

By: King of Parker, Edwards

H.B. No. 789

A BILL TO BE ENTITLED

AN ACT

relating to communications; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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 2. 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~~

1 ~~necessary to protect customers of telecommunications services]~~
2 consistent with the public interest.

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

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

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

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

10 (4) ~~(3)~~ maintain a wide availability of high
11 quality, interoperable, standards-based telecommunications
12 services at affordable rates.

13 (c) The policy goals described by Subsection (b) are best
14 achieved by legislation that modernizes the state's regulatory
15 framework [~~telecommunications regulation~~] by:

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

19 (2) fostering free market intermodal competition; and

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

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

1 standards for Texans through:

2 (1) enhanced economic development; and

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

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

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

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

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

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

20 (2) have an adverse competitive effect.

21 SECTION 3. Section 51.002, Utilities Code, is amended to
22 read as follows:

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

24 (1) "Advanced service" means a service that may be
25 delivered only over a broadband network.

26 (2) "Basic local telecommunications service" means:

27 (A) ~~[flat rate]~~ residential and business local

1 exchange telephone service, including primary directory listings;

2 (B) tone dialing service;

3 (C) access to operator services;

4 (D) access to directory assistance services;

5 (E) access to 911 service provided by a local
6 authority or dual party relay service;

7 (F) the ability to report service problems seven
8 days a week;

9 (G) lifeline [~~and tel-assistance~~] services; and

10 (H) any other service the commission determines
11 after a hearing is a basic local telecommunications service.

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

17 (4) [~~(2)~~] "Dominant carrier" means a provider of a
18 communication service provided wholly or partly over a telephone
19 system who the commission determines has sufficient market power in
20 a telecommunications market to control prices for that service in
21 that market in a manner adverse to the public interest. The term
22 includes a provider who provided local exchange telephone service
23 within a certificated exchange area on September 1, 1995, as to that
24 service and as to any other service for which a competitive
25 alternative is not available in a particular geographic market. In
26 addition, with respect to[+]

27 [~~(A) intraLATA long distance message~~]

1 ~~telecommunications service originated by dialing the access code~~
2 ~~"1-plus," the term includes a provider of local exchange telephone~~
3 ~~service in a certificated exchange area for whom the use of that~~
4 ~~access code for the origination of "1-plus" intraLATA calls in the~~
5 ~~exchange area is exclusive, and~~

6 ~~(B)~~ interexchange telecommunications
7 services, the term does not include an interexchange carrier that
8 is not a certificated local exchange company.

9 (5) ~~(3)~~ "Incumbent local exchange company" means a
10 local exchange company that held ~~has~~ a certificate of convenience
11 and necessity on September 1, 2004 ~~1995~~.

12 (6) "Information service" has the meaning assigned by
13 47 U.S.C. Section 153.

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

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

24 (9) ~~(4)~~ "Local exchange company" means an entity ~~a~~
25 ~~telecommunications utility~~ that has a certificate and is providing
26 ~~[of convenience and necessity or a certificate of operating~~
27 ~~authority to provide]~~ in this state:

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

4 (10) [~~5~~] "Local exchange telephone service" means
5 telecommunications service provided [~~within an exchange~~] to
6 establish connections between customer premises [~~within the~~
7 ~~exchange~~], including connections between a customer premises
8 within a local access and transport area and an entity providing
9 interexchange telecommunications service, using any landline
10 technology or radio or wireless type facility components used to
11 provide traditional landline service [~~and a long distance provider~~
12 ~~serving the exchange~~]. The term includes basic network service as
13 defined by Section 58.051, services classified as nonbasic network
14 services by Section 58.151, [~~tone dialing service, service~~
15 ~~connection charges, and directory assistance services offered in~~
16 ~~connection with basic local telecommunications service~~] and
17 interconnection with other service providers. The term does not
18 include the following services, whether offered on an intraexchange
19 or interexchange basis:

- 20 (A) central office based PBX-type services for
21 systems of 75 stations or more;
- 22 (B) billing and collection services;
- 23 (C) high-speed private line services of 1.544
24 megabits or greater;
- 25 (D) customized services;
- 26 (E) private line or virtual private line
27 services;

1 (F) resold or shared local exchange telephone
2 services if permitted by tariff;

3 (G) dark fiber services;

4 (H) non-voice data transmission service offered
5 as a separate service and not as a component of basic local
6 telecommunications service;

7 (I) dedicated or virtually dedicated access
8 services; or

9 (J) an information service or any other service
10 the commission determines is not a "local exchange telephone
11 service."

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

17 ~~(12) [(6) "Long run incremental cost" has the meaning~~
18 ~~assigned by 16 T.A.C. Section 23.91 or its successor.~~

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

20 (A) customer specific contracts;

21 (B) packaging of services;

22 (C) volume, term, and discount pricing;

23 (D) zone density pricing, with a zone to be
24 defined as an exchange; and

25 (E) other promotional pricing.

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

1 (14) [~~(8)~~] "Public utility" or "utility" means a
2 person or river authority that owns or operates for compensation in
3 this state equipment or facilities to convey, transmit, or receive
4 communications over a telephone system as a dominant carrier. The
5 term includes a lessee, trustee, or receiver of any of those
6 entities, or a combination of those entities. The term does not
7 include a municipal corporation. A person is not a public utility
8 solely because the person:

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

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

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

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

20 (A) is a cooperative corporation; or

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

24 (16) [~~(9)~~] "Separation" means the division of plant,
25 revenues, expenses, taxes, and reserves applicable to exchange or
26 local service if these items are used in common to provide public
27 [~~utility~~] service to both local exchange telephone service and

1 other service, such as interstate or intrastate toll service.

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

4 (18) "Telecommunications" has the meaning assigned by
5 47 U.S.C. Section 153.

6 (19) ~~(10)~~ "Telecommunications provider" means a
7 person or entity that offers telecommunications to others for a
8 fee[+]

9 ~~(A) means:~~

10 ~~(i) a certificated telecommunications~~
11 ~~utility;~~

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

13 ~~(iii) a nondominant carrier of~~
14 ~~telecommunications services;~~

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

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

24 ~~(vi) an interexchange telecommunications~~
25 ~~carrier;~~

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

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

1 ~~[(ix) a provider of operator services,~~
2 ~~[(x) a provider of customer-owned pay~~
3 ~~telephone service; or~~

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

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

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

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

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

15 ~~[(A) a public utility,~~

16 ~~[(B) an interexchange telecommunications~~
17 ~~carrier, including a reseller of interexchange telecommunications~~
18 ~~services,~~

19 ~~[(C) a specialized communications common~~
20 ~~carrier,~~

21 ~~[(D) a reseller of communications,~~

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

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

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

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

5 SECTION 4. Section 51.003, Utilities Code, is amended to
6 read as follows:

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

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

10 (A) is a telecommunications manager; or

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

13 (2) telegraph services;

14 (3) television or radio stations;

15 (4) community antenna television services; or

16 (5) a provider of commercial mobile service as defined
17 by Section 332(d), Communications Act of 1934 (47 U.S.C. Section
18 151 et seq.), Federal Communications Commission rules, and the
19 Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66),
20 other than conventional rural radio-telephone services provided by
21 a wire-line telephone company under the Public Mobile Service rules
22 of the Federal Communications Commission (47 C.F.R. Part 22).

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

26 (c) A state agency, a state institution of higher education,
27 or a service provided by a state agency or state institution of

1 higher education is not a network provider, service provider, or
2 telecommunications provider for purposes of this title.

3 SECTION 5. Section 51.009, Utilities Code, is amended to
4 read as follows:

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

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

16 SECTION 6. Section 52.002, Utilities Code, is amended to
17 read as follows:

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

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

1 SECTION 7. Section 52.003, Utilities Code, is amended to
2 read as follows:

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

12 SECTION 8. Section 51.005, Utilities Code, is transferred
13 to Subchapter A, Chapter 52, Utilities Code, redesignated as
14 Section 52.0041, and amended to read as follows:

15 Sec. 52.0041. COOPERATION WITH MUNICIPALITIES
16 [~~51.005. ASSISTANCE TO MUNICIPALITY~~]. (a) On request of a
17 municipality, the commission may advise and assist the municipality
18 with respect to a question or proceeding arising under this title.
19 Assistance provided by the commission may include aid to a
20 municipality on a matter pending before the commission or a court,
21 such as making a staff member available as a witness or otherwise
22 providing evidence to the municipality.

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

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

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

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

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

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

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

18 SECTION 9. Section 52.006, Utilities Code, is amended to
19 read as follows:

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

23 (1) the scope of competition in all [~~regulated~~]
24 telecommunications and information services markets, regardless of
25 technology used; and

26 (2) the effect of competition on customers [~~in both~~
27 ~~competitive and noncompetitive markets~~], with a specific focus on

1 rural markets and underserved areas in urban markets.

2 (b) The report shall include[+]

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

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

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

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

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

20 SECTION 10. The heading to Subchapter C, Chapter 52,
21 Utilities Code, is amended to read as follows:

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

24 SECTION 11. Section 52.101, Utilities Code, is amended to
25 read as follows:

26 Sec. 52.101. APPLICABILITY. This subchapter applies only
27 to a provider of interexchange telecommunications services

1 ~~[utility that is not:~~

2 ~~(1) a dominant carrier, or~~

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

6 SECTION 12. Section 52.102, Utilities Code, is amended to
7 read as follows:

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

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

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

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

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

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

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

27 ~~(7) to require the quality of telecommunications~~

1 ~~service provided to be adequate under Section 52.106.~~

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

4 SECTION 13. Section 52.103, Utilities Code, is amended to
5 read as follows:

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

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

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

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

16 [~~(3) other registration information the commission~~
17 ~~directs~~].

