

By: King of Parker, Edwards

H.B. No. 789

Substitute the following for H.B. No. 789:

By: King of Parker

C.S.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           SECTION 5. Section 51.009, Utilities Code, is amended to  
27 read as follows:

1           Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title,  
2 including Section 53.201, may be construed as in any way limiting  
3 the right of a network provider or service provider [~~public~~  
4 ~~utility~~] to pass through a municipal fee the provider is required to  
5 pay, including an increase in a municipal fee.

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

9           SECTION 6. Section 52.002, Utilities Code, is amended to  
10 read as follows:

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

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

21           SECTION 7. Section 52.003, Utilities Code, is amended to  
22 read as follows:

23           Sec. 52.003. COOPERATION WITH OTHER REGULATORY  
24 AUTHORITIES. In regulating the [~~rates, operations, and~~] services  
25 of a provider of local exchange telephone service  
26 [~~telecommunications utility~~] providing service in a municipality  
27 located on the state line adjacent to a municipality in an adjoining

1 state, the commission may cooperate with the [~~utility~~] regulatory  
2 commission of the adjoining state or of the federal government and  
3 may hold a joint hearing or make a joint investigation with that  
4 commission.

5 SECTION 8. Section 51.005, Utilities Code, is transferred  
6 to Subchapter A, Chapter 52, Utilities Code, redesignated as  
7 Section 52.0041, and amended to read as follows:

8 Sec. 52.0041. COOPERATION WITH MUNICIPALITIES

9 [~~51.005. ASSISTANCE TO MUNICIPALITY~~]. (a) On request of a  
10 municipality, the commission may advise and assist the municipality  
11 with respect to a question or proceeding arising under this title.  
12 Assistance provided by the commission may include aid to a  
13 municipality on a matter pending before the commission or a court,  
14 such as making a staff member available as a witness or otherwise  
15 providing evidence to the municipality.

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

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

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

26 (c) The governing body of a municipality participating in a  
27 ratemaking proceeding may engage rate consultants, accountants,

1 auditors, attorneys, and engineers to:

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

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

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

11 SECTION 9. Section 52.006, Utilities Code, is amended to  
12 read as follows:

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

16 (1) the scope of competition in all ~~[regulated]~~  
17 telecommunications and information services markets, regardless of  
18 technology used; and

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

22 (b) The report shall include~~+~~

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

27 ~~[(2) a summary of commission action over the preceding~~

1 ~~two years that reflects changes in the scope of competition in~~  
2 ~~regulated telecommunications markets, and~~

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

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

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

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

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

17 SECTION 11. Section 52.101, Utilities Code, is amended to  
18 read as follows:

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

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

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

26 SECTION 12. Section 52.102, Utilities Code, is amended to  
27 read as follows:

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

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

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

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

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

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

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

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

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

24           SECTION 13. Section 52.103, Utilities Code, is amended to  
25 read as follows:

26           Sec. 52.103. REGISTRATION REQUIRED. (a) A provider of  
27 interexchange telecommunications service to customers residing in

1 this state [utility] shall register with the commission not later  
2 than the 30th day after the date the provider [utility] commences  
3 service to the public.

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

- 7 (1) the location and type of service provided; and  
8 (2) the price to the public of that service[~~; and~~  
9 [~~(3) other registration information the commission~~  
10 ~~directs~~].

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

15 SECTION 14. Section 52.108, Utilities Code, is amended to  
16 read as follows:

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

- 22 [~~(1) failed to maintain statewide average rates,~~  
23 [~~(2) abandoned~~] interexchange [message]  
24 telecommunications service to a local exchange area in which there  
25 is no competitive alternative [~~in a manner contrary to the public~~  
26 ~~interest,~~

- 27 [~~(3) engaged in a pattern of preferential or~~

1 ~~discriminatory activities prohibited by Section 53.003, 55.005, or~~  
2 ~~55.006; or~~

3 ~~[(4) failed to pass switched access rate reductions to~~  
4 ~~customers under Chapter 56 or other law, as required by Section~~  
5 ~~52.112].~~

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

8 SUBCHAPTER F. REQUIRED ~~[REPORTS AND]~~ FILINGS AND ACCESS RATE  
9 PROHIBITIONS ~~[; RECORDS]~~

10 SECTION 16. Section 52.251, Utilities Code, is amended to  
11 read as follows:

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

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

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

19 (b) The incumbent local exchange company ~~[public utility]~~  
20 shall file as a part of the tariff required under Subsection (a)  
21 each term or condition ~~[rule]~~ that relates to or affects:

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

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

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

1 SECTION 17. Section 52.155, Utilities Code, is transferred  
2 to Subchapter F, Chapter 52, Utilities Code, redesignated as  
3 Section 52.2521, and amended to read as follows:

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

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

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

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

25 SECTION 18. Section 52.255, Utilities Code, is amended to  
26 read as follows:

27 Sec. 52.255. AVAILABILITY OF RECORDS. Notwithstanding

1 Section 14.152, a book, account, record, or memorandum of a  
2 provider of local exchange telephone service [~~public utility~~] may  
3 be removed from this state if the book, account, record, or  
4 memorandum is returned to this state for any commission inspection  
5 authorized by this title.

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

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

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

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

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

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

23 (4) [~~(5)~~] an assessment of the success of each of  
24 those initiatives, programs, and activities;

25 (5) [~~(6)~~] the extent to which the provider  
26 [~~telecommunications utility~~] has carried out its initiatives to  
27 facilitate opportunities for contracts or joint ventures with small

1 and historically underutilized businesses; and

2           (6) [~~(7)~~] the initiatives, programs, and activities  
3 the provider [~~telecommunications utility~~] will pursue during the  
4 next year to increase the diversity of its workforce and  
5 contracting opportunities for small and historically underutilized  
6 businesses.

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

9           Sec. 53.0001. APPLICABILITY OF CHAPTER. This chapter  
10 applies only to an incumbent local exchange company that was  
11 subject to this chapter on August 31, 2005.

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

14           (c) The rates and methods established under this section and  
15 the depreciation account required by the commission [~~Section~~  
16 ~~52.252~~] shall be used uniformly and consistently throughout  
17 rate-setting and appeal proceedings.

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

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

- 22           (1) an expenditure for legislative advocacy; or  
23           (2) an expenditure for business gifts and  
24 entertainment, advertising, or public relations, including  
25 expenditures for institutional and consumption-inducing purposes,  
26 [~~described by Section 52.254~~] that the commission determines to be  
27 not in the public interest.

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

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

6 SECTION 24. Section 53.308, Utilities Code, is amended to  
7 read as follows:

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

- 13 (1) this subchapter;  
14 (2) Section 53.112; and  
15 (3) Subchapter H [~~and~~  
16 [~~(4) Section 55.004~~].

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

19 SUBCHAPTER I. SPECIAL PROVISIONS FOR RURAL INCUMBENT LOCAL  
20 EXCHANGE COMPANIES

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

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

1 company for that service that have been accepted by the commission.

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

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

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

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

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

1       (b) A rural incumbent local exchange company, at the  
2 company's option, shall price each regulated service offered  
3 separately or as part of a package under Subsection (a) at either  
4 the service's tariffed rate or at a rate not lower than the  
5 service's long run incremental cost. The commission shall allow  
6 the company to establish a service's long run incremental cost by  
7 adopting, at that company's option, the cost studies of a larger  
8 company for that service that have been accepted by the commission.

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

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

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

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

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

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

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

5       SECTION 26. Section 54.001, Utilities Code, is amended to  
6 read as follows:

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

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

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

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

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

8        SECTION 27. Section 54.002, Utilities Code, is amended to  
9 read as follows:

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

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

19                    [~~(A) contiguous to the territory the~~  
20 ~~telecommunications utility serves,~~

21                    [~~(B) not receiving similar service from another~~  
22 ~~telecommunications utility, and~~

23                    [~~(C) not in another telecommunications utility's~~  
24 ~~certificated area,~~

25            [~~(2) extension in or to territory the~~  
26 ~~telecommunications utility serves or is authorized to serve under a~~  
27 ~~certificate of public convenience and necessity, a certificate of~~

1 ~~operating authority, or a service provider certificate of operating~~  
2 ~~authority; or~~

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

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

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

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

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

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

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

20 (2) if requested:

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

22 (B) give notice of the hearing.

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

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

1 date the application is filed.

