

By: King of Parker

H.B. No. 789

A BILL TO BE ENTITLED

AN ACT

relating to telecommunications.

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

SECTION 1. Subtitle C, Title 2, Utilities Code, is amended to read as follows:

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

CHAPTER 51. GENERAL PROVISIONS

Sec. 51.001. POLICY. (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 [~~telecommunications~~] services environment and infrastructure, new rules, policies, and principles must be formulated [~~and applied to protect~~] consistent with the understanding that as new technologies become available, all public [~~interest. Changes in technology and~~] policy must be driven by free-market [~~structure have increased the need~~] principles for [~~minimum~~] the [~~standards~~] benefit of [~~service quality, customer service, and fair business practices to ensure high quality service to customers and a healthy marketplace where competition is permitted by law. It is the purpose of this subtitle to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services~~] Texas consumers consistent with the public interest.

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

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

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

6 (3) [~~2~~] encourage a fully competitive
7 telecommunications and advanced services marketplace; and

8 (4) [~~3~~] maintain a wide availability of high
9 quality, interoperable, standards-based telecommunications
10 services at affordable rates.

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

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

16 (2) fostering free market intermodal competition[~~in~~
17 ~~the telecommunications industry.~~]; and

18 (3) maintaining and enforcing effective remedies to
19 discourage and redress anticompetitive conduct.

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

26 (1) enhanced economic development; and

27 (2) improved delivery of education, health, and other

1 public and private services.

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

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

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

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

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

16 (2) have an adverse competitive effect.

17 ~~[(g) It is the policy of this state to ensure that customers~~
18 ~~in all regions of this state, including low-income customers and~~
19 ~~customers in rural and high cost areas, have access to~~
20 ~~telecommunications and information services, including~~
21 ~~interexchange services, cable services, wireless services, and~~
22 ~~advanced telecommunications and information services, that are~~
23 ~~reasonably comparable to those services provided in urban areas and~~
24 ~~that are available at prices that are reasonably comparable to~~
25 ~~prices charged for similar services in urban areas. Not later than~~
26 ~~November 1, 1999, the commission shall begin a review and~~
27 ~~evaluation of the availability and the pricing of~~

1 ~~telecommunications and information services, including~~
2 ~~interexchange services, cable services, wireless services, and~~
3 ~~advanced telecommunications and information services, in rural and~~
4 ~~high cost areas, as well as the convergence of telecommunications~~
5 ~~services. The commission shall file a report with the legislature~~
6 ~~not later than January 1, 2001. The report must include the~~
7 ~~commission's recommendations on the issues reviewed and~~
8 ~~evaluated.]~~

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

10 (1) "Advanced services" means services requiring
11 delivery over broadband networks;

12 (2) [~~(1)~~] "Basic local telecommunications service"
13 means:

14 (A) [~~flat rate~~] residential and business local
15 exchange telephone service, including primary directory listings;

16 (B) tone dialing service;

17 (C) access to operator services;

18 (D) access to directory assistance services;

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

21 (F) the ability to report service problems seven
22 days a week;

23 (G) lifeline and tel-assistance services; and

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

26 (3) "Broadband networks" as used in this Act means
27 wireline networks which deliver a minimum downstream speed of 1.5

1 mbs and minimum upstream speed of 768 kbs to an end user premises.
2 DSL, fiber-to-the-premises and cable modem networks are
3 illustrative of broadband networks.

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

14 (A) intraLATA long distance message
15 telecommunications service originated by dialing the access code
16 "1-plus," the term includes a provider of local exchange telephone
17 service in a certificated exchange area for whom the use of that
18 access code for the origination of "1-plus" intraLATA calls in the
19 exchange area is exclusive; and

20 (B) interexchange telecommunications services,
21 the term does not include an interexchange carrier that is not a
22 certificated local exchange company.

23 (5) [~~(3)~~] "Incumbent local exchange company" means a
24 local exchange company that ~~has~~ held a certificate of convenience
25 and necessity on September 1, [~~1995.~~] 2004;

26 (6) "Interexchange telecommunications service" means
27 landline telecommunications between a point located within a local

1 access and transport area, as defined by the Federal Communications
2 Commission, and a point within another local access and transport
3 area;

4 (7) "Information service" has the same meaning as
5 applies under federal law;

6 (8) [(4)] "Local exchange company" means [a
7 telecommunications utility] an entity that has a certificate [of
8 convenience] and [necessity or a certificate of operating authority
9 to provide] is providing in this state:

10 (A) local exchange telephone service;

11 (B) basic local telecommunications service; or

12 (C) switched access service.