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

22 SECTION 14. Section 52.108, Utilities Code, is amended to
23 read as follows:

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

1 providing[+]

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

3 [~~(2) abandoned~~] interexchange [~~message~~]

4 telecommunications service to a local exchange area in which there
5 is no competitive alternative [~~in a manner contrary to the public~~
6 ~~interest,~~

7 [~~(3) engaged in a pattern of preferential or~~
8 ~~discriminatory activities prohibited by Section 53.003, 55.005, or~~
9 ~~55.006; or~~

10 [~~(4) failed to pass switched access rate reductions to~~
11 ~~customers under Chapter 56 or other law, as required by Section~~
12 ~~52.112].~~

13 SECTION 15. The heading to Subchapter F, Chapter 52,
14 Utilities Code, is amended to read as follows:

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

17 SECTION 16. Section 52.251, Utilities Code, is amended to
18 read as follows:

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

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

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

26 (b) The incumbent local exchange company [~~public utility~~]
27 shall file as a part of the tariff required under Subsection (a)

1 each term or condition [~~rule~~] that relates to or affects:

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

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

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

8 SECTION 17. Section 52.155, Utilities Code, is transferred
9 to Subchapter F, Chapter 52, Utilities Code, redesignated as
10 Section 52.2521, and amended to read as follows:

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

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

23 (2) subject to commission review, the provider of
24 local exchange telephone service [~~telecommunications utility~~]
25 establishes statewide average composite originating and
26 terminating intrastate switched access rates based on a reasonable
27 approximation of traffic originating and terminating between all

1 certificated providers [~~holders of certificates of convenience and~~
2 ~~necessity~~] in this state.

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

5 SECTION 18. Section 52.255, Utilities Code, is amended to
6 read as follows:

7 Sec. 52.255. AVAILABILITY OF RECORDS. Notwithstanding
8 Section 14.152, a book, account, record, or memorandum of a
9 provider of local exchange telephone service [~~public utility~~] may
10 be removed from this state if the book, account, record, or
11 memorandum is returned to this state for any commission inspection
12 authorized by this title.

13 SECTION 19. Section 52.256(c), Utilities Code, is amended
14 to read as follows:

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

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

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

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

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

3 (4) ~~[(5)]~~ an assessment of the success of each of
4 those initiatives, programs, and activities;

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

9 (6) ~~[(7)]~~ the initiatives, programs, and activities
10 the provider ~~[telecommunications utility]~~ will pursue during the
11 next year to increase the diversity of its workforce and
12 contracting opportunities for small and historically underutilized
13 businesses.

14 SECTION 20. Subchapter A, Chapter 53, Utilities Code, is
15 amended by adding Section 53.0001 to read as follows:

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

19 SECTION 21. Section 53.056(c), Utilities Code, is amended
20 to read as follows:

21 (c) The rates and methods established under this section and
22 the depreciation account required by the commission ~~[Section~~
23 ~~52.252]~~ shall be used uniformly and consistently throughout
24 rate-setting and appeal proceedings.

25 SECTION 22. Section 53.061(a), Utilities Code, is amended
26 to read as follows:

27 (a) The commission may not allow as a cost or expense for

1 ratemaking purposes:

2 (1) an expenditure for legislative advocacy; or

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

8 SECTION 23. Section 53.065(b), Utilities Code, is amended
9 to read as follows:

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

13 SECTION 24. Section 53.308, Utilities Code, is amended to
14 read as follows:

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

- 20 (1) this subchapter;
- 21 (2) Section 53.112; and
- 22 (3) Subchapter H~~, and~~
- 23 ~~[(4) Section 55.004]~~.

24 SECTION 25. Chapter 53, Utilities Code, is amended by
25 adding Subchapter I to read as follows:

1 SUBCHAPTER I. SPECIAL PROVISIONS FOR RURAL INCUMBENT LOCAL

2 EXCHANGE COMPANIES

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

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

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

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

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

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

26 Sec. 53.403. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER
27 PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of

1 this title, a rural incumbent local exchange company may exercise
2 pricing flexibility in accordance with this section, including the
3 packaging of any regulated service such as basic local
4 telecommunications service with any other regulated or unregulated
5 service or any service of an affiliate. Pricing flexibility
6 includes all pricing arrangements included in the definition of
7 "pricing flexibility" prescribed by Section 51.002 and includes
8 packaging of any regulated service with any unregulated service or
9 any service of an affiliate.

10 (b) A rural incumbent local exchange company, at the
11 company's option, shall price each regulated service offered
12 separately or as part of a package under Subsection (a) at either
13 the service's tariffed rate or at a rate not lower than the
14 service's long run incremental cost. The commission shall allow
15 the company to establish a service's long run incremental cost by
16 adopting, at that company's option, the cost studies of a larger
17 company for that service that have been accepted by the commission.

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

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

27 (b) The company shall file with the commission a promotional

1 offering that consists of:

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

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

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

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

14 SECTION 26. Section 54.001, Utilities Code, is amended to
15 read as follows:

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

24 [(1) certificate of convenience and necessity,

25 [(2) certificate of operating authority, or

26 [(3) service provider certificate of operating
27 authority].

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

6 (1) a request for a network provider certificate; or

7 (2) a notice of certificate relinquishment declaring
8 that the entity is exempt under Section 54.002 and stating the
9 reasons the entity is exempt.

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

17 SECTION 27. Section 54.002, Utilities Code, is amended to
18 read as follows:

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

27 ~~[(1) extension into territory that is:~~

1 ~~[(A) contiguous to the territory the~~
2 ~~telecommunications utility serves;~~

3 ~~[(B) not receiving similar service from another~~
4 ~~telecommunications utility; and~~

5 ~~[(C) not in another telecommunications utility's~~
6 ~~certificated area;~~

7 ~~[(2) extension in or to territory the~~
8 ~~telecommunications utility serves or is authorized to serve under a~~
9 ~~certificate of public convenience and necessity, a certificate of~~
10 ~~operating authority, or a service provider certificate of operating~~
11 ~~authority; or~~

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

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

16 ~~[(1) to interconnect existing facilities; or~~

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

20 SECTION 28. Section 54.005(a), Utilities Code, is amended
21 to read as follows:

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

27 (1) give notice of the application to interested

1 parties; and

2 (2) if requested:

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

4 (B) give notice of the hearing.

5 SECTION 29. Subchapter A, Chapter 54, Utilities Code, is
6 amended by adding Section 54.0055 to read as follows:

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

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

16 SECTION 30. Section 54.008, Utilities Code, is amended to
17 read as follows:

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

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

1 SECTION 31. Section 54.201, Utilities Code, is amended to
2 read as follows:

3 Sec. 54.201. CERTIFICATION PROHIBITED. The commission may
4 not grant to a municipality a network provider or service provider
5 certificate[-

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

7 [(2) ~~certificate of operating authority, or~~

8 [(3) ~~service provider certificate of operating~~
9 ~~authority]~~.

10 SECTION 32. Section 54.202, Utilities Code, is amended by
11 amending Subsection (a) and adding Subsections (c) and (d) to read
12 as follows:

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

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

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

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

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

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

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

1 to the public using the Internet, including:

2 (A) bill paying services;

3 (B) emergency services;

4 (C) constituent services;

5 (D) utility meter reading; and

6 (E) permitting; and

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

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

22 SECTION 33. Subchapter E, Chapter 54, Utilities Code, is
23 amended by adding Section 54.2022 to read as follows:

24 Sec. 54.2022. PROHIBITION ON MUNICIPAL CHARGES FOR WIRELESS
25 BROADBAND SERVICES. (a) Notwithstanding any other law, a
26 municipality may not charge for wireless broadband services,
27 including wireless fidelity, or Wi-Fi, services, that the

1 municipality may provide under this title, except as provided by
2 Subsection (b).

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

6 SECTION 34. Sections 54.203(a)-(c), Utilities Code, are
7 amended to read as follows:

8 (a) If an area is or will be included within a municipality
9 as the result of annexation, incorporation, or another reason, each
10 entity [~~telecommunications utility~~] that holds or is entitled to
11 hold a certificate under this title to provide service or operate a
12 facility in the area before the inclusion has the right to continue
13 to provide the service or operate the facility and extend service in
14 the entity's [~~utility's~~] certificated area within the annexed or
15 incorporated area under the rights granted by the certificate and
16 this title.

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

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

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

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

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

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

3 SECTION 35. Sections 54.204(a)-(c), Utilities Code, are
4 amended to read as follows:

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

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

10 (2) access to a building; or

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

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

21 (1) municipal utility pole attachment or underground
22 conduit rates or terms[~~7~~ ~~to the extent not addressed by federal~~
23 ~~law~~]; or

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

1 in the form of:

2 (A) money;

3 (B) services;

4 (C) use of facilities; or

5 (D) another kind of consideration.

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

21 SECTION 36. Section 54.206(a), Utilities Code, is amended
22 to read as follows:

23 (a) A provider that is required to pay a municipal fee
24 [~~holder of a certificate of convenience and necessity, a~~
25 ~~certificate of operating authority, or a service provider~~
26 ~~certificate of operating authority~~] has the right to collect a fee
27 that a municipality imposes under Section 54.204 [~~or 54.205~~]

1 through a pro rata charge to the customers in the boundaries of the
2 municipality.