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

7 SECTION 30. Section 54.008, Utilities Code, is amended to  
8 read as follows:

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

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

19 SECTION 31. Section 54.201, Utilities Code, is amended to  
20 read as follows:

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

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

1 SECTION 32. Section 54.202(a), Utilities Code, is amended  
2 to read as follows:

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

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

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

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

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

14 SECTION 33. Sections 54.203(a)-(c), Utilities Code, are  
15 amended to read as follows:

16 (a) If an area is or will be included within a municipality  
17 as the result of annexation, incorporation, or another reason, each  
18 entity [~~telecommunications utility~~] that holds or is entitled to  
19 hold a certificate under this title to provide service or operate a  
20 facility in the area before the inclusion has the right to continue  
21 to provide the service or operate the facility and extend service in  
22 the entity's [~~utility's~~] certificated area within the annexed or  
23 incorporated area under the rights granted by the certificate and  
24 this title.

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

27 (1) continue and extend service within the provider's

1 ~~[utility's]~~ certificated area; and

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

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

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

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

11 SECTION 34. Sections 54.204(a)-(c), Utilities Code, are  
12 amended to read as follows:

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

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

18 (2) access to a building; or

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

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

1 ~~authority]~~ regarding:

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

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

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

14 (c) A municipality or municipally owned ~~[Notwithstanding~~  
15 ~~Subsection (b)(1), a municipal]~~ utility may not charge a pole  
16 attachment rate or underground conduit rate that exceeds the fee  
17 the municipality or municipally owned utility would be permitted to  
18 charge if the municipality's or municipally owned ~~[the]~~ utility's  
19 rates were regulated under federal law and the rules of the Federal  
20 Communications Commission. In addition, a municipality or  
21 municipally owned utility shall charge a certificated provider the  
22 lower of the attachment fee that would apply to networks or  
23 facilities carrying voice or the fee that would apply to networks  
24 or facilities carrying other services, including cable television  
25 services.

26 SECTION 35. Subchapter E, Chapter 54, Utilities Code, is  
27 amended by adding Section 54.2055 to read as follows:

1           Sec. 54.2055. COMPENSATION FOR USE OF MUNICIPAL  
2 RIGHT-OF-WAY. (a) The legislature finds that controversy exists  
3 between municipalities and providers of voice and video services  
4 over the appropriate method by which municipalities should be  
5 compensated for use of the public right-of-way. The commission  
6 shall study the issue and recommend to the legislature a mechanism  
7 to provide compensation to municipalities that is  
8 technology-neutral or applies uniformly to providers of voice and  
9 video services, including community antenna television services  
10 and commercial mobile service.

11           (b) The mechanism recommended by the commission under this  
12 section:

13                   (1) must be revenue-neutral; and

14                   (2) must replace current forms of compensation for use  
15 of a municipal right-of-way, including compensation authorized by  
16 franchise agreement, municipal ordinance, or statute, including  
17 Chapter 283, Local Government Code.

18           (c) The commission has authority over municipalities and  
19 providers of voice and video services as necessary to conduct the  
20 study required by this section, provided that this section may not  
21 be construed to grant any jurisdiction to the commission to  
22 otherwise regulate video services in this state.

23           (d) Not later than January 5, 2007, the commission shall  
24 complete the study required by this section and submit a report to  
25 the legislature that includes recommendations on a mechanism to  
26 provide compensation to municipalities.

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

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

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

10 SECTION 37. Section 54.251, Utilities Code, is amended to  
11 read as follows:

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

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

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

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

1 ~~service provider certificate of operating authority for that area].~~

2 SECTION 38. Section 54.252, Utilities Code, is amended to  
3 read as follows:

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

11 (1) nonpayment of charges;

12 (2) nonuse; or

13 (3) another similar reason that occurs in the usual  
14 course of business.

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

18 SECTION 39. Section 54.254, Utilities Code, is amended to  
19 read as follows:

20 Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A certificated  
21 provider [~~holder of a certificate of convenience and necessity, a~~  
22 ~~certificate of operating authority, or a service provider~~  
23 ~~certificate of operating authority]~~ shall refuse to serve a  
24 customer in the provider's [~~holder's~~] certificated area if the  
25 provider [~~holder~~] is prohibited from providing the service under  
26 Section 212.012 or 232.029, Local Government Code.

27 SECTION 40. Section 54.259(a), Utilities Code, is amended

1 to read as follows:

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

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

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

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

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

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

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

26 (a) Notwithstanding Section 54.259, if a certificated  
27 provider [~~telecommunications utility~~] holds a municipal consent,

1 franchise, or permit as determined to be the appropriate grant of  
2 authority by the municipality [~~and holds a certificate if required~~  
3 ~~by this title~~], a public or private property owner may:

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

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

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

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

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

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

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

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

25 SECTION 42. Section 54.301, Utilities Code, is amended to  
26 read as follows:

27 Sec. 54.301. DEFINITIONS. In this subchapter:

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

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

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

11                   (B) [~~(C)~~] ceases operations in all or part of the  
12 provider's [utility's] certificated service area under Section  
13 [~~54.253 or~~] 54.303.

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

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

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

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

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

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

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

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

7           SECTION 44. Section 54.303, Utilities Code, is amended to  
8 read as follows:

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

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

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

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

27           (1) a reasonable time, in accordance with industry

1 practices and not subject to otherwise applicable commission  
2 service quality rules or standards, to modify, construct, or obtain  
3 facilities necessary to serve the customers of the exiting provider  
4 [~~telecommunications utility~~]; and

5 (2) an exemption on a transitional basis from any  
6 obligation to unbundle the successor provider's [~~utility's~~] network  
7 elements or to provide service for resale within that defined  
8 geographic area for nine months or another reasonable period the  
9 commission may authorize as necessary to modify the successor  
10 provider's [~~utility's~~] network to provide that unbundling or  
11 resale.

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

20 SECTION 45. Section 54.304, Utilities Code, is amended to  
21 read as follows:

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

27 (1) a certificated provider of local exchange

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

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

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

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

16 (B) abandoned the operation of the provider's  
17 [~~utility's~~] facilities in the defined geographic area that are used  
18 to provide [~~basic~~] local exchange telephone [~~telecommunications~~]  
19 service.

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

27 (1) provide for a temporary arrangement for operation

1 of the certificated provider's [~~utility's~~] facilities by an  
2 uncertificated entity that agrees to provide service;

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

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

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

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

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

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

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

22 SECTION 48. Section 55.013, Utilities Code, is amended to  
23 read as follows:

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

27 (b) A provider of basic network [~~local telecommunications~~]

1 service may not discontinue that service because of nonpayment by a  
2 residential customer of charges for interexchange  
3 telecommunications [~~long distance~~] service. Payment shall first be  
4 allocated to basic network [~~local telecommunications~~] service.

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

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

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

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

25 (c) [~~(d)~~] Notwithstanding any other provision of this  
26 title, the commission has all jurisdiction necessary to establish a  
27 maximum price that a [~~an incumbent~~] local exchange company may

1 charge a [~~long distance service~~] provider of interexchange  
 2 telecommunications service to initiate the toll blocking  
 3 capability required to be offered under commission [~~the~~] rules  
 4 [~~adopted under Subsection (c)~~]. The maximum price established  
 5 under this subsection shall be observed by all providers of basic  
 6 network [~~local telecommunications~~] service in the [~~incumbent~~]  
 7 local exchange company's certificated service area. The  
 8 [~~Notwithstanding Sections 52.102 and 52.152, the~~] commission has  
 9 all jurisdiction necessary to enforce this section.

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

13 SECTION 49. Section 55.015, Utilities Code, is amended by  
 14 amending Subsections (a), (c), and (d) and adding Subsection (d-1)  
 15 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 (c) A certificated provider of local exchange telephone  
 25 service [~~telecommunications provider~~] may block a lifeline service  
 26 participant's access to all interexchange telecommunications [~~long~~  
 27 ~~distance~~] service except toll-free numbers when the participant

1 owes an outstanding amount for that service. The provider  
2 [~~telecommunications provider~~] shall remove the block without  
3 additional cost to the participant on payment of the outstanding  
4 amount.

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

12 (d-1) A certificated provider of local exchange telephone  
13 service shall provide access to lifeline service to a customer  
14 whose income is not more than 150 percent of the applicable income  
15 level established by the federal poverty guidelines or who  
16 receives:

- 17 (1) Medicaid;  
18 (2) food stamps;  
19 (3) Supplemental Security Income (SSI);  
20 (4) federal public housing assistance; or  
21 (5) Low Income Home Energy Assistance Program (LIHEAP)  
22 assistance.

