiscriminatory access to telephone numbers, operator service, directory assistance, and directory listing with no unreasonable delays.

Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. Requires all telecommunications providers to provide access to poles, ducts, conduits, and rights-of-way to competing providers of telecommunications service on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Sec. 60.209. RECIPROCAL COMPENSATION. Requires all telecommunications providers to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 60.210. ACCESS TO SERVICES. Sets forth services to which a telecommunications provider is required to provide access.

SECTION 16. Amends Subchapter A, Chapter 62, Utilities Code, by adding Section 62.003, as follows:

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO PROGRAMMING. (a) Provides that this section applies only to certain providers of advanced services or local exchange telephone service.

(b) Requires a provider of advanced services or local exchange telephone service to provide subscribers access to the signals of the local broadcast television and radio stations licensed by the FCC.

(c) Requires a local broadcast station either to be granted mandatory carriage or authorizes a station to request retransmission consent with a provider to facilitate access by subscribers of providers of advanced services or local exchange telephone service to signals of said stations.

(d) Provides that this title does not require a provider of advanced services or local exchange telephone service to provide a television or radio station valuable consideration in exchange for carriage.

(e) Requires a provider of advanced services or local exchange telephone service to transmit without degradation the signals a local broadcast station delivers to the provider. Prohibits the transmission quality from being below a certain level.

(f) Sets forth certain prohibited activities for a provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers.

(g) Requires a provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers to include all programming providers in a subscriber programming guide that lists program schedules.

SECTION 17. Amends Subtitle C, Title 2, Utilities Code, by adding Chapter 65, as follows:

CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE COMPANY MARKETS

SUBCHAPTER A. GENERAL PROVISIONS.

Sec. 65.001. STATEMENT OF POLICY. Provides that the state's policy is to provide for full rate and service competition in the telecommunications market of this state so that customers may benefit from innovations in service quality and market-based pricing.

Sec. 65.002. DEFINITIONS. Defines "deregulated company," "market," "regulated company," "stand-alone residential local exchange voice service," and "transitioning company."

Sec. 65.003. COMMISSION AUTHORITY. Provides that the commission has authority to implement and enforce this chapter, notwithstanding any other provisions of this title. Authorizes the commission to adopt certain rules and conduct proceedings necessary to administer and enforce this chapter.

Sec. 65.004. INFORMATION. (a) Authorizes the commission to collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter.

(b) Requires the commission to maintain the confidentiality of information collected under this chapter that is claimed to be confidential for competitive purposes. Exempts information that is claimed to be confidential from certain disclosure.

Sec. 65.005. CUSTOMER PROTECTION. Provides that this chapter does not affect a customer's right to complain to the commission regarding a telecommunications provider.

[Reserves Sections 65.006-65.050 for expansion.]

SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED.

Sec. 65.051. MARKETS DEREGULATED. (a) Provides that, except as provided by Subsection (b), all markets of all incumbent local exchange companies are deregulated on January 1, 2006, unless the commission determines that a market or markets should remain regulated.

(b) Provides that market of a incumbent local exchange company in a certain population area is deregulated on January 1, 2007, unless the commission determines that a market or markets should remain regulated.

Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD REMAIN REGULATED. (a) Sets forth certain requirements for the commission.

(b) Prohibits the commission, in making determinations under Subsection (a), from determining that certain markets should remain regulated.

(c) Requires the commission to issue an order classifying an incumbent local exchange company as a deregulated company that is subject to Subchapter C under certain conditions.

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

(e) Requires the commission to issue an order classifying the company as a regulated company that is subject to the provisions of this title that has applied to the company on September 1, 2005, if the commission makes certain

determinations. Provides that this subsection does not effect the authority of a regulatory company to elect under Chapter 58 (Incentive Regulation) or 59 (Infrastructure Plan) after January 1, 2005, and to be regulated under the chapter under which the company elected.

(f) Requires the commission to make certain determinations pertaining to the regulation of certain markets not later than November 30, 2006. Requires the commission by rule to determine the market test to be applied in determining whether the market should remain regulated. Requires the commission, under certain conditions, to issue an order reclassifying the company appropriately.

Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS. Authorizes an incumbent local exchange company to elect for its market or markets to remain regulated on and after January 1, 2006, notwithstanding Section 65.052. Requires such an incumbent local exchange company to file an affidavit with the commission as specified by December 1, 2005. Requires an incumbent local exchange company who elects to remain regulated to continue to be a regulated company and subject to the provisions of this title applicable to it on September 1, 2005. Provides an exception.

Sec. 65.054. PETITION FOR DEREGULATION. Authorizes a transitioning or regulated company to petition the commission to deregulate a market that remains regulated. Sets forth requirements for the commission to appropriately reclassify a company.