13 (9) [(5)] "Local exchange telephone service" means
14 telecommunications service provided [within an exchange] via any
15 landline technology to establish connections between customer
16 premises within the exchange, including connections between a
17 customer premises within a LATA and [a long distance provider
18 serving the exchange] an entity providing interexchange service.
19 The term includes [tone dialing service], [service connection
20 charges], basic network and [directory] non-basic [assistance]
21 network services [offered in connection with basic local
22 telecommunications service] and interconnection with other service
23 providers. The term does not include the following services,
24 whether offered on an intraexchange or interexchange basis:

25 (A) central office based PBX-type services for
26 systems of 75 stations or more;

27 (B) billing and collection services;

1 (C) high-speed private line services of 1.544
2 megabits or greater;

3 (D) customized services;

4 (E) private line or virtual private line
5 services;

6 (F) resold or shared local exchange telephone
7 services if permitted by tariff;

8 (G) dark fiber services;

9 (H) non-voice data transmission service offered
10 as a separate service and not as a component of basic local
11 telecommunications service;

12 (I) dedicated or virtually dedicated access
13 services; or

14 (J) information services, as defined by the
15 Federal Communications Commission, and any other service the
16 commission determines is not a "local exchange telephone
17 service[~~+~~]";

18 [~~(6) "Long run incremental cost" has the meaning~~
19 ~~assigned by 16 T.A.C. Section 23.91 or its~~
20 ~~successor.] (10) "Network provider" means an entity, whether or~~

21 not certificated, that uses any technology to offer voice
22 communication to the public over a wireline network that it or an
23 affiliate owns or controls;

24 (11) [~~(7)]~~ "Pricing flexibility" includes:

25 (A) customer specific contracts;

26 (B) packaging of services;

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

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

3 (E) other promotional pricing.

4 (12) "Provider" means a network provider or service
5 provider;

6 (13) [~~(8)~~] "Public utility" or "utility" means a
7 person or river authority that owns or operates for compensation in
8 this state equipment or facilities to convey, transmit, or receive
9 communications over a telephone system as a dominant carrier. The
10 term includes a lessee, trustee, or receiver of any of those
11 entities, or a combination of those entities. The term does not
12 include a municipal corporation. A person is not a public utility
13 solely because the person:

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

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

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

23 (14) [~~(9)~~] "Separation" means the division of plant,
24 revenues, expenses, taxes, and reserves applicable to exchange or
25 local service if these items are used in common to provide public
26 [~~utility~~] service to both local exchange telephone service and
27 other service, such as interstate or intrastate toll service.

1 (15) [~~(10)~~ "Telecommunications"] "Service
2 provider"~~["~~+

3 [~~(A)~~] means [~~+~~

4 [~~(i)~~ a ~~certificated~~ telecommunications

5 utility~~;~~

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

7 [~~(iii)~~ a ~~nondominant~~ carrier ~~of~~

8 telecommunications services~~;~~

9 [~~(iv)~~ a provider of commercial mobile

10 service as defined by Section 332(d), Communications Act of 1934

11 (47 U.S.C. Section 151 et seq.), Federal Communications Commission

12 rules, and the Omnibus Budget Reconciliation Act of 1993 (Public

13 Law 103-66), except that the term does not include these entities

14 for the purposes of Chapter 17 or 55 or 64~~;~~

15 [~~(v)~~ a telecommunications entity that

16 provides central office based PBX-type sharing or resale

17 arrangements~~;~~

18 [~~(vi)~~ an interexchange telecommunications

19 carrier~~;~~

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

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

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

23 [~~(x)~~ a provider of customer-owned pay

24 telephone service~~;~~ or

25 [~~(xi)~~ a person or entity determined by the

26 commission to provide telecommunications services to customers in

27 this state~~;~~ and

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

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

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

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

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

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

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

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

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

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

22 ~~[(G) a separated affiliate or an electronic~~
23 ~~publishing joint venture as defined in Chapter 63.(12) "Tier 1]~~
24 ~~local exchange company["] or provider of interexchange~~
25 ~~telecommunications services, as those terms are defined in this~~
26 ~~section;~~

27 (16) "Telecommunications" has the same meaning

1 ~~[assigned by the Federal Communications Commission.]~~ as applies
2 under federal law;

3 (17) "Telecommunications provider" means any person
4 or entity that offers telecommunications to others for a fee.