23 SECTION 50. Section 55.021, Utilities Code, is amended to  
24 read as follows:

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

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

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

5 SECTION 51. Section 55.048, Utilities Code, is amended to  
6 read as follows:

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

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

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

27 [~~(d)~~ ~~The company may not recover regulatory case expenses~~

1 ~~under this subchapter by imposing a surcharge on the subscribers of~~  
2 ~~the petitioning exchange].~~

3 SECTION 52. Section 55.084(c), Utilities Code, is amended  
4 to read as follows:

5 (c) The information must state:

6 (1) the provider's name;

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

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

12 (3) ~~[(4)]~~ that a complaint about the service may be  
13 made to the provider or to the commission at the designated  
14 telephone number.

15 SECTION 53. Section 55.085, Utilities Code, is amended to  
16 read as follows:

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

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

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

23 SECTION 54. The heading to Section 55.087, Utilities Code,  
24 is amended to read as follows:

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

27 SECTION 55. Section 55.087(a), Utilities Code, is amended

1 to read as follows:

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

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

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

9 SECTION 56. Section 55.088(a), Utilities Code, is amended  
10 to read as follows:

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

17 SECTION 57. Section 55.089(a), Utilities Code, is amended  
18 to read as follows:

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

23 SECTION 58. Section 55.173(b), Utilities Code, is amended  
24 to read as follows:

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

1 SECTION 59. Subchapter H, Chapter 55, Utilities Code, is  
2 amended by adding Section 55.1735 to read as follows:

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

8 SECTION 60. Section 55.178(d), Utilities Code, is amended  
9 to read as follows:

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

14 SECTION 61. Sections 55.201(a) and (b), Utilities Code, are  
15 amended to read as follows:

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

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

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

1 SECTION 62. Section 55.203(c), Utilities Code, is amended  
2 to read as follows:

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

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

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

11 SECTION 63. Section 55.252, Utilities Code, is amended to  
12 read as follows:

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

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

17 (1) covered by a contract authorized by Chapter 76 or  
18 508, Government Code; and

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

22 (A) pay a fee or cost; or

23 (B) comply with telephone reporting  
24 requirements.

25 (b) A certificated provider [~~telecommunications utility~~]  
26 may adjust or authorize the adjustment of an end-user's bill for 900  
27 service described by Subsection (a) only with the consent of the

1 contracting community supervision and corrections department or  
2 the contracting pardons and paroles division of the Texas  
3 Department of Criminal Justice.

4 SECTION 64. Section 56.021, Utilities Code, is amended to  
5 read as follows:

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

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

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

16 (3) finance the specialized telecommunications  
17 assistance program established under Subchapter E;

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

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

26 (6) finance the implementation and administration of  
27 an integrated eligibility process created under Section 64.005

1 [17.007] for customer service discounts relating to local exchange  
2 telephone service [~~telecommunications services~~], including  
3 outreach expenses the commission determines are reasonable and  
4 necessary;

5 (7) reimburse a designated provider under Subchapter  
6 F; and

7 (8) reimburse a successor provider [~~utility~~] under  
8 Subchapter G.

9 SECTION 65. Sections 56.023(a), (b), (c), and (e),  
10 Utilities Code, are amended to read as follows:

11 (a) The commission shall:

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

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

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

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

1 and

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

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

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

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

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

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

1 SECTION 66. Section 56.024, Utilities Code, is amended to  
2 read as follows:

3 Sec. 56.024. REPORTS [~~CONFIDENTIALITY~~]. [(a)] The  
4 commission may require a telecommunications provider to provide a  
5 report or information necessary to assess contributions and  
6 disbursements to the universal service fund.

7 [~~(b) A report or information is confidential and not subject  
8 to disclosure under Chapter 552, Government Code.~~]

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

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

14 (a-1) In addition to the authority provided by Section  
15 56.021, for each [~~local exchange~~] company [~~that serves fewer than~~  
16 ~~five million access lines~~], the commission:

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

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

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

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

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

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

3 (c-1) An incumbent local exchange company governed under  
4 Chapter 58 is not entitled to receive disbursements from the  
5 universal service fund to compensate for reductions in access  
6 charges.

7 SECTION 69. Section 56.028, Utilities Code, is amended to  
8 read as follows:

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

15 (1) an educational institution as defined by Section  
16 59.071;

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

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

20 (4) a public or not-for-profit hospital [~~entities~~  
21 ~~described in Section 58.253(a)].~~

22 (b) The amount of reimbursement shall be the difference  
23 between the company's tariffed rate for that service as of January  
24 1, 1998, and the lowest rate offered for that service by any local  
25 exchange company electing incentive regulation under Chapter 58.

26 SECTION 70. Subchapter B, Chapter 56, Utilities Code, is  
27 amended by adding Section 56.029 to read as follows:

1       Sec. 56.029. TEXAS UNIVERSAL SERVICE FUND STUDY;  
2 ATTESTATION REQUIREMENT. (a) The commission shall contract with  
3 an independent person to conduct a review and evaluation of whether  
4 the universal service fund accomplishes the fund's purposes as  
5 prescribed by Section 56.021 and the commission's final orders  
6 issued in Docket No. 18515 and Docket No. 18516. The evaluation  
7 must include a forward-looking, comprehensive assessment of the  
8 appropriate use of the money in the fund and the manner in which  
9 that money is collected and disbursed. The commission shall pay for  
10 the review and evaluation from the universal service fund.

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

13               (1) the commission:

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

18                       (B) evaluates the received proposals; and

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

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

24       (c) Not later than January 1, 2006, the contractor shall  
25 require telecommunications providers receiving disbursements under  
26 the universal service fund to provide to the contractor the  
27 information that the contractor determines is necessary to

1 discharge the contractor's duties under this section, including  
2 information necessary to review and evaluate how money is collected  
3 for the universal service fund.

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

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

16 (f) Not later than January 5, 2007, the contractor shall  
17 deliver to the legislature a report on the results of the review and  
18 evaluation. The report must:

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

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

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

25 (B) how the money in the fund should be disbursed  
26 and the purposes for which the money should be used by the  
27 telecommunications provider receiving the money; and

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

4           (3) include recommendations that ensure that a  
5 telecommunications provider's support from the universal service  
6 fund for a geographic area is consistent with Section 56.021 and the  
7 commission's final orders issued in Docket No. 18515 and Docket No.  
8 18516.

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

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

1 in the assessment of fees and other state-imposed economic burdens.

2 SECTION 71. Section 56.106(a), Utilities Code, is amended  
3 to read as follows:

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

7 SECTION 72. Section 56.107, Utilities Code, is amended to  
8 read as follows:

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

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

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

20 SECTION 73. Section 56.110(a), Utilities Code, is amended  
21 to read as follows:

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

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

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

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

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

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

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

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

14           (8) two representatives of telecommunications  
15 providers [~~utilities~~], one representing a nonlocal exchange  
16 company [~~utility~~] and one representing a local exchange company,  
17 chosen from a list of candidates provided by the Texas Telephone  
18 Association;

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

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

25           SECTION 74. Section 56.155, Utilities Code, is amended to  
26 read as follows:

27           Sec. 56.155. RECOVERY OF SPECIALIZED TELECOMMUNICATIONS

1 DEVICE ASSISTANCE PROGRAM SURCHARGE. (a) The commission shall  
2 allow a telecommunications provider [~~utility~~] to recover the  
3 universal service fund assessment related to the specialized  
4 telecommunications assistance program through a surcharge added to  
5 [~~the utility's~~] customers' bills.

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

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

18 SECTION 75. Section 56.202(a), Utilities Code, is amended  
19 to read as follows:

20 (a) Notwithstanding Section 54.001, the commission may  
21 designate a local exchange company [~~telecommunications provider~~  
22 ~~under this section~~] to provide voice-grade services to permanent  
23 residential or business premises that are not included within the  
24 certificated area of a local exchange company [~~holder of a~~  
25 ~~certificate of convenience and necessity~~].

26 SECTION 76. Section 56.203, Utilities Code, is amended to  
27 read as follows:

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

9           SECTION 77. Section 56.251, Utilities Code, is amended to  
10 read as follows:

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

13           SECTION 78. Section 56.252, Utilities Code, is amended to  
14 read as follows:

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

19           (1) the telecommunications provider [utility] is  
20 eligible to receive universal service funding under Section  
21 56.023(b); and

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

24           SECTION 79. Section 56.253, Utilities Code, is amended to  
25 read as follows:

26           Sec. 56.253. DETERMINATION OF SUCCESSOR PROVIDER'S  
27 [~~UTILITY'S~~] COSTS TO BE RECOVERED. (a) At the time the commission

1 designates the successor provider [~~utility~~] under Section 54.303,  
2 the commission shall determine the extent to which the provider  
3 [~~utility~~] should recover the costs the provider [~~utility~~] will  
4 incur in accepting and establishing service to the affected service  
5 area.