3 SECTION 37. Section 54.251, Utilities Code, is amended to
4 read as follows:

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

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

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

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

22 SECTION 38. Section 54.252, Utilities Code, is amended to
23 read as follows:

24 Sec. 54.252. GROUNDS FOR REDUCTION OF SERVICE BY PREVIOUS
25 HOLDER OF CERTIFICATE OF CONVENIENCE AND NECESSITY. ~~[(a)]~~ Except to
26 the extent otherwise ordered by the commission in accordance with
27 this subchapter, the holder of a certificate of convenience and

1 necessity before October 1, 2005, may not discontinue, reduce, or
2 impair local exchange telephone service to any part of the holder's
3 certificated service area except for:

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

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

11 SECTION 39. Section 54.254, Utilities Code, is amended to
12 read as follows:

13 Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A certificated
14 provider ~~[holder of a certificate of convenience and necessity, a
15 certificate of operating authority, or a service provider
16 certificate of operating authority]~~ shall refuse to serve a
17 customer in the provider's ~~[holder's]~~ certificated area if the
18 provider ~~[holder]~~ is prohibited from providing the service under
19 Section 212.012 or 232.029, Local Government Code.

20 SECTION 40. Section 54.259(a), Utilities Code, is amended
21 to read as follows:

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

- 27 (1) prevent the provider ~~[utility]~~ from installing on

1 the owner's property a telecommunications service facility a tenant
2 requests;

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

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

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

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

17 SECTION 41. Section 54.260(a), Utilities Code, is amended
18 to read as follows:

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

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

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

1 (B) the safety and convenience of other persons;

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

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

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

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

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

18 SECTION 42. Section 54.301, Utilities Code, is amended to
19 read as follows:

20 Sec. 54.301. DEFINITIONS. In this subchapter:

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

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

26 [~~(B)~~] is the dominant carrier as to local
27 exchange telephone [~~predominant provider of basic local~~

1 ~~telecommunications~~] service in a defined geographic area and
2 provides those services using the provider's ~~[utility's]~~ own
3 facilities; and

4 (B) ~~[(C)]~~ ceases operations in all or part of the
5 provider's ~~[utility's]~~ certificated service area under Section
6 ~~[54.253 or]~~ 54.303.

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

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

19 SECTION 43. Sections 54.302(a) and (b), Utilities Code, are
20 amended to read as follows:

21 (a) Notwithstanding any other provision of this title, if a
22 certificated provider of local exchange telephone service
23 ~~[telecommunications utility]~~ installs facilities to serve
24 customers located in a defined geographic area to provide
25 telecommunications services, including local exchange telephone
26 ~~[basic local telecommunications]~~ service, before the previously
27 designated provider of last resort ~~[holder of the certificate of~~

1 ~~convenience and necessity]~~ installs facilities to serve customers
2 located in that defined geographic area, the previously designated
3 provider of last resort [~~holder of the certificate of convenience~~
4 ~~and necessity]~~ may petition the commission for an order relieving
5 the previously designated provider [~~utility]~~ of the provider's
6 obligations [~~utility's designation]~~ as the provider of last resort
7 in that defined geographic area.

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

16 (1) the previously designated provider of last resort
17 [~~holder of the certificate of convenience and necessity]~~ does not
18 have facilities in place to provide [~~basic~~] local exchange
19 telephone [~~telecommunications]~~ service to all customers within
20 that defined geographic area;

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

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

27 SECTION 44. Section 54.303, Utilities Code, is amended to

1 read as follows:

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

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

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

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

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

25 (2) an exemption on a transitional basis from any
26 obligation to unbundle the successor provider's [~~utility's~~] network
27 elements or to provide service for resale within that defined

1 geographic area for nine months or another reasonable period the
2 commission may authorize as necessary to modify the successor
3 provider's [~~utility's~~] network to provide that unbundling or
4 resale.

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

13 SECTION 45. Section 54.304, Utilities Code, is amended to
14 read as follows:

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

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

26 (2) no other certificated provider
27 [~~telecommunications utility~~] has facilities sufficient to provide

1 [basic] local exchange telephone [telecommunications] service in
2 that defined geographic area; and

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

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

9 (B) abandoned the operation of the provider's
10 [~~utility's~~] facilities in the defined geographic area that are used
11 to provide [basic] local exchange telephone [~~telecommunications~~]
12 service.

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

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

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

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

27 (c) The commission may designate a successor provider

1 ~~[utility]~~ in accordance with Section 54.303 during a proceeding
2 under this section.

3 SECTION 46. Section 54.305(a), Utilities Code, is amended
4 to read as follows:

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

10 SECTION 47. Subchapter A, Chapter 55, Utilities Code, is
11 amended by adding Section 55.0011 to read as follows:

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

15 SECTION 48. Section 55.013, Utilities Code, is amended to
16 read as follows:

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

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

25 ~~[(b) For purposes of allocating payment in this section, if~~
26 ~~the provider of basic local telecommunications service bundles its~~
27 ~~basic local telecommunications service with long distance service~~

1 ~~or any other service and provides a discount for the basic local~~
2 ~~telecommunications service because of that bundling, the rate of~~
3 ~~basic local telecommunications service shall be the rate the~~
4 ~~provider charges for stand-alone basic local telecommunications~~
5 ~~service.~~

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

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

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

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

1 ~~[Notwithstanding Sections 52.102 and 52.152, the]~~ commission has
2 all jurisdiction necessary to enforce this section.

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

6 SECTION 49. Section 55.014(b), Utilities Code, is amended
7 to read as follows:

8 (b) This section applies to a company electing under Chapter
9 58 or a certificated provider of local exchange telephone service
10 that is not an incumbent local exchange company ~~[company that holds~~
11 ~~a certificate of operating authority or service provider~~
12 ~~certificate of operating authority]~~.

13 SECTION 50. Section 55.015, Utilities Code, is amended by
14 amending Subsections (a), (c), and (d) and adding Subsections
15 (b-1), (d-1), and (d-2) to read as follows:

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

24 (b-1) The commission shall adopt rules requiring
25 certificated providers to implement procedures to ensure that all
26 consumers are clearly informed both orally and in writing of the
27 existence of the telephone lifeline service program when they

1 request or initiate service or change service locations or
2 providers. By June 1, 2006, the commission shall enter into a
3 memorandum of understanding with the Health and Human Services
4 Commission and, to the maximum extent feasible, housing authorities
5 in the principal cities of each metropolitan statistical area, to
6 improve enrollment rates in the telephone lifeline service program.

7 (c) A certificated provider of local exchange telephone
8 service [~~telecommunications provider~~] may block a lifeline service
9 participant's access to all interexchange telecommunications [~~long~~
10 ~~distance~~] service except toll-free numbers when the participant
11 owes an outstanding amount for that service. The provider
12 [~~telecommunications provider~~] shall remove the block without
13 additional cost to the participant on payment of the outstanding
14 amount.

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

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

- 1 (1) Medicaid;
2 (2) food stamps;
3 (3) Supplemental Security Income;
4 (4) federal public housing assistance;
5 (5) Low Income Home Energy Assistance Program (LIHEAP)
6 assistance; or
7 (6) health insurance benefits through the Children's
8 Health Insurance Program (CHIP).

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

15 SECTION 51. Section 55.021, Utilities Code, is amended to
16 read as follows:

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

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

22 (2) optional extended area service [~~in accordance with~~
23 ~~Section 55.023~~].

24 SECTION 52. Section 55.048, Utilities Code, is amended to
25 read as follows:

26 Sec. 55.048. CHARGES. (a) The incumbent local exchange
27 company may impose a monthly fee against each residential and

1 business customer in the petitioning exchange [~~shall recover all~~
2 ~~costs incurred and all loss of revenue from an expansion of a~~
3 ~~toll-free local calling area under this subchapter through a~~
4 ~~request other than a revenue requirement showing by imposing a~~
5 ~~monthly fee under Subsection (b) or (c), or both].~~

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

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

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

22 SECTION 53. Section 55.084(c), Utilities Code, is amended
23 to read as follows:

24 (c) The information must state:

25 (1) the provider's name;

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

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

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

7 SECTION 54. Section 55.085, Utilities Code, is amended to
8 read as follows:

9 Sec. 55.085. CONNECTION ANNOUNCEMENT. Before connecting a
10 call, the operator service provider shall~~+~~

11 ~~[(1)]~~ announce the provider's name~~+, and~~
12 ~~[(2) at the caller's request, quote the rate and any~~
13 ~~other fee or surcharge that applies to the call and is charged by~~
14 ~~the provider].~~

15 SECTION 55. The heading to Section 55.087, Utilities Code,
16 is amended to read as follows:

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

19 SECTION 56. Section 55.087(a), Utilities Code, is amended
20 to read as follows:

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

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

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

1 SECTION 57. Section 55.088(a), Utilities Code, is amended
2 to read as follows:

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

9 SECTION 58. Section 55.089(a), Utilities Code, is amended
10 to read as follows:

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

15 SECTION 59. Section 55.173(b), Utilities Code, is amended
16 to read as follows:

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

20 SECTION 60. Subchapter H, Chapter 55, Utilities Code, is
21 amended by adding Section 55.1735 to read as follows:

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

27 SECTION 61. Section 55.178(d), Utilities Code, is amended

1 to read as follows:

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

6 SECTION 62. Sections 55.201(a) and (b), Utilities Code, are
7 amended to read as follows:

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

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

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

20 SECTION 63. Section 55.203(c), Utilities Code, is amended
21 to read as follows:

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

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

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

3 SECTION 64. Section 55.252, Utilities Code, is amended to
4 read as follows:

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

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

9 (1) covered by a contract authorized by Chapter 76 or
10 508, Government Code; and

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

14 (A) pay a fee or cost; or

15 (B) comply with telephone reporting
16 requirements.