5 Sec. 51.003. APPLICABILITY. (1) Except as otherwise
6 expressly provided by this title, this title does not apply to:

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

9 (i) ~~(A)~~ is a telecommunications manager;

10 or

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

14 (b) ~~(2)~~ telegraph services;

15 (c) ~~(3)~~ television or radio stations;

16 (d) ~~(4)~~ community antenna television services;

17 or

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

26 (2) Service providers and network service providers
27 are subject to the commission's jurisdiction except to the extent

1 it is specifically preempted from exercising authority by federal
2 law.

3 Sec. 51.004. [~~PRICING FLEXIBILITY~~] DEREGULATION ELECTIONS.

4 [~~(a)~~]

5 (1) [~~A discount or other form of pricing flexibility~~
6 ~~may not be:~~

7 [~~(1) unreasonably preferential, prejudicial, or~~
8 ~~discriminatory; or~~] No later than September 1, 2005, each incumbent
9 local exchange company shall make an election to do business
10 pursuant to subsection.

11 [~~(2) predatory or anticompetitive.~~

12 [~~(b) This title does not prohibit a volume discount or other~~
13 ~~discount based on a reasonable business purpose. A price that is~~
14 ~~set at or above the long run incremental cost of a service is~~
15 ~~presumed not to be a predatory price.~~

16 [~~(c) This title allows an offer based on a reasonable~~
17 ~~business purpose~~] this section, including an offer made at any time
18 to a selected customer or a group of customers in response to a
19 competitor's offer or a former customer's acceptance of a
20 competitor's offer if the price of the offer meets the requirements
21 of Section 52.0584, 58.063, or 59.031.

22 [~~(d) An offer made under Subsection (c) must be made in~~
23 ~~compliance with~~] Chapter [~~43, Business & Commerce Code, as added by~~
24 ~~Chapter 1429, Acts of~~] 53, Chapter 58, or Chapter 59, which election
25 shall be made by filing a notice with the [~~77th Legislature, Regular~~
26 ~~Session, 2001.~~] [~~See~~] commission.

27 (2) Notwithstanding any other provisions to the

1 contrary in this title, an incumbent local exchange company in the
2 State of Texas that elects deregulation under this paragraph is
3 subject only to the following provisions of this title: Chapter 52,
4 Sections 52.101-52.108; Sections 52.251(a); 52.255; Chapter 54,
5 Sections 54.001-54.005; 54.203-.206; 54.251-[-
6 51.005. ASSISTANCE TO MUNICIPALITY.] 253; 54.259-304; Chapter 55,
7 Sections 55.001; 55.013; 55.015; 55.021-.048; 55.201-.203;
8 55.251-.252; Chapter 56, Sections 56.001-.029; 56.101-.109;
9 56.151-.155; Chapter 57; Chapter 60; and Chapter 64 of this title,
10 provided that such incumbent local exchange company agrees as part
11 of its election to:

12 (a) Reduce its intrastate switched access
13 charges to its interstate switched access rate level in two
14 increments: by 50% of the difference in the intrastate and
15 interstate level by September 1, 2005, and by the remaining 50% by
16 January 1, 2007;

17 (b) Relinquish its eligibility to receive Texas
18 Universal Service Funds disbursements as of January 1, 2006, and
19 not raise its rates in exchanges where it is receiving such payments
20 until all actions necessary to implement Section 56.029(b) have
21 been accomplished; and

22 (c) Make the infrastructure improvements
23 required by and otherwise comply with Section 57.002.

24 Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title,
25 including Section 53.201, may be construed as in any way limiting
26 the right of a network provider or service provider to pass through
27 a municipal fee it is required to pay, including an increase in a

1 municipal fee.

2 (b) A network provider or service provider that passes
3 through municipal fees shall promptly pass through any municipal
4 fee reduction.