6 (b) In making the determination under Subsection (a), the  
7 commission shall consider relevant information, including the  
8 costs of acquiring and restoring or upgrading the provider's  
9 [~~utility's~~] facilities in the geographic area as necessary to make  
10 those facilities compatible with the facilities in the provider's  
11 [~~utility's~~] other certificated service areas and to comply with  
12 commission quality of service standards.

13 SECTION 80. Section 56.254, Utilities Code, is amended to  
14 read as follows:

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

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

23 (2) not later than the second anniversary of the date  
24 of the order if the costs are more than \$1 million but no more than  
25 \$2 million; and

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

1 SECTION 81. The heading to Chapter 57, Utilities Code, is  
2 amended to read as follows:

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

5 SECTION 82. The heading to Subchapter A, Chapter 57,  
6 Utilities Code, is amended to read as follows:

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

8 SECTION 83. Subchapter A, Chapter 57, Utilities Code, is  
9 amended by adding Section 57.002 to read as follows:

10 Sec. 57.002. STATEMENT OF STATE GOAL. (a) It is the goal of  
11 this state to facilitate and promote the deployment of an advanced  
12 broadband network infrastructure to spur economic development  
13 throughout this state.

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

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

26 SECTION 84. Effective September 1, 2007, Subchapter A,  
27 Chapter 57, Utilities Code, is amended by adding Section 57.003 to

1 read as follows:

2 Sec. 57.003. PROHIBITION ON DISPARATE TREATMENT. (a) In  
3 furtherance of the goals and policies of this state provided by this  
4 title to encourage the deployment of competitive broadband networks  
5 through private investment, a provider that is not a "local  
6 exchange carrier" as defined by 47 U.S.C. Section 153(26), or a  
7 political subdivision of this state may not, either directly or  
8 through a separate enterprise entity such as a municipally owned  
9 utility:

10 (1) enforce or impose on a broadband network or on a  
11 provider of a broadband network a pole attachment fee or assessment  
12 that is greater than a similar fee or assessment imposed on a  
13 network that carries voice or other services in the same political  
14 subdivision, including cable television and other video services;

15 (2) enforce or impose on a broadband network multiple  
16 assessments for the carriage of multiple services over the same  
17 facility of the broadband network; or

18 (3) enforce or impose on a broadband network or a  
19 provider of a broadband network an obligation to provide a  
20 ubiquitous network or service throughout a political subdivision or  
21 to all areas where the provider uses its communications network to  
22 provide voice service, except to the extent that obligation is  
23 specifically required by federal law.

24 (b) An agency or political subdivision of this state may not  
25 enforce or impose on a provider a fee, tax, assessment, or other  
26 economic burden that is greater than the burden imposed in  
27 connection with functionally similar services over which federal

1 jurisdiction has been exercised that are provided in the same area  
2 and under the jurisdiction of the agency or political subdivision.

3 (c) This section does not affect the right of an entity  
4 aggrieved by an agency or by a political subdivision of this state  
5 to pursue private remedies in an appropriate court of law.

6 (d) Subsection (b) takes effect September 1, 2007. This  
7 subsection expires September 2, 2007.

8 SECTION 85. The heading to Section 57.043, Utilities Code,  
9 is amended to read as follows:

10 Sec. 57.043. TELECOMMUNICATIONS INFRASTRUCTURE FUND [~~AND~~  
11 ~~ACCOUNTS~~].

12 SECTION 86. Sections 57.043(a) and (b), Utilities Code, are  
13 amended to read as follows:

14 (a) The telecommunications infrastructure fund is an  
15 account in the general revenue fund. [~~The telecommunications~~  
16 ~~infrastructure fund account is composed of the public schools~~  
17 ~~account and the qualifying entities account.~~] Section 403.095,  
18 Government Code, does not apply to the [~~telecommunications~~  
19 ~~infrastructure~~] fund [~~account or to the accounts that compose the~~  
20 ~~fund account~~].

21 (b) The fund is [~~public schools account and qualifying~~  
22 ~~entities account are~~] financed by an annual assessment imposed as  
23 prescribed by Section 57.048 on each telecommunications provider,  
24 including a [~~telecommunications utility and~~] commercial mobile  
25 service provider, doing business in this state.

26 SECTION 87. Section 57.048, Utilities Code, is amended by  
27 amending Subsections (a), (b), and (e) and adding Subsections

1 (f)-(i) to read as follows:

2 (a) An annual assessment is imposed on each  
3 telecommunications provider, including [~~utility and~~] each  
4 commercial mobile service provider, doing business in this state.

5 (b) The assessment is imposed at the rate of 1.25 percent of  
6 the taxable telecommunications receipts of the telecommunications  
7 provider, including the [~~utility or~~] commercial mobile service  
8 provider, subject to this section.

9 (e) The comptroller may require a telecommunications  
10 provider, including a [~~utility or~~] commercial mobile service  
11 provider, to provide any report or information necessary to fulfill  
12 the comptroller's duties under this section. Information provided  
13 to the comptroller under this section is confidential and exempt  
14 from disclosure under Chapter 552, Government Code.

15 (f) Notwithstanding any other provision of this title, a  
16 certificated telecommunications provider may recover from the  
17 provider's customers an assessment imposed on the provider under  
18 this subchapter after the total amount deposited to the credit of  
19 the fund, excluding interest and loan repayments, is equal to \$1.5  
20 billion, as determined by the comptroller. A certificated  
21 telecommunications provider may recover only the amount of the  
22 assessment imposed after the total amount deposited to the credit  
23 of the fund, excluding interest and loan repayments, is equal to  
24 \$1.5 billion, as determined by the comptroller. The provider may  
25 recover the assessment through a monthly billing process.

26 (g) The comptroller shall publish in the Texas Register the  
27 date on which the total amount deposited to the credit of the fund,

1 excluding interest and loan repayments, is equal to \$1.5 billion.

2 (h) Not later than February 15 of each year, a certificated  
3 telecommunications provider that wants to recover the assessment  
4 under Subsection (f) shall file with the commission an affidavit or  
5 affirmation stating the amount that the provider paid to the  
6 comptroller under this section during the previous calendar year  
7 and the amount the provider recovered from its customers in  
8 cumulative payments during that year.

9 (i) The commission shall maintain the confidentiality of  
10 information the commission receives under this section that is  
11 claimed to be confidential for competitive purposes. The  
12 confidential information is exempt from disclosure under Chapter  
13 552, Government Code.

14 SECTION 88. The heading to Chapter 58, Utilities Code, is  
15 amended to read as follows:

16 CHAPTER 58. INCENTIVE REGULATION FOR INCUMBENT LOCAL  
17 EXCHANGE COMPANIES

18 SECTION 89. Section 58.001, Utilities Code, is amended to  
19 read as follows:

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

25 [~~(1) provide a framework for an orderly transition~~  
26 ~~from the traditional regulation of return on invested capital to a~~  
27 ~~fully competitive telecommunications marketplace in which all~~

1 ~~telecommunications providers compete on fair terms;~~

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

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

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

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

10 SECTION 90. Subchapter A, Chapter 58, Utilities Code, is  
11 amended by adding Section 58.005 to read as follows:

12 Sec. 58.005. RATES FOR BASIC NETWORK SERVICES;  
13 APPLICABILITY OF PROVISIONS OF SUBTITLE. (a) Notwithstanding any  
14 other provision of this title, an incumbent local exchange company  
15 may not raise the company's retail price for basic network service  
16 to a price that is above the price the company charged on January 1,  
17 2005, for basic network service that included the same components  
18 before the date the company:

19 (1) reduces the company's intrastate switched access  
20 rates on a combined originating and terminating basis to parity  
21 with interstate switched access rates, as required by Section  
22 58.301(3); and

23 (2) certifies to the commission that the company has  
24 made that reduction.

25 (b) On the date described by Subsection (a), the company is  
26 subject only to the following provisions of this subtitle:

27 (1) Sections 52.101-52.108;

- 1           (2) Section 52.251(a);
- 2           (3) Section 52.255;
- 3           (4) Sections 54.001-54.005;
- 4           (5) Sections 54.203-54.206;
- 5           (6) Sections 54.251-54.254;
- 6           (7) Sections 54.259 and 54.260;
- 7           (8) Sections 54.301-54.304;
- 8           (9) Sections 55.0011, 55.013, and 55.015;
- 9           (10) Section 55.1735;
- 10          (11) Sections 55.201-55.203;
- 11          (12) Section 55.252;
- 12          (13) Sections 56.001 and 56.002;
- 13          (14) Sections 56.021-56.024;
- 14          (15) Section 56.026;
- 15          (16) Section 56.029;
- 16          (17) Sections 56.101-56.109;
- 17          (18) Sections 56.151-56.155;
- 18          (19) Subchapter G, Chapter 56;
- 19          (20) Chapter 57;
- 20          (21) Sections 58.301 and 58.302; and
- 21          (22) Chapters 60 and 64.