Sec. 65.055. COMMISSION AUTHORITY TO REGULATE CERTAIN MARKETS.

(a) Provides that this section applies only to certain markets.

(b) Authorizes the commission to determine that a market that was previously deregulated should again be subject to regulation.

(c) Authorizes the commission by rule to prescribe the procedures and standards applicable to a determination under this section.

[Reserves Sections 65.056-65.100 for expansion.]

SUBCHAPTER C. DEREGULATED COMPANY.

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

(b) Requires the commission to issue the deregulated company a certificate of operating authority and to relinquish the company's certificate of convenience and necessity if the commission finds that all of the company's markets have deregulated under Subchapter B.

Sec. 65.102. REQUIREMENTS. Provides that a deregulated company holding a certificate of operating authority to be a nondominant carrier governed in the same manner as any holder of a certificate of operating authority except that the deregulated company is required to meet specific criteria. Requires a deregulated company, in each market, to make available to all customers uniformly throughout that market the same price for all services and products.

[Reserves Sections 65.103-65.150 for expansion.]

SUBCHAPTER D. TRANSITIONING COMPANY.

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY.

Provides that a transitioning company is subject to the provisions of this title applicable

immediately prior to becoming a transitioning company and to the provisions of this subchapter. Provides that where the provisions are inconsistent, this chapter controls.

Sec. 65.152. GENERAL REQUIREMENTS. Sets forth general requirements of a transitioning company.

Sec. 65.153. RATE REQUIREMENTS. Requires a transitioning company to price its retail services in accordance with the provisions applicable to such company immediately prior to becoming a transitioning company, in a market that remains regulated. Requires a transitioning company to price its retail services in markets as specified, in a market that is deregulated. Requires a transitioning company to make available to all customers uniformly throughout the market the same price for all services and products. Prohibits a transitioning company from specific action in all markets.

[Reserves Sections 65.154-65.200 for expansion.]

SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY DEREGULATED COMPANY. (a) Requires an incumbent local exchange company, on the date the last such company is deregulated, to reduce its originating and terminating per minute use of switched access rates in each markets to parity with the company's respective local reciprocal compensation rates.

(b) Requires a deregulated company to maintain parity with the company's respective local reciprocal compensation rates. Requires a deregulated company to change its per minute of use switched access rates in each market as necessary to re-achieve parity with the company's respective local reciprocal compensation rates.

Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES. Sets forth certain requirements for a transitioning company that has more than three million access lines in service in this state on January 1, 2006.

Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN TRANSITIONING COMPANY WITH NOT MORE THAN THREE MILLION ACCESS LINES. Sets forth certain requirements for a transitioning company that has not more than three million access lines in service in this state on January 1, 2006.

Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY DESIGNATED TRANSITIONING COMPANY. Sets forth certain requirements for a company that is classified as a transitioning company after January 1, 2006.

Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY. (a) Prohibits a deregulated or transitioning company that reduces its rates under this chapter company from increasing those rates above the applicable rates prescribed by this subchapter.

(b) Requires a company to reduce the company's per minute of use switched access rates to not more than the applicable rates prescribed by this subchapter if the transitioning company's federal per minute of use switched access rates are reduced.

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

[Reserves Sections 65.206-65.250 for expansion.]

SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 65.251. OVERSIGHT COMMITTEE. Defines "committee." Sets forth the member composition of the committee. Provides that an appointed member of the committee serves at the pleasure of the appointing official.

Sec. 65.252. COMMITTEE DUTIES. (a) Requires the telecommunications competitiveness legislative oversight committee (committee) to conduct joint public hearings with the commission at least annually regarding the introduction of full competition to telecommunication services in the state.

(b) Sets forth actions required of the commission.

(c) Provides that information that is claimed to be confidential under Subsection (b) is exempt from disclosure under Chapter 552, Government Code.

(d) Requires the committee to receive information about rules relating to telecommunications deregulation proposed by the commission. Authorizes the committee to submit comments to the commission on proposed rules.

(e) Requires the committee to monitor the effectiveness of telecommunications deregulations, including specific factors.

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

(g) Requires the committee to report on the committee's activities under this subchapter to specified persons, not later than November 15 of each even-numbered year. Sets forth the required items to be included in the committee report.

SECTION 18. (a) Repealer: (1) Sections 57.048(c) and (d), Utilities Code;

(2) Subchapters B-F, Chapter 62, Utilities Code; and

(3) Chapters 61 and 63, Utilities Code.

SECTION 19. Requires the comptroller of public accounts, if on August 31, 2005, the assessment prescribed by Section 57.048, Utilities Code, is imposed at a rate of less than 1.25 percent, on September 1, 2005, to reset the rate of the assessment to 1.25 percent.

SECTION 20. Effective date: September 1, 2005.