5 CHAPTER 52. COMMISSION JURISDICTION

6 SUBCHAPTER A. GENERAL POWERS AND DUTIES OF COMMISSION

7 Sec. 52.002. AUTHORITY TO REGULATE. The commission's
8 regulatory authority is only as prescribed by this title.

9 Sec. 52.003. COOPERATION WITH OTHER REGULATORY
10 AUTHORITIES. In regulating the services of a provider of local
11 exchange telephone service providing service in a municipality
12 located on the state line adjacent to a municipality in an adjoining
13 state, the commission may cooperate with the regulatory commission
14 of the adjoining state or of the federal government and may hold a
15 joint hearing or make a joint investigation with that commission.

16 Sec. 52.004. COOPERATION WITH MUNICIPALITIES. [On] (a)
17 Upon request of a municipality, the commission may advise and
18 assist the municipality with respect to a question or proceeding
19 arising under this title. Assistance provided by the commission
20 may include aid to a municipality on a matter pending before the
21 commission or a court, such as making a staff member available as a
22 witness or otherwise providing evidence to the municipality.

23 ~~[Sec. 51.006. MUNICIPAL PARTICIPATION IN RATEMAKING~~
24 ~~PROCEEDINGS. (a) The governing body of a municipality~~
25 ~~participating in a ratemaking proceeding may engage rate~~
26 ~~consultants, accountants, auditors, attorneys, and engineers to:~~

27 ~~[(1) conduct investigations, present evidence, and~~

1 ~~advise and represent the governing body; and~~

2 ~~[(2) assist the governing body with litigation before~~
3 ~~the commission or a court.]~~

4 ~~[(b) The public utility in the ratemaking proceeding shall~~
5 ~~reimburse the governing body of the municipality for the reasonable~~
6 ~~cost of the services of a person engaged under Subsection (a) to the~~
7 ~~extent the commission determines is reasonable.]~~

8 ~~[Sec. 51.007. MUNICIPAL STANDING IN CERTAIN CASES.]~~

9 (b) ~~[(a)]~~ A municipality has standing in each case before
10 the commission that relates to a ~~[utility]~~ provider of local
11 exchange telephone service providing retail service ~~[in]~~ to the
12 municipality.

13 ~~[(b)]~~ A municipality's standing is subject to the right of
14 the commission to:

15 (1) determine standing in a case involving a retail
16 service area dispute that involves two or more ~~[utilities]~~
17 providers of local exchange telephone services; and

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

20 ~~[Sec. 51.008. JUDICIAL REVIEW. A municipality is entitled~~
21 ~~to judicial review of a commission order relating to a utility~~
22 ~~providing services in the municipality as provided by Section~~
23 ~~15.001.]~~

24 ~~[Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title,~~
25 ~~including Section 53.201, may be construed as in any way limiting~~
26 ~~the right of a public utility to pass through a municipal fee,~~
27 ~~including an increase in a municipal fee.]~~

1 ~~[(b) A public utility that traditionally passes through~~
2 ~~municipal fees shall promptly pass through any municipal fee~~
3 ~~reduction.~~

4 ~~[Sec. 51.010. COMMISSION INVESTIGATION OF SALE, MERGER, OR~~
5 ~~CERTAIN OTHER ACTIONS. (a) The commission, not later than the~~
6 ~~180th day after the date a public utility reports to the commission~~
7 ~~under Section 14.101, shall complete an investigation under that~~
8 ~~section and enter a final order.~~

9 ~~[(b) If a final order is not entered as required by~~
10 ~~Subsection (a), the commission is considered to have determined~~
11 ~~that the action taken by the public utility is consistent with the~~
12 ~~public interest.~~

13 ~~[(c) Section 14.101 does not apply to:~~

14 ~~[(1) a company that receives a certificate of~~
15 ~~operating authority or a service provider certificate of operating~~
16 ~~authority under Chapter 54; or~~

17 ~~[(2) a company electing under Chapter 58.~~

18 ~~[CHAPTER 52. COMMISSION JURISDICTION~~

19 ~~[SUBCHAPTER A. GENERAL POWERS AND DUTIES OF COMMISSION~~

20 ~~[Sec. 52.001. POLICY. (a) It is the policy of this state to~~
21 ~~protect the public interest in having adequate and efficient~~
22 ~~telecommunications service available to each resident of this state~~
23 ~~at just, fair, and reasonable rates.~~