22           SECTION 91. Section 58.023, Utilities Code, is amended to  
23 read as follows:

24           Sec. 58.023. APPLICABILITY OF CHAPTER; SERVICE  
25 CLASSIFICATION. (a) This chapter applies only to an incumbent  
26 local exchange company that was subject to this chapter on August  
27 31, 2005.

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

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

6           (2) nonbasic network services governed by Subchapter  
7 E.

8           SECTION 92. Section 58.025, Utilities Code, is amended to  
9 read as follows:

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

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

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

23           SECTION 93. Section 58.026, Utilities Code, is amended to  
24 read as follows:

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

- 27           (1) a consumer's right to complain to the commission

1 about the application of an ambiguous tariff; or

2 (2) the commission's right to determine[+  
3 [~~(A)~~] the proper application of that tariff[+~~or~~  
4 [~~(B)~~ the proper rate if that tariff does not  
5 apply].

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

8 (1) lower a tariff rate [~~except as specifically~~  
9 ~~provided by this title~~];

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

12 (3) extend the application of a tariff to a new class  
13 of customers.

14 SECTION 94. Section 58.027, Utilities Code, is amended to  
15 read as follows:

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

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

20 (2) the commission's right to enforce a consumer  
21 protection standard provided by Chapter 64 [~~a quality of service~~  
22 ~~standard~~].

23 SECTION 95. Section 58.051, Utilities Code, is amended to  
24 read as follows:

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

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

4           (1) a nonbasic network service;

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

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

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

12           (1) ~~[(2)]~~ residential tone dialing service;

13           (2) ~~[(3)]~~ lifeline [~~and tel-assistance~~] service;

14           (3) ~~[(4)]~~ service connection for basic network  
15 service [~~residential services~~];

16           (4) ~~[(5)]~~ direct inward dialing service for basic  
17 residential service [~~services~~];

18           (5) ~~[(6) private pay telephone access service;~~

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

20           (6) ~~[(8)]~~ access for all residential [~~and business~~]  
21 end users to 911 service provided by a local authority and access to  
22 dual party relay service; and

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

26           ~~[(10)]~~ mandatory residential extended metropolitan  
27 service or other mandatory residential toll-free calling

1 arrangements, mandatory expanded local calling service  
2 arrangements, or another service required under a tariff and  
3 applicable to a customer who subscribes to or may subscribe to basic  
4 network service [~~and~~

5 ~~[(11) residential call waiting service.~~

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

10 (c) The commission may not:

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

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

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

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

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

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

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

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

3           SECTION 96. Section 58.061, Utilities Code, is amended to  
4 read as follows:

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

7           (1) [~~Section 55.024,~~

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

9           (2) [(3)] Subchapter B, Chapter 56.

10          SECTION 97. Section 58.063, Utilities Code, is amended to  
11 read as follows:

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

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

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

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

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

15 SECTION 98. The heading to Subchapter E, Chapter 58,  
16 Utilities Code, is amended to read as follows:

17 SUBCHAPTER E. NONBASIC NETWORK SERVICES

18 SECTION 99. Section 58.151, Utilities Code, is amended to  
19 read as follows:

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

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

25 (2) flat rate business local exchange telephone  
26 service, including primary directory listings and the receipt of a  
27 directory, and any applicable mileage or zone charges [~~, except that~~

1 ~~the prices for this service shall be capped until September 1, 2005,~~  
2 ~~at the prices in effect on September 1, 1999];~~

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

6 (4) ~~[(3)]~~ service connection for all business  
7 services~~[, except that the prices for this service shall be capped~~  
8 ~~until September 1, 2005, at the prices in effect on September 1,~~  
9 ~~1999];~~

10 (5) ~~[(4)]~~ direct inward dialing for basic business  
11 services~~[, except that the prices for this service shall be capped~~  
12 ~~until September 1, 2005, at the prices in effect on September 1,~~  
13 ~~1999];~~

14 (6) ~~[(5)]~~ "1-plus" intraLATA message toll services;

15 (7) ~~[(6)]~~ 0+ and 0- operator services;

16 (8) ~~[(7)]~~ call waiting, call forwarding, and custom  
17 calling~~[, except that:~~

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

20 ~~[(B) for an electing company subject to Section~~  
21 ~~58.301, prices for residential call forwarding and other custom~~  
22 ~~calling services shall be capped at the prices in effect on~~  
23 ~~September 1, 1999, until the electing company implements the~~  
24 ~~reduction in switched access rates described by Section 58.301(2)];~~

25 (9) ~~[(8)]~~ call return, caller identification, and  
26 call control options~~[, except that, for an electing company subject~~  
27 ~~to Section 58.301, prices for residential call return, caller~~

1 ~~identification, and call control options shall be capped at the~~  
2 ~~prices in effect on September 1, 1999, until the electing company~~  
3 ~~implements the reduction in switched access rates described by~~  
4 ~~Section 58.301(2)];~~

5           (10) [~~(9)~~] central office based PBX-type services;

6           (11) [~~(10)~~] billing and collection services, which  
7 include only [~~including~~] installment billing and late payment  
8 charges for retail customers of the billing provider [~~electing~~  
9 ~~company~~];

10           (12) [~~(11)~~] integrated services digital network  
11 (ISDN) services[~~, except that prices for Basic Rate Interface (BRI)~~  
12 ~~ISDN services, which comprise up to two 64 Kbps B-channels and one~~  
13 ~~16 Kbps D-channel, shall be capped until September 1, 2005, at the~~  
14 ~~prices in effect on September 1, 1999)];~~

15           (13) [~~(12)~~] new services;

16           (14) [~~(13)~~] directory assistance services[~~, except~~  
17 ~~that an electing company shall provide to a residential customer~~  
18 ~~the first three directory assistance inquiries in a monthly billing~~  
19 ~~cycle at no charge)];~~

20           (15) [~~(14)~~] services described in the WATS tariff as  
21 the tariff existed on January 1, 1995;

22           (16) [~~(15)~~] 800 and foreign exchange services;

23           (17) [~~(16)~~] private line service;

24           (18) [~~(17)~~] special access service;

25           (19) [~~(18)~~] services from public pay telephones;

26           (20) [~~(19)~~] paging services and mobile services  
27 (IMTS);

1           (21) [~~(20)~~] 911 services provided to a local authority  
2 that are available from another provider;

3           (22) [~~(21)~~] speed dialing;

4           (23) [~~(22)~~] three-way calling; and

5           (24) [~~(23)~~] all other local exchange telephone  
6 services subject to the commission's jurisdiction that are not  
7 specifically included as components of [~~classified as~~] basic  
8 network service as defined by [~~services in~~] Section 58.051 or as  
9 switched access services [~~, except that nothing in this section~~  
10 ~~shall preclude a customer from subscribing to a local flat rate~~  
11 ~~residential or business line for a computer modem or a facsimile~~  
12 ~~machine)].~~

13           SECTION 100. Section 58.152, Utilities Code, is amended to  
14 read as follows:

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

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

22           [~~(2)~~ ~~price for the service in effect on September 1,~~  
23 ~~1999.~~

24           [~~(b)~~ ~~Subject to Section 51.004, an electing company may use~~  
25 ~~pricing flexibility for a nonbasic service. Pricing flexibility~~  
26 ~~includes all pricing arrangements included in the definition of~~  
27 ~~"pricing flexibility" prescribed by Section 51.002 and includes~~

1 ~~packages that include basic network services].~~

2 SECTION 101. Section 58.153, Utilities Code, is amended to  
3 read as follows:

4 Sec. 58.153. NEW SERVICES. [~~a~~] Subject to the pricing  
5 conditions prescribed by Section 58.152, a local exchange  
6 [~~58.152(a), an electing~~] company may introduce a new service at any  
7 time [~~10 days after providing an informational notice to the~~  
8 ~~commission, to the office, and to any person who holds a certificate~~  
9 ~~of operating authority in the electing company's certificated area~~  
10 ~~or areas or who has an effective interconnection agreement with the~~  
11 ~~electing company.~~

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

26 [~~1~~] ~~if the electing company is required to give~~  
27 ~~notice to the commission, at the same time the company provides that~~