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

23 SECTION 65. Section 56.021, Utilities Code, is amended to
24 read as follows:

25 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The
26 commission shall adopt and enforce rules requiring
27 telecommunications providers ~~[local exchange companies]~~ to

1 establish a universal service fund to:

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

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

8 (3) finance the specialized telecommunications
9 assistance program established under Subchapter E;

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

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

18 (6) finance the implementation and administration of
19 an integrated eligibility process created under Section 64.005
20 ~~[17.007]~~ for customer service discounts relating to local exchange
21 telephone service ~~[telecommunications services]~~, including
22 outreach expenses the commission determines are reasonable and
23 necessary;

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

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

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

3 SECTION 66. Sections 56.023(a), (b), (c), and (e),
4 Utilities Code, are amended to read as follows:

5 (a) The commission shall:

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

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

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

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

23 (5) approve procedures for the collection and
24 disbursal of the revenue of the universal service fund.

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

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

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

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

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

22 SECTION 67. Section 56.025, Utilities Code, is amended by
23 amending Subsections (a) and (c) and adding Subsection (a-1) to
24 read as follows:

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

27 (a-1) In addition to the authority provided by Section

1 56.021, for each [~~local exchange~~] company [~~that serves fewer than~~
2 ~~five million access lines~~], the commission:

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

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

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

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

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

14 SECTION 68. Section 56.026, Utilities Code, is amended by
15 adding Subsection (c-1) to read as follows:

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

20 SECTION 69. Section 56.028, Utilities Code, is amended to
21 read as follows:

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

1 (1) an educational institution as defined by Section
2 59.071;

3 (2) a library as defined by Section 59.071;

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

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

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

9 (b) The amount of reimbursement shall be the difference
10 between the company's tariffed rate for that service as of January
11 1, 1998, and the lowest rate offered for that service by any local
12 exchange company electing incentive regulation under Chapter 58.

13 SECTION 70. Subchapter B, Chapter 56, Utilities Code, is
14 amended by adding Section 56.0285 to read as follows:

15 Sec. 56.0285. REIMBURSEMENT OF FEDERALLY QUALIFIED HEALTH
16 CENTERS. The health centers defined in Section 58.2535 are
17 entitled to receive from the universal service fund the equivalent
18 of a rebate equal to the difference between the company's tariffed
19 rate for interexchange high capacity service (at or in excess of
20 1.544 Mbps) as of January 1, 1998, and the lowest rate offered for
21 that service by any local exchange company electing incentive rate
22 regulation under Chapter 58.

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

25 SECTION 71. Subchapter B, Chapter 56, Utilities Code, is
26 amended by adding Section 56.029 to read as follows:

27 Sec. 56.029. TEXAS UNIVERSAL SERVICE FUND STUDY;

1 ATTESTATION REQUIREMENT. (a) The commission shall contract with
2 an independent person to conduct a review and evaluation of whether
3 the universal service fund accomplishes the fund's purposes as
4 prescribed by Section 56.021 and the commission's final orders
5 issued in Docket No. 18515 and Docket No. 18516. The evaluation
6 shall determine whether the fund's purposes have been sufficiently
7 achieved, whether the fund should be abolished or phased out,
8 whether the fund should be brought within the state's treasury, and
9 whether those receiving said funds are expending the dollars for
10 their intended purposes. The evaluation must include a
11 forward-looking, comprehensive assessment of the appropriate use
12 of the money in the fund and the manner in which that money is
13 collected and disbursed. The commission shall pay for the review
14 and evaluation from the universal service fund.

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

17 (1) the commission:

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

22 (B) evaluates the received proposals; and

23 (C) enters into a fixed price, lump-sum contract
24 with a person under this section; and

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (h) In addition to the study required by this section, the
26 commission shall compile information necessary to determine
27 whether the current funding mechanism for the universal service

1 fund will be adequate in the future to sustain the purposes for
2 which the fund was created considering the development of new
3 technologies that are not subject to the existing funding mechanism
4 and the shift in jurisdictional control from this state to the
5 federal government. Not later than January 5, 2007, the commission
6 shall deliver to the legislature a report on this issue. If the
7 commission determines that the existing funding mechanism is not
8 adequate, the commission must include recommendations for
9 alternative funding methods that will be adequate and are
10 consistent with a policy of technology and competitive neutrality
11 in the assessment of fees and other state-imposed economic burdens.

12 SECTION 72. Section 56.106(a), Utilities Code, is amended
13 to read as follows:

14 (a) The commission shall set appropriate assessments for
15 all telecommunications providers [~~utilities~~] to fund the
16 telecommunications relay access service.

17 SECTION 73. Section 56.107, Utilities Code, is amended to
18 read as follows:

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

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

27 (c) If a telecommunications provider [~~utility~~] imposes the

1 surcharge, the bill shall list the surcharge as the "universal
2 service fund surcharge."

3 SECTION 74. Section 56.110(a), Utilities Code, is amended
4 to read as follows:

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

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

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

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

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

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

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

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

24 (8) two representatives of telecommunications
25 providers [~~utilities~~], one representing a nonlocal exchange
26 company [~~utility~~] and one representing a local exchange company,
27 chosen from a list of candidates provided by the Texas Telephone

1 Association;

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

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

8 SECTION 75. Section 56.155, Utilities Code, is amended to
9 read as follows:

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

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

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

1 SECTION 76. Section 56.202(a), Utilities Code, is amended
2 to read as follows:

3 (a) Notwithstanding Section 54.001, the commission may
4 designate a local exchange company [~~telecommunications provider~~
5 ~~under this section~~] to provide voice-grade services to permanent
6 residential or business premises that are not included within the
7 certificated area of a local exchange company [~~holder of a~~
8 ~~certificate of convenience and necessity~~].

9 SECTION 77. Section 56.203, Utilities Code, is amended to
10 read as follows:

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

19 SECTION 78. Section 56.251, Utilities Code, is amended to
20 read as follows:

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

23 SECTION 79. Section 56.252, Utilities Code, is amended to
24 read as follows:

25 Sec. 56.252. TELECOMMUNICATIONS PROVIDERS [~~UTILITIES~~]
26 ELIGIBLE TO RECEIVE FUNDING UNDER THIS SUBCHAPTER. A
27 telecommunications provider [~~utility~~] may receive funding under

1 this subchapter only if:

2 (1) the telecommunications provider [~~utility~~] is
3 eligible to receive universal service funding under Section
4 56.023(b); and

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

7 SECTION 80. Section 56.253, Utilities Code, is amended to
8 read as follows:

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

16 (b) In making the determination under Subsection (a), the
17 commission shall consider relevant information, including the
18 costs of acquiring and restoring or upgrading the provider's
19 [~~utility's~~] facilities in the geographic area as necessary to make
20 those facilities compatible with the facilities in the provider's
21 [~~utility's~~] other certificated service areas and to comply with
22 commission quality of service standards.

23 SECTION 81. Section 56.254, Utilities Code, is amended to
24 read as follows:

25 Sec. 56.254. RECOVERY OF COSTS. The commission order
26 designating the successor provider [~~utility~~] under Section 54.303
27 shall authorize the provider [~~utility~~] to recover the costs

1 determined under Section 56.253. The costs may be amortized and
2 recovered from the state universal service fund, together with
3 interest at the prevailing commercial lending rate:

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

6 (2) not later than the second anniversary of the date
7 of the order if the costs are more than \$1 million but no more than
8 \$2 million; and

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

11 SECTION 82. Chapter 56, Utilities Code, is amended by
12 adding Subchapter H to read as follows:

13 SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

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

20 SECTION 83. The heading to Chapter 57, Utilities Code, is
21 amended to read as follows:

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

24 SECTION 84. The heading to Subchapter A, Chapter 57,
25 Utilities Code, is amended to read as follows:

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

27 SECTION 85. Subchapter A, Chapter 57, Utilities Code, is

1 amended by adding Section 57.002 to read as follows:

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

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

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

19 SECTION 86. The heading to Chapter 58, Utilities Code, is
20 amended to read as follows:

21 CHAPTER 58. INCENTIVE REGULATION FOR INCUMBENT LOCAL
22 EXCHANGE COMPANIES

23 SECTION 87. Section 58.001, Utilities Code, is amended to
24 read as follows:

25 Sec. 58.001. POLICY. It is the policy of this state to
26 regulate the telecommunications industry in a technology-neutral
27 manner through adherence to free market principles. [~~Considering~~

1 ~~the status of competition in the telecommunications industry, it is~~
2 ~~the policy of this state to:~~

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

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

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

11 ~~[(4) promote network interconnectivity; and~~

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

15 SECTION 88. Section 58.002, Utilities Code, is amended to
16 read as follows:

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

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

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

25 (1) on application by the company; and

26 (2) only for good cause ~~[In this chapter, "electing~~
27 ~~company" means an incumbent local exchange company that elects to~~

1 ~~be subject to incentive regulation and to make the corresponding~~
2 ~~infrastructure commitment under this chapter].~~

3 SECTION 89. Subchapter A, Chapter 58, Utilities Code, is
4 amended by adding Section 58.005 to read as follows:

5 Sec. 58.005. RATES FOR BASIC NETWORK SERVICES;
6 APPLICABILITY OF PROVISIONS OF SUBTITLE. (a) Notwithstanding any
7 other provision of this title, an incumbent local exchange company
8 may not raise the company's retail price for basic network service
9 to a price that is above the price the company charged on January 1,
10 2005, for basic network service that included the same components
11 before January 1, 2008.