24 ~~[(b) The telecommunications industry, through technical~~
25 ~~advancements, federal legislative, judicial, and administrative~~
26 ~~actions, and the formulation of new telecommunications~~
27 ~~enterprises, has become and will continue to be in many and growing~~

1 ~~areas a competitive industry that does not lend itself to~~
2 ~~traditional public utility regulatory rules, policies, and~~
3 ~~principles. As a result, the public interest requires that rules,~~
4 ~~policies, and principles be formulated and applied to:~~

5 ~~(1) protect the public interest; and~~

6 ~~(2) provide equal opportunity to each~~
7 ~~telecommunications utility in a competitive marketplace.~~

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

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

18 ~~[Sec. 52.003. COOPERATION WITH OTHER REGULATORY~~
19 ~~AUTHORITIES. In regulating the rates, operations, and services of~~
20 ~~a telecommunications utility providing service in a municipality~~
21 ~~located on the state line adjacent to a municipality in an adjoining~~
22 ~~state, the commission may cooperate with the utility regulatory~~
23 ~~commission of the adjoining state or of the federal government and~~
24 ~~may hold a joint hearing or make a joint investigation with that~~
25 ~~commission.~~

26 ~~[Sec. 52.004. COMMISSION MAY ESTABLISH SEPARATE MARKETS.]~~
27 The governing body of a municipality participating in a ratemaking

1 proceeding may engage rate consultants, accountants, auditors,
2 attorneys, and engineers to:

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

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

7 (d) [~~(a)~~] [~~The commission may establish separate~~
8 ~~telecommunications markets in this state if]~~ A provider of local
9 exchange telephone service in the ratemaking proceeding shall not
10 be required to reimburse the governing body of the municipality for
11 the reasonable cost of the services of a person engaged under
12 Subsection (c) to the extent the commission determines [~~that the~~
13 ~~public interest will be served. The commission shall hold hearings~~
14 ~~and require evidence as necessary to:]~~ is reasonable.

15 [~~(1) carry out the public purpose of this chapter, and~~

16 [~~(2) determine the need and effect of establishing~~
17 ~~separate markets.~~

18 [~~(b) A provider determined to be a dominant carrier as to a~~
19 ~~particular telecommunications service in a market may not be~~
20 ~~presumed to be a dominant carrier of a different telecommunications~~
21 ~~service in that market.~~

22 [~~Sec. 52.005. MINIMUM REQUIREMENTS FOR DOMINANT CARRIERS.~~
23 ~~The commission shall impose as minimum requirements for a dominant~~
24 ~~carrier the same requirements imposed by Subchapter C, except~~
25 ~~Section 52.107.]~~

26 Sec. 52.006. COMMISSION TO REPORT TO LEGISLATURE. (a)
27 Before January 15 of each odd-numbered year, the commission shall

1 report to the legislature on:

2 (1) the scope of competition in [~~regulated~~] all
3 telecommunications and information services markets, regardless of
4 technology; and

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

8 (b) The report shall include[+]

9 [(1)] an assessment of the effect of competition on
10 the rates and availability of all telecommunications services for
11 residential and business customers, regardless of technologies;

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

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

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

21 (d) [~~A telecommunications utility~~] Each Network Provider
22 and Service Provider shall cooperate with the commission as
23 reasonably necessary for the commission to satisfy the requirements
24 of this section.

25 SUBCHAPTER B. [~~INCUMBENT LOCAL EXCHANGE COMPANIES~~

26 [~~Sec. 52.051. POLICY. In adopting rules and establishing~~
27 ~~procedures under this subchapter, the commission shall:~~

1 ~~[(1) attempt to balance the public interest in a~~
2 ~~technologically advanced telecommunications system providing a~~
3 ~~wide range of new and innovative services with traditional~~
4 ~~regulatory concerns for:~~

5 ~~[(A) preserving universal service,~~

6 ~~[(B) prohibiting anticompetitive practices, and~~

7 ~~[(C) preventing the subsidization of competitive~~
8 ~~services with revenues from regulated monopoly services; and~~

9 ~~[(2) incorporate an appropriate mix of regulatory and~~
10 ~~market mechanisms reflecting the level and nature of competition in~~
11 ~~the marketplace.~~

12 ~~[Sec. 52.052. APPLICABILITY. This subchapter does not~~
13 ~~apply to basic local telecommunications service, including local~~
14 ~~measured service.~~