1 ~~notice, or~~

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

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

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

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

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

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

25 SECTION 102. Section 58.155, Utilities Code, is amended to  
26 read as follows:

27 Sec. 58.155. INTERCONNECTION. An incumbent local exchange

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

9 SECTION 103. Section 58.301, Utilities Code, is amended to  
10 read as follows:

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

16 (1) effective January 1, 2006, the [~~electing~~] company  
17 shall reduce intrastate switched access rates on a combined  
18 originating and terminating basis to an amount not to exceed four  
19 cents for each minute of use [~~in effect on September 1, 1999, by one~~  
20 ~~cent a minute]; [~~and~~]~~

21 (2) effective January 1, 2007, the company shall  
22 reduce intrastate switched access rates on a combined originating  
23 and terminating basis to an amount not to exceed 2.5 cents for each  
24 minute of use; and

25 (3) effective January 1, 2008, the [~~electing~~] company  
26 shall reduce intrastate switched access rates on a combined  
27 originating and terminating basis to parity with interstate

1 switched access rates [~~by an additional two cents a minute on the~~  
2 ~~earlier of:~~

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

4 [~~(B) the date the electing company, or its~~  
5 ~~affiliate formed in compliance with 47 U.S.C. Section 272, as~~  
6 ~~amended, actually begins providing interLATA services in this state~~  
7 ~~in accordance with the authorization required by 47 U.S.C. Section~~  
8 ~~271, as amended].~~

9 SECTION 104. Section 58.302, Utilities Code, is amended to  
10 read as follows:

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

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

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

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

27 SECTION 105. Subchapter A, Chapter 59, Utilities Code, is

1 amended by adding Section 59.003 to read as follows:

2 Sec. 59.003. APPLICABILITY OF CHAPTER. This chapter  
3 applies only to an incumbent local exchange company that was  
4 subject to this chapter on August 31, 2005.

5 SECTION 106. Section 59.024(a), Utilities Code, is amended  
6 to read as follows:

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

13 SECTION 107. Section 59.029(b), Utilities Code, is amended  
14 to read as follows:

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

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

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

20 SECTION 108. Section 59.030(a), Utilities Code, is amended  
21 to read as follows:

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

1 SECTION 109. Section 59.031(a), Utilities Code, is amended  
2 to read as follows:

3 (a) Notwithstanding any other provision of this title  
4 ~~[Section 59.027(b) or Subchapter F, Chapter 60]~~, an electing  
5 company may exercise pricing flexibility in accordance with this  
6 section, including the packaging of any regulated service such as  
7 basic local telecommunications service with any other regulated or  
8 unregulated service or any service of an affiliate. ~~[The electing~~  
9 ~~company may exercise pricing flexibility 10 days after providing an~~  
10 ~~informational notice to the commission, to the office, and to any~~  
11 ~~person who holds a certificate of operating authority in the~~  
12 ~~electing company's certificated area or areas or who has an~~  
13 ~~effective interconnection agreement with the electing company.]~~  
14 Pricing flexibility includes all pricing arrangements included in  
15 the definition of "pricing flexibility" prescribed by Section  
16 51.002 ~~[51.002(7)]~~ and includes packaging of regulated services  
17 with unregulated services or any service of an affiliate.

18 SECTION 110. Section 59.055, Utilities Code, is amended to  
19 read as follows:

20 Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND  
21 UNIVERSAL SERVICE FUNDS. The commission may not consider the cost  
22 of implementing the infrastructure goals prescribed by former  
23 Section 59.052, as enacted by Section 49, Chapter 231, Acts of the  
24 74th Legislature, Regular Session, 1995, and as codified by Section  
25 1, Chapter 166, Acts of the 75th Legislature, Regular Session,  
26 1997, in determining whether an electing company is entitled to:

- 27 (1) a rate increase under this chapter; or

1           (2) increased universal service funds under  
2 Subchapter B, Chapter 56.

3           SECTION 111. Sections 59.071(1) and (2), Utilities Code,  
4 are amended to read as follows:

5           (1) "Educational institution" includes:

6                   (A) an accredited primary or secondary school;

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

9                   (C) a private institution of higher education  
10 accredited by a recognized accrediting agency as defined by Section  
11 61.003, Education Code;

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

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

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

20           (2) "Library" means:

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

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

26           SECTION 112. The heading to Chapter 60, Utilities Code, is  
27 amended to read as follows:

1 CHAPTER 60. FAIR COMPETITION AND COMPETITIVE SAFEGUARDS

2 SECTION 113. Section 60.001, Utilities Code, is amended to  
3 read as follows:

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

6 (1) unreasonably preferential, prejudicial, or  
7 discriminatory;

8 (2) improperly subsidized either directly or  
9 indirectly; or

10 (3) predatory or anticompetitive.

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

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

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

23 (e) This title may not be construed as conferring  
24 jurisdiction on the commission to regulate video or data services  
25 in this state. [~~To the extent necessary to ensure that competition~~  
26 ~~in telecommunications is fair to each participant and to accelerate~~  
27 ~~the improvement of telecommunications in this state, the commission~~

1 ~~shall ensure that the rates and rules of an incumbent local exchange~~  
2 ~~company:~~

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

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

6 SECTION 114. Subchapter A, Chapter 60, Utilities Code, is  
7 amended by adding Sections 60.0013 and 60.0016 to read as follows:

8 Sec. 60.0013. CODE OF CONDUCT. (a) The commission shall  
9 adopt and enforce a code of conduct to ensure integrity of business  
10 practices in carrier-to-carrier, marketing, and advertising  
11 practices.

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

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

18 (b) A complaint that a provider has violated this subchapter  
19 shall be referred to binding arbitration at the mutual election of  
20 both parties to the dispute, but only if the election for  
21 arbitration occurs before a filing is made to the commission in  
22 relation to that dispute. If the parties elect arbitration, the  
23 dispute shall be expeditiously adjudicated by binding arbitration  
24 before a panel of three independent arbitrators. Each party shall  
25 select one member of the panel, and the two selected members shall  
26 select the third member. If the first two arbitrators cannot agree  
27 on the third member, the two arbitrators shall request a list of

1 candidates from an independent dispute resolution organization,  
2 and the third member shall be elected in accordance with the  
3 published procedures of that organization.

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

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

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

19 SECTION 115. Section 60.003, Utilities Code, is amended to  
20 read as follows:

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

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

27 (2) allow a provider serving fewer than one million

1 access lines in this state to establish a service's long run  
2 incremental cost by adopting, at that provider's option, the cost  
3 studies of a larger provider for that service that have been  
4 accepted by the commission [~~resolve a dispute that arises under a~~  
5 ~~policy described by Subdivision (1)].~~

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

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

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

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

22 [~~(1) consumers;~~

23 [~~(2) competitors; and~~

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

25 (d) An appeal from a commission order issued under this  
26 chapter, other than an order issued in relation to interconnection  
27 under Subchapter G, may be appealed directly to the court of appeals

1 for the Third Court of Appeals District. [~~The commission, by order~~  
2 ~~or rule, may not implement a requirement that is contrary to a~~  
3 ~~federal law or rule.~~]

4 SECTION 116. Subchapter A, Chapter 60, Utilities Code, is  
5 amended by adding Section 60.0035 to read as follows:

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

10 SECTION 117. Section 60.082(b), Utilities Code, is amended  
11 to read as follows:

12 (b) The commission rules shall be consistent [~~may not be~~  
13 ~~inconsistent~~] with the rules and regulations of the Federal  
14 Communications Commission regarding telecommunications number  
15 portability and may not impose any obligations beyond the  
16 obligations required by federal law.

17 SECTION 118. Section 60.121, Utilities Code, is amended to  
18 read as follows:

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

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

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

25 (A) communicate with each other efficiently; and

26 (B) exercise their choice of provider and service  
27 without unreasonable disruption and delay [~~,"interconnection"~~]

1 ~~means, for calls that originate and terminate in this state, the~~  
2 ~~termination of local intraexchange traffic of another local~~  
3 ~~exchange company or holder of a service provider certificate of~~  
4 ~~operating authority within the local calling area of the~~  
5 ~~terminating local exchange company or certificate holder].~~

6 SECTION 119. Section 60.122, Utilities Code, is amended to  
7 read as follows:

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

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

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

20 SECTION 120. Section 60.123, Utilities Code, is amended to  
21 read as follows:

22 Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. This  
23 subchapter does not apply to a rate for the existing termination of  
24 commercial mobile radio service (CMRS) [cellular] or interexchange  
25 traffic. This chapter may not be construed to impose an obligation  
26 on a provider if the provider is exempt from that requirement under  
27 federal law.