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

- 19 (1) Sections 52.101-52.108;
20 (2) Section 52.251(a);
21 (3) Section 52.255;
22 (4) Sections 54.001-54.005;
23 (5) Sections 54.203-54.206;
24 (6) Sections 54.251-54.254;
25 (7) Sections 54.259 and 54.260;
26 (8) Sections 54.301-54.304;
27 (9) Sections 55.0011, 55.013, 55.014, and 55.015;

- 1 (10) Section 55.1735;
- 2 (11) Sections 55.201-55.203;
- 3 (12) Section 55.252;
- 4 (13) Sections 56.001 and 56.002;
- 5 (14) Sections 56.021-56.024;
- 6 (15) Section 56.026;
- 7 (16) Section 56.029;
- 8 (17) Sections 56.101-56.109;
- 9 (18) Sections 56.151-56.155;
- 10 (19) Subchapter G, Chapter 56;
- 11 (20) Chapter 57;
- 12 (21) Subchapter G of this chapter;
- 13 (22) Sections 58.301 and 58.302; and
- 14 (23) Chapters 60 and 64.

15 SECTION 90. Section 58.023, Utilities Code, is amended to
16 read as follows:

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

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

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

25 (2) nonbasic network services governed by Subchapter
26 E.

27 SECTION 91. Section 58.025, Utilities Code, is amended to

1 read as follows:

2 Sec. 58.025. COMPLAINT OR HEARING. Except as otherwise
3 specifically provided by this title, an incumbent local exchange
4 company that is not regulated under Chapter 53 is not subject to a
5 traditional rate of return [~~(a) An electing company is not, under~~
6 ~~any circumstances, subject to a~~] complaint, hearing, or
7 determination regarding the reasonableness of the company's:

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

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

15 SECTION 92. Section 58.026, Utilities Code, is amended to
16 read as follows:

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

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

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

- 27 (1) lower a tariff rate [~~except as specifically~~

1 ~~provided by this title];~~

2 (2) change the commission's interpretation of a
3 tariff; or

4 (3) extend the application of a tariff to a new class
5 of customers.

6 SECTION 93. Section 58.027, Utilities Code, is amended to
7 read as follows:

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

10 (1) a consumer's right to complain to the commission
11 about quality of service; or

12 (2) the commission's right to enforce a quality of
13 service standard.

14 SECTION 94. Section 58.051, Utilities Code, is amended to
15 read as follows:

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

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

22 (1) a nonbasic network service;

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

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

27 (b) "Basic network service" includes only: [including

1 ~~primary directory listings and the receipt of a directory and any~~
2 ~~applicable mileage or zone charges;~~

3 (1) ~~[(2)]~~ residential tone dialing service;

4 (2) ~~[(3)]~~ lifeline ~~[and tel-assistance]~~ service;

5 (3) ~~[(4)]~~ service connection for basic network
6 service ~~[residential services];~~

7 (4) ~~[(5)]~~ direct inward dialing service for basic
8 residential service ~~[services];~~

9 (5) ~~[(6)]~~ ~~private pay telephone access service;~~

10 ~~[(7)]~~ call trap and trace service;

11 (6) ~~[(8)]~~ access for all residential ~~[and business]~~
12 end users to 911 service provided by a local authority and access to
13 dual party relay service; and

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

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

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

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

1 (c) The commission may not:

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

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

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

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

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

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

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

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

21 SECTION 95. Section 58.061, Utilities Code, is amended to
22 read as follows:

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

25 (1) ~~[Section 55.024,~~

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

27 (2) ~~(3)]~~ Subchapter B, Chapter 56.

1 SECTION 96. Section 58.063, Utilities Code, is amended to
2 read as follows:

3 Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a)
4 Notwithstanding any other provision of this title [~~Section~~
5 ~~58.052(b) or Subchapter F, Chapter 60~~], an electing company may
6 exercise pricing flexibility for basic network services, including
7 the packaging of basic network services with any other regulated or
8 unregulated service or any service of an affiliate. Pricing
9 flexibility includes all pricing arrangements included in the
10 definition of "pricing flexibility" prescribed by Section 51.002
11 and includes packaging of any regulated service with any
12 unregulated service or any service of an affiliate. [~~The company~~
13 ~~may exercise pricing flexibility in accordance with this section 10~~
14 ~~days after providing an informational notice to the commission, to~~
15 ~~the office, and to any person who holds a certificate of operating~~
16 ~~authority in the electing company's certificated area or areas or~~
17 ~~who has an effective interconnection agreement with the electing~~
18 ~~company.~~]

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

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

26 (2) the sum of the tariffed prices of any basic local
27 telecommunications service [~~network services~~] contained in the

1 package and the long run incremental costs of nonbasic network
2 services contained in the package.

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

6 SECTION 97. The heading to Subchapter E, Chapter 58,
7 Utilities Code, is amended to read as follows:

8 SUBCHAPTER E. NONBASIC NETWORK SERVICES

9 SECTION 98. Section 58.151, Utilities Code, is amended to
10 read as follows:

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

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

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

21 (3) ~~[(2)]~~ business tone dialing service~~[, except that~~
22 ~~the prices for this service shall be capped until September 1, 2005,~~
23 ~~at the prices in effect on September 1, 1999];~~

24 (4) ~~[(3)]~~ service connection for all business
25 services~~[, except that the prices for this service shall be capped~~
26 ~~until September 1, 2005, at the prices in effect on September 1,~~
27 ~~1999];~~

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

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

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

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

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

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

16 (9) [~~(8)~~] call return, caller identification, and
17 call control options[, ~~except that, for an electing company subject~~
18 ~~to Section 58.301, prices for residential call return, caller~~
19 ~~identification, and call control options shall be capped at the~~
20 ~~prices in effect on September 1, 1999, until the electing company~~
21 ~~implements the reduction in switched access rates described by~~
22 ~~Section 58.301(2)];~~

23 (10) [~~(9)~~] central office based PBX-type services;

24 (11) [~~(10)~~] billing and collection services, which
25 include only [~~including~~] installment billing and late payment
26 charges for retail customers of the billing provider [~~electing~~
27 ~~company~~];

1 (12) [~~(11)~~] integrated services digital network
2 (ISDN) services[, ~~except that prices for Basic Rate Interface (BRI)~~
3 ~~ISDN services, which comprise up to two 64 Kbps B-channels and one~~
4 ~~16 Kbps D-channel, shall be capped until September 1, 2005, at the~~
5 ~~prices in effect on September 1, 1999~~];

6 (13) [~~(12)~~] new services;

7 (14) [~~(13)~~] directory assistance services, except
8 that an electing company shall provide to a residential customer
9 the first three directory assistance inquiries in a monthly billing
10 cycle at no charge;

11 (15) [~~(14)~~] services described in the WATS tariff as
12 the tariff existed on January 1, 1995;

13 (16) [~~(15)~~] 800 and foreign exchange services;

14 (17) [~~(16)~~] private line service;

15 (18) [~~(17)~~] special access service;

16 (19) [~~(18)~~] services from public pay telephones;

17 (20) [~~(19)~~] paging services and mobile services
18 (IMTS);

19 (21) [~~(20)~~] 911 services provided to a local authority
20 that are available from another provider;

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

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

23 (24) [~~(23)~~] all other local exchange telephone
24 services subject to the commission's jurisdiction that are not
25 specifically included as components of [~~classified as~~] basic
26 network service as defined by [~~services in~~] Section 58.051 or as
27 switched access services[, ~~except that nothing in this section~~

1 ~~shall preclude a customer from subscribing to a local flat rate~~
2 ~~residential or business line for a computer modem or a facsimile~~
3 ~~machine].~~

4 SECTION 99. Section 58.152, Utilities Code, is amended to
5 read as follows:

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

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

13 [~~(2) price for the service in effect on September 1,~~
14 ~~1999.~~

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

20 SECTION 100. Section 58.153, Utilities Code, is amended to
21 read as follows:

22 Sec. 58.153. NEW SERVICES. [~~a~~] Subject to the pricing
23 conditions prescribed by Section 58.152, a local exchange
24 [~~58.152(a), an electing~~] company may introduce a new service at any
25 time [~~10 days after providing an informational notice to the~~
26 ~~commission, to the office, and to any person who holds a certificate~~
27 ~~of operating authority in the electing company's certificated area~~

1 ~~or areas or who has an effective interconnection agreement with the~~
2 ~~electing company.~~

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

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

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

25 ~~[(c) An affected person, the office on behalf of residential~~
26 ~~or small commercial customers, or the commission may file a~~
27 ~~complaint at the commission challenging whether the pricing by an~~

1 ~~incumbent local exchange company of a new service is in compliance~~
2 ~~with Section 58.152(a). The commission shall allow the company to~~
3 ~~continue to provide the service while the complaint is pending.~~

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

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

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

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

16 SECTION 101. Section 58.155, Utilities Code, is amended to
17 read as follows:

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

27 SECTION 102. Section 58.253(a), Utilities Code, as amended

1 by Chapters 959, 1220, 1255, and 1350, Acts of the 77th Legislature,
2 Regular Session, 2001, is reenacted and amended to read as follows:

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

5 (1) an educational institution;

6 (2) a library as defined in Section 57.021
7 [~~57.042(6)(A) and (B)~~];

8 (3) a nonprofit telemedicine center;

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

10 (5) [~~a project funded by the telecommunications~~
11 ~~infrastructure fund under Subchapter C, Chapter 57, except for a~~
12 ~~telepharmacy system; or~~

13 [~~(6)~~] a legally constituted consortium or group of
14 entities listed in this subsection.

15 SECTION 103. Subchapter G, Chapter 58, Utilities Code, is
16 amended by adding Section 58.2535 to read as follows:

17 Sec. 58.2535. FEDERALLY QUALIFIED HEALTH CENTERS. (a) In
18 addition to the entities to which an incumbent local exchange
19 company is required to provide private network services under this
20 subchapter, the company shall provide those services to a federally
21 qualified health center, as defined by 42 U.S.C. Section
22 1396d(1)(2)(B) and to an organization that receives a grant under
23 42 U.S.C. Section 254b.