15 ~~[Sec. 52.053. CERTAIN RATES PROHIBITED. A rate established~~
16 ~~under this subchapter may not be:~~

17 ~~[(1) unreasonably preferential, prejudicial, or~~
18 ~~discriminatory,~~

19 ~~[(2) subsidized either directly or indirectly by a~~
20 ~~regulated monopoly service; or~~

21 ~~[(3) predatory or anticompetitive.~~

22 ~~[Sec. 52.054. RULES AND PROCEDURES FOR INCUMBENT LOCAL~~
23 ~~EXCHANGE COMPANIES. (a) To carry out the public policy stated in~~
24 ~~Section 52.001, notwithstanding any other provision of this title,~~
25 ~~the commission may adopt rules and establish procedures applicable~~
26 ~~to incumbent local exchange companies to:~~

27 ~~[(1) determine the level of competition in a specific~~

1 ~~telecommunications market or submarket, and~~

2 ~~[(2) provide appropriate regulatory treatment to~~
3 ~~allow an incumbent local exchange company to respond to significant~~
4 ~~competitive challenges.~~

5 ~~[(b) This section does not change the burden of proof on an~~
6 ~~incumbent local exchange company under Sections 53.003, 53.006,~~
7 ~~53.051, 53.052, 53.053, 53.054, 53.055, 53.057, 53.058, 53.060, and~~
8 ~~53.062.~~

9 ~~[Sec. 52.055. HEARING TO DETERMINE LEVEL] PROVIDERS OF~~
10 ~~[COMPETITION. In determining the level of competition in a~~
11 ~~specific market or submarket, the commission shall hold an~~
12 ~~evidentiary hearing to consider:~~

13 ~~[(1) the number and size of telecommunications~~
14 ~~utilities or other persons providing the same, equivalent, or~~
15 ~~substitutable service,~~

16 ~~[(2) the extent to which the same, equivalent, or~~
17 ~~substitutable service is available,~~

18 ~~[(3) the ability of a customer to obtain the same,~~
19 ~~equivalent, or substitutable service at comparable rates and terms,~~

20 ~~[(4) the ability of a telecommunications utility or~~
21 ~~other person to make the same, equivalent, or substitutable service~~
22 ~~readily available at comparable rates and terms,~~

23 ~~[(5) the existence of a significant barrier to the~~
24 ~~entry or exit of a provider of the service, and~~

25 ~~[(6) other relevant information the commission~~
26 ~~determines is appropriate.~~

27 ~~[Sec. 52.056. SPECIFICALLY AUTHORIZED REGULATORY~~

1 ~~TREATMENTS. The regulatory treatments the commission may implement~~
2 ~~under Section 52.054 include:~~

3 ~~[(1) approval of a range of rates for a specific~~
4 ~~service,~~

5 ~~[(2) approval of a customer-specific contract for a~~
6 ~~specific service, and~~

7 ~~[(3) the detariffing of rates.~~

8 ~~[Sec. 52.057. CUSTOMER-SPECIFIC CONTRACTS. (a) The~~
9 ~~commission shall approve a customer-specific contract that meets~~
10 ~~the requirements of Subsection (b) to provide:~~

11 ~~[(1) central office based PBX-type services for a~~
12 ~~system of 200 stations or more,~~

13 ~~[(2) billing and collection services,~~

14 ~~[(3) high-speed private line services of 1.544~~
15 ~~megabits or greater, or~~

16 ~~[(4) customized services.~~

17 ~~[(b) The commission shall approve a contract for a service~~
18 ~~described by Subsection (a) if:~~

19 ~~[(1) the contract is filed before the 30th day before~~
20 ~~the date the service contracted for is initiated,~~

21 ~~[(2) the contract is accompanied by an affidavit from~~
22 ~~the person or entity contracting for the service stating that the~~
23 ~~person or entity considered acquiring the same, equivalent, or~~
24 ~~substitutable service by bid or quotation from a source other than~~
25 ~~the incumbent local exchange company,~~

26 ~~[(3) the incumbent local exchange company recovers the~~
27 ~~appropriate costs of providing the service, and~~