1 SECTION 121. Section 60.124, Utilities Code, is amended to  
2 read as follows:

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

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

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

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

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

15 SECTION 122. Section 60.125, Utilities Code, is amended to  
16 read as follows:

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

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

5        (c) [~~(b)~~] If interconnectivity[~~, charges,~~] and terms and  
6 conditions or rates of interconnectivity are successfully  
7 negotiated, the commission shall approve the interconnection  
8 agreement if the commission finds the agreement is in the public  
9 interest and is nondiscriminatory [~~rates~~].

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

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

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

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

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

1 ~~establish interconnection rates.]~~

2 SECTION 123. Section 60.126, Utilities Code, is amended to  
3 read as follows:

4 Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE  
5 RESOLUTION. A party negotiating an interconnection agreement under  
6 Section 60.125(b) may file a request for the commission to resolve a  
7 disputed issue not earlier than the 135th day or later than the  
8 160th day after the date a party receives a request for negotiation.  
9 The commission shall ~~[may]~~ resolve the ~~[a]~~ dispute not later than  
10 the 270th day after the date the request for negotiation was  
11 received by a party ~~[filed by a party to a negotiation under Section~~  
12 ~~60.125(a)]~~.

13 SECTION 124. Section 60.127, Utilities Code, is amended to  
14 read as follows:

15 Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES. A  
16 provider may adopt in its entirety any interconnection agreement  
17 reached by another provider and approved by the commission under  
18 this chapter. ~~[(a) An incumbent local exchange company may adopt~~  
19 ~~the interconnection rates the commission approves for a larger~~  
20 ~~incumbent local exchange company without additional cost~~  
21 ~~justification.~~

22 ~~[(b) If an incumbent local exchange company does not adopt~~  
23 ~~the interconnection rates of a larger company or negotiates under~~  
24 ~~Section 60.125(a), the company is governed by Sections~~  
25 ~~60.125(c)-(f).~~

26 ~~[(c) If the incumbent local exchange company adopts the~~  
27 ~~interconnection rates of another incumbent local exchange company,~~

1 ~~the new entrant may adopt those rates as the new entrant's~~  
2 ~~interconnection rates.~~

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

6 SECTION 125. Subchapter G, Chapter 60, Utilities Code, is  
7 amended by adding Section 60.129 to read as follows:

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

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

18 (b) Rules adopted under Subsection (a) must provide for the  
19 payment of compensation to an incumbent local exchange company for  
20 loading or storing customer information. The rules may not require  
21 unbundling of a provider's network elements.

22 SECTION 126. The heading to Subchapter I, Chapter 60,  
23 Utilities Code, is amended to read as follows:

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

26 SECTION 127. Section 60.161, Utilities Code, is amended to  
27 read as follows:

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

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

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

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

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

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

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

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

24           SECTION 128. Section 64.001(b), Utilities Code, is amended  
25 to read as follows:

26           (b) The purpose of this chapter is to establish retail  
27 customer protection standards and confer on the commission

1 authority to adopt and enforce rules to protect retail customers  
2 from fraudulent, unfair, misleading, deceptive, or anticompetitive  
3 practices. The commission has authority governing those matters  
4 only as expressly provided by this chapter.

5 SECTION 129. Sections 64.002(1), (2), and (4), Utilities  
6 Code, are amended to read as follows:

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

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

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

19 SECTION 130. Section 64.003, Utilities Code, is amended to  
20 read as follows:

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

26 (b) The commission shall compile a report on customer  
27 service at least once each year showing the comparative customer

1 information [~~from reports given to the commission it deems~~  
2 ~~necessary~~].

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

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

12 SECTION 131. Section 64.004, Utilities Code, is amended by  
13 amending Subsections (a), (b), and (d), and adding Subsections  
14 (f)-(h) to read as follows:

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

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

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

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

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

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

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

7 (6) privacy of customer consumption and credit  
8 information;

9 (7) accuracy of metering and billing;

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

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

15 (10) all consumer protections and disclosures  
16 established by the Fair Credit Reporting Act (15 U.S.C. Section  
17 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601  
18 et seq.); and

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

24 (b) The commission may adopt and enforce rules as necessary  
25 or appropriate to carry out this section, including rules [~~for~~  
26 ~~minimum service standards for a certificated telecommunications~~  
27 ~~utility~~] relating to customer deposits and the extension of credit,

1 switching fees, termination of service, [~~an~~] affordable services  
2 [~~rate package~~], and bill payment assistance programs for low-income  
3 customers. The commission may waive language requirements for good  
4 cause.

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

10 (f) The commission shall adopt rules to provide automatic  
11 enrollment of eligible customers for lifeline telephone service  
12 available to low-income households. Each state agency, on the  
13 request of the commission, shall assist in the adoption and  
14 implementation of those rules.

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

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

27 SECTION 132. Subchapter A, Chapter 64, Utilities Code, is

1 amended by adding Section 64.005 to read as follows:

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

5 SECTION 133. Section 64.101, Utilities Code, is amended to  
6 read as follows:

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

11 SECTION 134. Section 64.102, Utilities Code, is amended to  
12 read as follows:

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

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

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

24 (3) ensure that every service provider submitting  
25 charges on the bill is clearly and easily identified on the bill  
26 along with its services, products, and charges;

27 (4) provide that unauthorized changes in service be

1 remedied at no cost to the customer within a period established by  
2 the commission;

3 (5) require refunds or credits to the customer in the  
4 event of an unauthorized change; and

5 (6) provide for penalties for violations of commission  
6 rules adopted under this section, including fines and revocation of  
7 certificates or registrations[~~, by this action denying the~~  
8 ~~certificated telecommunications utility the right to provide~~  
9 ~~service in this state, except that the commission may not revoke a~~  
10 ~~certificate of convenience and necessity of a telecommunications~~  
11 ~~utility except as provided by Section 54.008].~~

12 SECTION 135. Chapter 282, Local Government Code, is amended  
13 by adding Section 282.004 to read as follows:

14 Sec. 282.004. RELOCATION OF COMMUNICATIONS FACILITY  
15 LOCATED IN PUBLIC RIGHT-OF-WAY. (a) In this section:

16 (1) "Communications facility" means the equipment and  
17 components of a communications network provider, and includes the  
18 property owned, operated, leased, licensed, used, controlled, or  
19 supplied for, by, or in connection with the provider's business  
20 operations.

21 (2) "Communications network provider" means a  
22 publicly, privately, or cooperatively owned entity that provides  
23 voice, video, telephone, telegraph, communications, cable,  
24 information, broadband, or another form of advanced  
25 telecommunications services.

26 (3) "Public improvement project" means a construction  
27 or improvement activity in a public right-of-way undertaken by or

1 on behalf of a municipality or in conjunction with another entity  
2 for any public purpose, other than a construction or improvement  
3 activity undertaken solely for beautification purposes.

4 (4) "Public right-of-way" means the area on, below, or  
5 above a public roadway, highway, street, public sidewalk, alley,  
6 waterway, or utility easement in which the municipality has an  
7 interest.

8 (b) A municipality must design public improvement projects  
9 to minimize the relocation of any communications facility. If a  
10 municipality determines during the design of a public improvement  
11 project that, based on available information, the relocation of any  
12 portion of a communications facility may be necessary, the  
13 municipality shall provide the communications network provider:

14 (1) written notice of the planned public improvement  
15 project at a point in the design stage that allows the  
16 communications network provider sufficient time to offer planning  
17 and design alternatives; and

18 (2) plans and drawings of the project that are  
19 sufficient to enable the communications network provider to develop  
20 plans for and determine the cost of the necessary relocation.

21 (c) On the municipality's request, a communications network  
22 provider shall provide the municipality information concerning the  
23 provider's facility location. After the municipality and the  
24 provider have exchanged information regarding the design and  
25 facility location, the municipality shall give the provider an  
26 opportunity to discuss potential design alternatives that may avoid  
27 facility relocation.

1       (d) Notwithstanding any other provision of law, the  
2 governing body of a municipality may require a communications  
3 network provider to relocate the provider's facility that is  
4 located in a public right-of-way at the provider's sole expense to  
5 accommodate a public improvement project.

6       (e) A communications network provider shall relocate its  
7 facility as required by the municipality if the municipality:

8           (1) gives the provider 30 days' written notice of the  
9 municipality's determination that the facility must be relocated;

10          (2) specifies the new location for the facility along  
11 the public right-of-way; and

12          (3) prescribes a reasonable time for relocating the  
13 facility that is not earlier than the 90th day after the date the  
14 provider receives the information required by Subdivisions (1) and  
15 (2).