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

27 SECTION 104. Section 58.301, Utilities Code, is amended to

1 read as follows:

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

7 (1) effective January 1, 2006, the [~~electing~~] company
8 shall reduce intrastate switched access rates on a combined
9 originating and terminating basis to an amount not to exceed four
10 cents for each minute of use, except that a company may not, in any
11 event, be required to reduce its intrastate switched access rates
12 on a combined originating and terminating basis by more than two
13 cents for each minute of use [~~in effect on September 1, 1999, by one~~
14 ~~cent a minute~~]; [~~and~~]

15 (2) effective January 1, 2007, the company shall
16 reduce intrastate switched access rates on a combined originating
17 and terminating basis to an amount not to exceed 2.5 cents for each
18 minute of use, except that a company may not, in any event, be
19 required to reduce its intrastate switched access rates on a
20 combined originating and terminating basis by more than four cents
21 for each minute of use below the rate in effect on December 31,
22 2005; and

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

1 ~~[(A) July 1, 2000, or~~
2 ~~[(B) the date the electing company, or its~~
3 ~~affiliate formed in compliance with 47 U.S.C. Section 272, as~~
4 ~~amended, actually begins providing interLATA services in this state~~
5 ~~in accordance with the authorization required by 47 U.S.C. Section~~
6 ~~271, as amended].~~

7 SECTION 105. Section 58.302, Utilities Code, is amended to
8 read as follows:

9 Sec. 58.302. SWITCHED ACCESS RATE CAP. On or after January
10 1, 2008, an incumbent local exchange ~~[(a) An electing]~~ company may
11 not increase the per minute rates for switched access services on a
12 combined originating and terminating basis above the interstate
13 rates for switched access service ~~[lesser of:~~

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

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

21 ~~[(b) Notwithstanding Subchapter F, Chapter 60, but subject~~
22 ~~to Section 60.001, an electing company may, on its own initiative,~~
23 ~~decrease a rate charged for switched access service to any amount~~
24 ~~above the long run incremental cost of the service].~~

25 SECTION 106. Section 59.002(1), Utilities Code, is amended
26 to read as follows:

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

1 exchange company that elects to be subject to [~~for an~~
2 ~~infrastructure commitment and corresponding regulation under~~] this
3 chapter.

4 SECTION 107. Subchapter A, Chapter 59, Utilities Code, is
5 amended by adding Section 59.003 to read as follows:

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

9 SECTION 108. Section 59.021(a), Utilities Code, is amended
10 to read as follows:

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

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

16 (2) has not elected incentive regulation under Chapter
17 58.

18 SECTION 109. Section 59.024(a), Utilities Code, is amended
19 to read as follows:

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

26 SECTION 110. Section 59.029(b), Utilities Code, is amended
27 to read as follows:

1 (b) In computing the average under Subsection (a), the
2 electing company shall exclude[+]

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

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

6 SECTION 111. Section 59.030(a), Utilities Code, is amended
7 to read as follows:

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

14 SECTION 112. Section 59.031(a), Utilities Code, is amended
15 to read as follows:

16 (a) Notwithstanding any other provision of this title
17 [~~Section 59.027(b) or Subchapter F, Chapter 60~~], an electing
18 company may exercise pricing flexibility in accordance with this
19 section, including the packaging of any regulated service such as
20 basic local telecommunications service with any other regulated or
21 unregulated service or any service of an affiliate. [~~The electing~~
22 ~~company may exercise pricing flexibility 10 days after providing an~~
23 ~~informational notice to the commission, to the office, and to any~~
24 ~~person who holds a certificate of operating authority in the~~
25 ~~electing company's certificated area or areas or who has an~~
26 ~~effective interconnection agreement with the electing company.~~]

27 Pricing flexibility includes all pricing arrangements included in

1 the definition of "pricing flexibility" prescribed by Section
2 51.002 [~~51.002(7)~~] and includes packaging of regulated services
3 with unregulated services or any service of an affiliate.

4 SECTION 113. Section 59.055, Utilities Code, is amended to
5 read as follows:

6 Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND
7 UNIVERSAL SERVICE FUNDS. The commission may not consider the cost
8 of implementing the infrastructure goals prescribed by former
9 Section 59.052, as enacted by Section 49, Chapter 231, Acts of the
10 74th Legislature, Regular Session, 1995, and as codified by Section
11 1, Chapter 166, Acts of the 75th Legislature, Regular Session,
12 1997, in determining whether an electing company is entitled to:

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

16 SECTION 114. Sections 59.071(1) and (2), Utilities Code,
17 are amended to read as follows:

- 18 (1) "Educational institution" includes:
19 (A) an accredited primary or secondary school;
20 (B) an institution of higher education as defined
21 by Section 61.003, Education Code;
22 (C) a private institution of higher education
23 accredited by a recognized accrediting agency as defined by Section
24 61.003, Education Code;
25 (D) the Texas Education Agency and its successors
26 and assigns;
27 (E) a regional education service center

1 established and operated in accordance with Chapter 8, Education
2 Code; or

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

6 (2) "Library" means:

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

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

12 SECTION 115. The heading to Chapter 60, Utilities Code, is
13 amended to read as follows:

14 CHAPTER 60. FAIR COMPETITION AND COMPETITIVE SAFEGUARDS

15 SECTION 116. Section 60.001, Utilities Code, is amended to
16 read as follows:

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

19 (1) unreasonably preferential, prejudicial, or
20 discriminatory;

21 (2) improperly subsidized either directly or
22 indirectly; or

23 (3) predatory or anticompetitive.

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

26 (c) This title does not prohibit a volume discount, other
27 discount, or pricing flexibility that is based on a reasonable

1 business purpose. A price that is set at or above the long run
2 incremental cost of a service is presumed not to be a predatory
3 price.

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

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

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

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

19 SECTION 117. Subchapter A, Chapter 60, Utilities Code, is
20 amended by adding Sections 60.0013 and 60.0016 to read as follows:

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

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

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

7 (b) A complaint that a provider has violated this subchapter
8 shall be referred to binding arbitration at the mutual election of
9 both parties to the dispute, but only if the election for
10 arbitration occurs before a filing is made to the commission in
11 relation to that dispute. If the parties elect arbitration, the
12 dispute shall be expeditiously adjudicated by binding arbitration
13 before a panel of three independent arbitrators. Each party shall
14 select one member of the panel, and the two selected members shall
15 select the third member. If the first two arbitrators cannot agree
16 on the third member, the two arbitrators shall request a list of
17 candidates from an independent dispute resolution organization,
18 and the third member shall be elected in accordance with the
19 published procedures of that organization.

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

24 (d) The panel shall issue the panel's final decision not
25 later than the 180th day after the date arbitration is requested.
26 The decision of the arbitration panel is final. A party may file an
27 application with a district court in Travis County for confirmation

1 of the decision. The award is entitled to confirmation unless the
2 court determines the decision should be vacated or modified. The
3 court shall conduct a review de novo based on the record developed
4 before the arbitrators.

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

8 SECTION 118. Section 60.003, Utilities Code, is amended to
9 read as follows:

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

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

16 (2) allow a provider serving fewer than one million
17 access lines in this state to establish a service's long run
18 incremental cost by adopting, at that provider's option, the cost
19 studies of a larger provider for that service that have been
20 accepted by the commission [resolve a dispute that arises under a
21 policy described by Subdivision (1)].

22 (b) Notwithstanding Section 15.023(b), the commission may
23 impose an administrative penalty of not more than \$10,000 a day for
24 each violation of this subchapter. The commission may impose the
25 penalty for each day the violation continues. The administrative
26 penalty is in addition to any other remedy provided by law. [The
27 commission shall adopt procedures for a proceeding under

1 ~~Subchapters B and C. A procedure may:~~

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

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

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

11 ~~(1) consumers;~~

12 ~~(2) competitors; and~~

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

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

20 SECTION 119. Subchapter A, Chapter 60, Utilities Code, is
21 amended by adding Section 60.0035 to read as follows:

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

26 SECTION 120. Section 60.082(b), Utilities Code, is amended
27 to read as follows:

1 (b) The commission rules shall be consistent [~~may not be~~
2 ~~inconsistent~~] with the rules and regulations of the Federal
3 Communications Commission regarding telecommunications number
4 portability and may not impose any obligations beyond the
5 obligations required by federal law.

6 SECTION 121. Section 60.121, Utilities Code, is amended to
7 read as follows:

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

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

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

14 (A) communicate with each other efficiently; and

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

22 SECTION 122. Section 60.122, Utilities Code, is amended to
23 read as follows:

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

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

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

9 SECTION 123. Section 60.123, Utilities Code, is amended to
10 read as follows:

11 Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. This
12 subchapter does not apply to a rate for the existing termination of
13 commercial mobile radio service (CMRS) [~~cellular~~] or interexchange
14 traffic. This chapter may not be construed to impose an obligation
15 on a provider if the provider is exempt from that requirement under
16 federal law.

17 SECTION 124. Section 60.124, Utilities Code, is amended to
18 read as follows:

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

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

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

26 (1) adopt rules, including generic rules that are
27 responsive to changes in federal law or a development in the [~~local~~

1 ~~exchange]~~ market; and

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

4 SECTION 125. Section 60.125, Utilities Code, is amended to
5 read as follows:

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

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

21 (c) [~~(b)~~] If interconnectivity[~~, charges,~~] and terms and
22 conditions or rates of interconnectivity are successfully
23 negotiated, the commission shall approve the interconnection
24 agreement if the commission finds the agreement is in the public
25 interest and is nondiscriminatory [~~rates~~].

26 (d) The commission has all necessary authority to adopt
27 rules and conduct proceedings as necessary to implement and enforce

1 this section.

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

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

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

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

18 SECTION 126. Section 60.126, Utilities Code, is amended to
19 read as follows:

20 Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE
21 RESOLUTION. A party negotiating an interconnection agreement under
22 Section 60.125(b) may file a request for the commission to resolve a
23 disputed issue not earlier than the 135th day or later than the
24 160th day after the date a party receives a request for negotiation.
25 The commission shall ~~[may]~~ resolve the ~~[a]~~ dispute not later than
26 the 270th day after the date the request for negotiation was
27 received by a party ~~[filed by a party to a negotiation under Section~~

1 ~~60.125(a)]~~.

2 SECTION 127. Section 60.127, Utilities Code, is amended to
3 read as follows:

4 Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES. A
5 provider may adopt in its entirety any interconnection agreement
6 reached by another provider and approved by the commission under
7 this chapter. [~~(a) An incumbent local exchange company may adopt~~
8 ~~the interconnection rates the commission approves for a larger~~
9 ~~incumbent local exchange company without additional cost~~
10 ~~justification.~~

11 [~~(b) If an incumbent local exchange company does not adopt~~
12 ~~the interconnection rates of a larger company or negotiates under~~
13 ~~Section 60.125(a), the company is governed by Sections~~
14 ~~60.125(c)-(f).~~

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

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

22 SECTION 128. Subchapter G, Chapter 60, Utilities Code, is
23 amended by adding Section 60.129 to read as follows:

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

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

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

15 SECTION 129. The heading to Subchapter I, Chapter 60,
16 Utilities Code, is amended to read as follows:

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

19 SECTION 130. Section 60.161, Utilities Code, is amended to
20 read as follows:

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

- 25 (1) discriminate against another provider in
26 providing interconnection, traffic exchange terms and conditions,
27 or facility use, rates, terms, and conditions to exchange traffic

1 between and among providers [~~by refusing access to the local~~
2 ~~exchange~~];

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

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

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

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

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

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

17 SECTION 131. Section 60.164, Utilities Code, is amended to
18 read as follows:

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

26 SECTION 132. Section 60.165, Utilities Code, is amended to
27 read as follows:

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

14 SECTION 133. Section 64.001(b), Utilities Code, is amended
15 to read as follows:

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

22 SECTION 134. Sections 64.002(1), (2), and (4), Utilities
23 Code, are amended to read as follows:

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

27 (2) "Billing provider" [~~utility~~] means any service

1 ~~[telecommunications]~~ provider or network provider, as defined by
2 Section 51.002, that issues a bill directly to a customer for any
3 telecommunications product or service.

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

9 SECTION 135. Section 64.003, Utilities Code, is amended to
10 read as follows:

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

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

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

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

1 ~~necessary~~].

2 SECTION 136. Section 64.004, Utilities Code, is amended by
3 amending Subsections (a), (b), and (d), and adding Subsections
4 (f)-(h) to read as follows:

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

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

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

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

16 (4) protection from discrimination on the basis of
17 race, color, sex, nationality, religion, marital status, income
18 level, or source of income and from unreasonable discrimination on
19 the basis of geographic location;

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

24 (6) privacy of customer consumption and credit
25 information;

26 (7) accuracy of metering and billing;

27 (8) bills presented in a clear, readable format and

1 easy-to-understand language;

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

5 (10) all consumer protections and disclosures
6 established by the Fair Credit Reporting Act (15 U.S.C. Section
7 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601
8 et seq.); and

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

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

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

27 (f) The commission shall adopt rules to provide automatic

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

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

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

17 SECTION 137. Subchapter A, Chapter 64, Utilities Code, is
18 amended by adding Section 64.005 to read as follows:

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

22 SECTION 138. (a) Subchapter A, Chapter 64, Utilities Code,
23 is amended by adding Section 64.006 to read as follows:

24 Sec. 64.006. NOTICE REGARDING ACCESS TO EMERGENCY SERVICES.

25 (a) As used in this section:

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

1 Internet Protocol.

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

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

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

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

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

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

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

22 (1) be a separate document; and

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

27 (e) At least annually, a VoIP provider shall send to each

1 customer to whom it provides VoIP service a notice that includes the
2 information required by Subsection (c). The entity shall provide
3 the notice as a separate document.

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

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

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

16 SECTION 139. Section 64.101, Utilities Code, is amended to
17 read as follows:

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

22 SECTION 140. Section 64.102, Utilities Code, is amended to
23 read as follows:

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

26 (1) ensure that customers are protected from deceptive
27 practices employed in obtaining authorizations of service and in

1 the verification of change orders, including negative option
2 marketing, sweepstakes, and contests that cause customers to
3 unknowingly change their telecommunications service provider;

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

8 (3) ensure that every service provider submitting
9 charges on the bill is clearly and easily identified on the bill
10 along with its services, products, and charges;

11 (4) provide that unauthorized changes in service be
12 remedied at no cost to the customer within a period established by
13 the commission;

14 (5) require refunds or credits to the customer in the
15 event of an unauthorized change; and

16 (6) provide for penalties for violations of commission
17 rules adopted under this section, including fines and revocation of
18 certificates or registrations~~[, by this action denying the~~
19 ~~certificated telecommunications utility the right to provide~~
20 ~~service in this state, except that the commission may not revoke a~~
21 ~~certificate of convenience and necessity of a telecommunications~~
22 ~~utility except as provided by Section 54.008].~~

23 SECTION 141. Chapter 240, Local Government Code, is amended
24 by adding Subchapter E to read as follows:

25 SUBCHAPTER E. COMMUNICATION FACILITIES

26 Sec. 240.081. DEFINITIONS. In this subchapter:

27 (1) "Communication facility structure" means:

1 (A) an antenna support structure for a mobile or
2 land-based telecommunication facility, or a whip antenna, panel
3 antenna, microwave dish, or receive-only satellite dish;

4 (B) a cell enhancer and related equipment for
5 wireless transmission from a sender to one or more receivers for a
6 mobile telephone, or a mobile radio system facility, commercial
7 radio service, or other service or receiver; or

8 (C) a monopole tower, a steel lattice tower, or
9 any other communication tower.

10 (2) "Residential subdivision" means a subdivision:

11 (A) for which a plat is recorded in the county
12 real property records;

13 (B) in which the majority of the lots are subject
14 to deed restrictions limiting the lots to residential use; and

15 (C) that includes at least five lots that are
16 designated as homestead property.

17 Sec. 240.082. APPLICABILITY. (a) This subchapter applies
18 only to real property that is located in the unincorporated area of
19 a county with a population of 1.4 million or more and located within
20 one-quarter mile of a residential subdivision.

21 (b) This subchapter does not apply to:

22 (1) a communication facility structure built to
23 replace an existing communication facility structure if:

24 (A) the replacement communication facility
25 structure is constructed within 300 feet of the existing
26 communication facility structure;

27 (B) the replacement communication facility

1 structure is the same size and constructed for the same purpose as
2 the existing communication facility structure; and

3 (C) the existing communication facility
4 structure is removed not later than the 14th day after the date the
5 replacement communication facility structure begins operation; or

6 (2) a communication antenna, antenna facility, or
7 antenna tower or support structure located in a residential area
8 that is used by an amateur radio operator:

9 (A) exclusively for amateur radio communication
10 or public safety services; and

11 (B) who is licensed by the Federal Communications
12 Commission.

13 Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) The
14 commissioners court of a county subject to this subchapter may by
15 order regulate the location of a communication facility structure.

16 (b) The regulations may include a requirement for a permit
17 for the construction or expansion of the communication facility
18 structure and may impose fees on regulated persons to recover the
19 cost of administering the regulations.

20 Sec. 240.084. COUNTY PERMIT. (a) This section applies only
21 to the issuance of a permit to construct or improve a communication
22 facility structure under a regulation adopted under this
23 subchapter.

24 (b) The commissioners court must, not later than the 45th
25 day after the date the application for the permit is filed:

26 (1) grant or deny the permit application;

27 (2) provide written notice to the applicant stating

1 the reason the commissioners court has not acted on the permit
2 application; or

3 (3) enter into an agreement with the applicant
4 establishing a date by which the commissioners court will grant or
5 deny the permit application.

6 (c) If the commissioners court provides notice to the
7 applicant under Subsection (b)(2), the commissioners court must
8 grant or deny the permit application not later than the 30th day
9 after the date the applicant received the notice.

10 (d) If the commissioners court fails to act on a permit
11 application within the 30-day period prescribed by Subsection (c)
12 or under the terms of an agreement under Subsection (b)(3), the
13 commissioners court:

14 (1) may not collect any permit fees associated with
15 the permit application; and

16 (2) shall refund to the applicant any permit fees
17 associated with the application that have been previously
18 collected.

19 Sec. 240.085. NOTICE BY SIGN. (a) Not later than the 60th
20 day before the date a permit application is filed under Section
21 240.084, the applicant for a permit for a location not previously
22 licensed or permitted shall prominently post an outdoor sign at the
23 proposed location:

24 (1) stating that a communication facility structure is
25 proposed for the location; and

26 (2) providing the name and business address of the
27 applicant.

1 (b) The sign must be at least 24 by 36 inches in size and
2 must be published in lettering at least two inches in size. The
3 county in which the proposed communication facility structure is to
4 be located may require the sign to be published in English and in a
5 language other than English if it is likely that a substantial
6 number of residents in the area speak a language other than English
7 as their familiar language.

8 Sec. 240.086. VARIANCES. (a) A person who proposes to
9 construct or increase the height of a communication facility
10 structure in violation of a regulation adopted by order by a county
11 subject to this subchapter may apply to the commissioners court for
12 a variance from the regulation.