16       (f) The notification requirements and time limitations  
17 provided by this chapter do not apply to the relocation of a  
18 communications facility the necessity of which is discovered during  
19 the construction process of a public improvement project if the  
20 relocation is due to inaccurate or insufficient information  
21 provided to a municipality by a communications network provider and  
22 if the requirements of this section were met initially.

23       (g) The time for relocation prescribed by the municipality  
24 under Subsection (e)(3) may be extended by mutual agreement of the  
25 municipality and the communications network provider.

26       (h) A municipality shall make a good faith effort to obtain  
27 available third-party funding for a communications facility

1 relocation. If any part of the public improvement project is  
2 financed with federal funds, the funds allocated for communications  
3 facility relocations shall be used to pay for the relocation of the  
4 communications facility.

5 (i) Before the fourth anniversary of the completion date of  
6 the relocation of a portion of a communications facility as  
7 certified by a municipality, the municipality may not require a  
8 communications network provider to relocate that portion of the  
9 facility unless the relocation is required by an imminent threat to  
10 public health or safety. If the relocation of a portion of a  
11 communications facility is necessary before the fourth anniversary  
12 of the certified completion date, the municipality shall pay in  
13 advance for the relocation.

14 (j) This section does not limit the authority of a  
15 municipality and a communications network provider to enter into an  
16 agreement that establishes the terms for relocating a  
17 communications facility, including terms that preempt a provision  
18 of this section.

19 (k) For purposes of this section, a requirement to buy an  
20 existing aerial communications facility owned by a communications  
21 network provider may not be considered to be a municipal public  
22 improvement project.

23 (l) A municipality's exercise of authority under this  
24 section must be competitively neutral and may not be unreasonable  
25 or discriminatory.

26 (m) This section does not affect a municipality's authority  
27 under an agreement, ordinance, or statute to require the relocation

1 of another type of utility facility located in a public  
2 right-of-way.

3 (n) To the extent of a conflict between this section and  
4 another law relating to the relocation of a utility, this section  
5 controls.

6 SECTION 136. CONFORMING AMENDMENTS. (a) Section 37.02(a),  
7 Business & Commerce Code, is amended to read as follows:

8 (a) A telephone solicitor may not make a consumer telephone  
9 call to a consumer unless:

10 (1) the telephone solicitor identifies himself or  
11 herself by name and identifies the business on whose behalf the  
12 telephone solicitor is calling and the purpose of the call  
13 immediately after making contact with the consumer to whom the call  
14 is made;

15 (2) the telephone solicitor makes the call after 12  
16 noon or before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m.  
17 on a weekday or a Saturday; and

18 (3) for those calls in which an automated dial  
19 announcing device is used, the device must disconnect the  
20 consumer's telephone line within the period provided by Section  
21 55.126, Utilities Code, as that section existed on August 31, 2005,  
22 after termination of the call by either the telephone solicitor or  
23 the consumer.

24 (b) Section 46.011(a), Business & Commerce Code, is amended  
25 to read as follows:

26 (a) In this section, "telecommunications utility" has the  
27 meaning assigned by Section 51.002, Utilities Code, as that section

1 existed on August 31, 2005.

2 (c) Section 246.001(6), Local Government Code, is amended  
3 to read as follows:

4 (6) "Telecommunications utility" has the meaning  
5 assigned by Section 51.002, Utilities Code, as that section existed  
6 on August 31, 2005.

7 (d) Section 1(10), Article 18.21, Code of Criminal  
8 Procedure, is amended to read as follows:

9 (10) "Trap and trace device" means a device or process  
10 that records an incoming electronic or other impulse that  
11 identifies the originating number or other dialing, routing,  
12 addressing, or signaling information reasonably likely to identify  
13 the source of a wire or electronic communication, if the  
14 information does not include the contents of the communication. The  
15 term does not include a device or telecommunications network used  
16 in providing:

17 (A) a caller identification service authorized  
18 by the Public Utility Commission of Texas under Subchapter E,  
19 Chapter 55, Utilities Code, as that subchapter existed on August  
20 31, 2005;

21 (B) the services referenced in Section  
22 55.102(b), Utilities Code, as that section existed on August 31,  
23 2005; or

24 (C) a caller identification service provided by a  
25 commercial mobile radio service provider licensed by the Federal  
26 Communications Commission.

27 SECTION 137. (a) The following provisions of the Utilities

1 Code are repealed on the effective date of this Act:

- 2 (1) Section 51.001(g);
- 3 (2) Section 51.004;
- 4 (3) Sections 51.006-51.008;
- 5 (4) Section 51.010;
- 6 (5) Section 52.001;
- 7 (6) Sections 52.004 and 52.005;
- 8 (7) Subchapter B, Chapter 52;
- 9 (8) Sections 52.104-52.107;
- 10 (9) Sections 52.109-52.112;
- 11 (10) Sections 52.151-52.154;
- 12 (11) Subchapter E, Chapter 52;
- 13 (12) Sections 52.252-52.254;
- 14 (13) Section 52.256(b);
- 15 (14) Sections 54.003 and 54.004;
- 16 (15) Sections 54.006 and 54.007;
- 17 (16) Subchapters B-D, Chapter 54;
- 18 (17) Section 54.2025;
- 19 (18) Section 54.253;
- 20 (19) Sections 54.255-54.258;
- 21 (20) Section 54.261;
- 22 (21) Section 55.001;
- 23 (22) Sections 55.002-55.012;
- 24 (23) Section 55.014;
- 25 (24) Section 55.016;
- 26 (25) Sections 55.024 and 55.025;
- 27 (26) Sections 55.082 and 55.083;

- 1 (27) Sections 55.088(b) and (c);
- 2 (28) Sections 55.101(3) and (4);
- 3 (29) Sections 55.102 and 55.103;
- 4 (30) Sections 55.105-55.110;
- 5 (31) Subchapter F, Chapter 55;
- 6 (32) Section 55.172;
- 7 (33) Sections 55.175-55.177;
- 8 (34) Section 55.179;
- 9 (35) Section 55.201(c);
- 10 (36) Section 55.202;
- 11 (37) Sections 55.203(d)-(g);
- 12 (38) Section 55.251;
- 13 (39) Subchapter K, Chapter 55;
- 14 (40) Sections 56.026(a) and (d);
- 15 (41) Section 56.204(b);
- 16 (42) Section 57.001;
- 17 (43) Subchapter B, Chapter 57;
- 18 (44) Sections 57.042(1), (2), (5), (6), (7), (8), (9),
- 19 (11), (12), and (13);
- 20 (45) Sections 57.044-57.0475;
- 21 (46) Sections 57.0485-57.050;
- 22 (47) Subchapter D, Chapter 57;
- 23 (48) Sections 58.002-58.022;
- 24 (49) Section 58.024;
- 25 (50) Section 58.028;
- 26 (51) Sections 58.052-58.060;
- 27 (52) Subchapters F and G, Chapter 58;

- 1 (53) Section 59.024(e);
- 2 (54) Sections 59.051-59.054;
- 3 (55) Section 59.076;
- 4 (56) Section 59.078(b);
- 5 (57) Section 60.002;
- 6 (58) Sections 60.004-60.006;
- 7 (59) Subchapters B-D, Chapter 60;
- 8 (60) Sections 60.083 and 60.084;
- 9 (61) Subchapter F, Chapter 60;
- 10 (62) Section 60.128;
- 11 (63) Subchapter H, Chapter 60;
- 12 (64) Sections 60.162-60.165;
- 13 (65) Chapter 61;
- 14 (66) Chapter 62;
- 15 (67) Chapter 63;
- 16 (68) Sections 64.001(a) and (c);
- 17 (69) Sections 64.002(3), (5), and (6);
- 18 (70) Section 64.004(e);
- 19 (71) Subchapter B, Chapter 64; and
- 20 (72) Subchapter D, Chapter 64.

21 (b) Section 56.026(c), Utilities Code, is repealed June 1,  
22 2007.

23 SECTION 138. (a) The changes in law made by this Act to  
24 Sections 57.043 and 57.048, Utilities Code, take effect only if the  
25 79th Legislature, during the Regular Session or a later special  
26 session, enacts a law that continues the existence of the  
27 telecommunications infrastructure fund and Subchapter C, Chapter

1 57, Utilities Code. If the 79th Legislature does not enact such a  
2 law, the changes in law made by this Act to those sections do not  
3 take effect.

4 (b) The repeal of Section 54.2025, Utilities Code, by this  
5 Act, does not affect a contract entered into under that section  
6 before the effective date of this Act.

7 SECTION 139. This Act takes effect September 1, 2005.