13 (b) The commissioners court shall hold a public hearing on
14 the proposed variance. The commissioners court may authorize a
15 variance from a regulation if the commissioners court finds that:

16 (1) a literal application or enforcement of the
17 regulation would result in practical difficulty or unnecessary
18 hardship; and

19 (2) granting the relief sought would:

20 (A) result in substantial justice;

21 (B) not be contrary to the public interest; and

22 (C) be in accordance with the spirit of the
23 regulation and this subchapter.

24 (c) The commissioners court may impose any reasonable
25 conditions on the variance that the commissioners court considers
26 necessary to accomplish the purposes of this subchapter.

27 (d) Before the 10th day before the date the commissioners

1 court holds a public hearing on the variance request, written
2 notice of the public hearing shall be provided to each owner of
3 property located within one-quarter mile of the proposed location
4 of the communication facility structure. The notice must include:

5 (1) the date, time, and place of the public hearing;

6 (2) the proposed location, height, and use of the
7 proposed communication facility structure; and

8 (3) the name and telephone number of a person
9 interested persons may contact to receive information regarding the
10 construction of the proposed communication facility structure.

11 Sec. 240.087. ADDITIONAL FILING REQUIREMENTS REGARDING
12 CONSTRUCTION. Before the 90th day before the date construction
13 begins, a person proposing to construct a communication facility
14 structure in the unincorporated area of a county subject to this
15 subchapter that is taller than 60 feet shall file with the county
16 official designated by the commissioners court:

17 (1) a statement informing the county that the
18 construction is proposed and providing the date on or after which
19 the construction will begin;

20 (2) copies of any necessary permits from the Federal
21 Communications Commission;

22 (3) any necessary engineered drawings that have been
23 approved by the Federal Aviation Administration;

24 (4) the correct phone number and address of each
25 entity involved in the construction; and

26 (5) a plat or map of the specific proposed location of
27 the communication facility structure.

1 Sec. 240.088. OFFENSE. (a) A person commits an offense if
2 the person violates an order adopted under this subchapter and the
3 order defines the violation as an offense.

4 (b) An offense under this section is prosecuted in the same
5 manner as an offense defined under state law.

6 (c) An offense under this section is a Class C misdemeanor.

7 Sec. 240.089. INJUNCTION. The county attorney or an
8 attorney representing the county may file an action in a district
9 court to enjoin a violation or threatened violation of an order
10 adopted under this subchapter. The court may grant appropriate
11 relief.

12 SECTION 142. CONFORMING AMENDMENTS. (a) Section 37.02(a),
13 Business & Commerce Code, is amended to read as follows:

14 (a) A telephone solicitor may not make a consumer telephone
15 call to a consumer unless:

16 (1) the telephone solicitor identifies himself or
17 herself by name and identifies the business on whose behalf the
18 telephone solicitor is calling and the purpose of the call
19 immediately after making contact with the consumer to whom the call
20 is made;

21 (2) the telephone solicitor makes the call after 12
22 noon or before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m.
23 on a weekday or a Saturday; and

24 (3) for those calls in which an automated dial
25 announcing device is used, the device must disconnect the
26 consumer's telephone line within the period provided by Section
27 55.126, Utilities Code, as that section existed on August 31, 2005,

1 after termination of the call by either the telephone solicitor or
2 the consumer.

3 (b) Section 46.011(a), Business & Commerce Code, is amended
4 to read as follows:

5 (a) In this section, "telecommunications utility" has the
6 meaning assigned by Section 51.002, Utilities Code, as that section
7 existed on August 31, 2005.

8 (c) Section 246.001(6), Local Government Code, is amended
9 to read as follows:

10 (6) "Telecommunications utility" has the meaning
11 assigned by Section 51.002, Utilities Code, as that section existed
12 on August 31, 2005.

13 (d) Section 1(10), Article 18.21, Code of Criminal
14 Procedure, is amended to read as follows:

15 (10) "Trap and trace device" means a device or process
16 that records an incoming electronic or other impulse that
17 identifies the originating number or other dialing, routing,
18 addressing, or signaling information reasonably likely to identify
19 the source of a wire or electronic communication, if the
20 information does not include the contents of the communication. The
21 term does not include a device or telecommunications network used
22 in providing:

23 (A) a caller identification service authorized
24 by the Public Utility Commission of Texas under Subchapter E,
25 Chapter 55, Utilities Code, as that subchapter existed on August
26 31, 2005;

27 (B) the services referenced in Section

1 55.102(b), Utilities Code, as that section existed on August 31,
2 2005; or

3 (C) a caller identification service provided by a
4 commercial mobile radio service provider licensed by the Federal
5 Communications Commission.

6 SECTION 143. (a) The Public Utility Commission of Texas
7 shall conduct a study for presentation to the 80th Legislature on
8 issues regarding the provision of wireless broadband
9 communications services by municipalities, including wireless
10 fidelity, or Wi-Fi, services.

11 (b) A municipality may not offer to the public, directly or
12 indirectly, wireless broadband communications services, including
13 wireless fidelity, or Wi-Fi, services, unless the municipality was
14 providing the service on or before September 1, 2006, or unless the
15 municipality has filed with the commission before June 15, 2006, a
16 statement of intent to provide the services that meets the
17 requirements of Subsection (c) of this section.

18 (c) A statement of intent described by Subsection (b) of
19 this section must be presented to the commission for approval as a
20 part of the study conducted under this section and must include
21 information sufficient for the commission to determine that the
22 municipality has a plan for providing the services and has the
23 fiscal and managerial capacity to provide the intended services.

24 (d) The commission shall present the report and approved
25 statements of intent to the lieutenant governor, the speaker of the
26 house of representatives, and the presiding officer of each
27 standing committee of the house of representatives and senate that

1 has jurisdiction over matters related to communications services
2 and municipal government. The report must be presented not later
3 than September 1, 2006.

4 (e) The report may include discussion on any issue related
5 to the provision of wireless broadband communications services by
6 municipalities, including wireless fidelity, or Wi-Fi, services,
7 that the commission considers important for consideration by the
8 legislature. The report must include the commission's
9 recommendations for legislation and commentary on issues the
10 commission considers important for the legislature's
11 consideration.

12 SECTION 144. (a) The following provisions of the Utilities
13 Code are repealed on the effective date of this Act:

- 14 (1) Section 51.001(g);
- 15 (2) Section 51.004;
- 16 (3) Sections 51.006-51.008;
- 17 (4) Section 51.010;
- 18 (5) Section 52.001;
- 19 (6) Sections 52.004 and 52.005;
- 20 (7) Subchapter B, Chapter 52;
- 21 (8) Sections 52.104-52.107;
- 22 (9) Sections 52.109-52.112;
- 23 (10) Sections 52.151-52.154;
- 24 (11) Subchapter E, Chapter 52;
- 25 (12) Sections 52.252-52.254;
- 26 (13) Section 52.256(b);
- 27 (14) Sections 54.003 and 54.004;

- 1 (15) Sections 54.006 and 54.007;
- 2 (16) Subchapters B-D, Chapter 54;
- 3 (17) Section 54.2025;
- 4 (18) Section 54.253;
- 5 (19) Sections 54.255-54.258;
- 6 (20) Section 54.261;
- 7 (21) Section 55.001;
- 8 (22) Sections 55.002-55.012;
- 9 (23) Section 55.016;
- 10 (24) Sections 55.024 and 55.025;
- 11 (25) Sections 55.082 and 55.083;
- 12 (26) Sections 55.088(b) and (c);
- 13 (27) Sections 55.101(3) and (4);
- 14 (28) Sections 55.102 and 55.103;
- 15 (29) Sections 55.105-55.110;
- 16 (30) Subchapter F, Chapter 55;
- 17 (31) Section 55.172;
- 18 (32) Sections 55.175-55.177;
- 19 (33) Section 55.179;
- 20 (34) Section 55.201(c);
- 21 (35) Section 55.202;
- 22 (36) Sections 55.203(d)-(g);
- 23 (37) Section 55.251;
- 24 (38) Subchapter K, Chapter 55;
- 25 (39) Sections 56.026(a) and (d);
- 26 (40) Section 56.204(b);
- 27 (41) Section 57.001;

- 1 (42) Subchapter D, Chapter 57;
- 2 (43) Sections 58.003-58.022;
- 3 (44) Section 58.024;
- 4 (45) Section 58.028;
- 5 (46) Sections 58.052-58.060;
- 6 (47) Subchapter F, Chapter 58;
- 7 (48) Section 59.023(b);
- 8 (49) Section 59.024(e);
- 9 (50) Sections 59.051-59.054;
- 10 (51) Section 59.076;
- 11 (52) Section 59.078(b);
- 12 (53) Section 60.002;
- 13 (54) Sections 60.004-60.006;
- 14 (55) Subchapters B-D, Chapter 60;
- 15 (56) Sections 60.083 and 60.084;
- 16 (57) Subchapter F, Chapter 60;
- 17 (58) Section 60.128;
- 18 (59) Subchapter H, Chapter 60;
- 19 (60) Sections 60.162 and 60.163;
- 20 (61) Chapter 61;
- 21 (62) Chapter 62;
- 22 (63) Chapter 63;
- 23 (64) Sections 64.002(3), (5), and (6); and
- 24 (65) Subchapter B, Chapter 64.

25 (b) Section 56.026(c), Utilities Code, is repealed
26 September 1, 2007.

27 (c) Subchapter C, Chapter 57, Utilities Code, is repealed.

1 SECTION 145. The repeal of Section 54.2025, Utilities Code,
2 by this Act, shall not take effect until September 30, 2006.

3 SECTION 146. This Act takes effect September 1, 2005.