1 ~~[(4) approval of the contract is in the public~~
2 ~~interest.~~

3 ~~[(c) The commission shall approve or deny a contract under~~
4 ~~this section not later than the 30th day after the date the contract~~
5 ~~is filed, unless the commission for good cause extends the~~
6 ~~effective date for an additional 35 days.~~

7 ~~[(d) An incumbent local exchange company may not price~~
8 ~~similar services provided under contracts governed by this section~~
9 ~~in an unreasonably discriminatory manner.~~

10 ~~[(e) This section and Section 52.056(2) do not apply to:~~

11 ~~[(1) message telecommunications service,~~

12 ~~[(2) switched access service for an interexchange~~
13 ~~carrier, or~~

14 ~~[(3) wide area telecommunications service.~~

15 ~~[(f) In this section, "similar services" means services~~
16 ~~that:~~

17 ~~[(1) are provided at or near the same point in time,~~

18 ~~[(2) have the same characteristics, and~~

19 ~~[(3) are provided under the same or similar~~
20 ~~circumstances.~~

21 ~~[Sec. 52.058. GENERAL PROVISIONS RELATING TO NEW OR~~
22 ~~EXPERIMENTAL SERVICES OR PROMOTIONAL RATES. (a) To encourage the~~
23 ~~rapid introduction of new or experimental services or promotional~~
24 ~~rates, the commission shall adopt rules and establish procedures~~
25 ~~that allow:~~

26 ~~[(1) the expedited introduction of new or experimental~~
27 ~~services or promotional rates,~~

1 ~~[(2) the establishment and adjustment of rates; and~~

2 ~~[(3) the withdrawal of those services or promotional~~
3 ~~rates.~~

4 ~~[(b) The rules and procedures described by Subsection (a)~~
5 ~~must include rules and procedures to allow the governing body of a~~
6 ~~municipality served by an incumbent local exchange company having~~
7 ~~more than 500,000 access lines in this state to make requests to the~~
8 ~~commission for new or experimental services or promotional rates.~~

9 ~~[(c) A rate established or adjusted at the request of a~~
10 ~~municipality may not:~~

11 ~~[(1) result in higher rates for ratepayers outside the~~
12 ~~municipal boundaries; or~~

13 ~~[(2) include a rate for incumbent local exchange~~
14 ~~company interexchange service or interexchange carrier access~~
15 ~~service.~~

16 ~~[Sec. 52.0583. NEW SERVICES. (a) An incumbent local~~
17 ~~exchange company may introduce a new service 10 days after~~
18 ~~providing an informational notice to the commission, to the office,~~
19 ~~and to any person who holds a certificate of operating authority in~~
20 ~~the incumbent local exchange company's certificated area or areas~~
21 ~~or who has an effective interconnection agreement with the~~
22 ~~incumbent local exchange company.~~

23 ~~[(b) An incumbent local exchange company shall price each~~
24 ~~new service at or above the service's long run incremental cost.~~
25 ~~The commission shall allow a company serving fewer than one million~~
26 ~~access lines in this state to establish a service's long run~~
27 ~~incremental cost by adopting, at that company's option, the cost~~

1 ~~studies of a larger company for that service that have been accepted~~
2 ~~by the commission.~~

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

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

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

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

18 ~~[(e) A company electing incentive regulation under Chapter~~
19 ~~58 or 59 may introduce new services only in accordance with the~~
20 ~~applicable provisions of Chapter 58 or 59.]~~

21 ~~[Sec. 52.0584. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER~~
22 ~~PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision~~
23 ~~of this title, an incumbent local exchange company may exercise~~
24 ~~pricing flexibility in accordance with this section, including the~~
25 ~~packaging of any regulated service such as basic local~~
26 ~~telecommunications service with any other regulated or unregulated~~
27 ~~service or any service of an affiliate. The company may exercise~~

1 ~~pricing flexibility 10 days after providing an informational notice~~
2 ~~to the commission, to the office, and to any person who holds a~~
3 ~~certificate of operating authority in the incumbent local exchange~~
4 ~~company's certificated area or areas or who has an effective~~
5 ~~interconnection agreement with the incumbent local exchange~~
6 ~~company. Pricing flexibility includes all pricing arrangements~~
7 ~~included in the definition of "pricing flexibility" prescribed by~~
8 ~~Section 51.002 and includes packaging of any regulated service with~~
9 ~~any unregulated service or any service of an affiliate.~~

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

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

25 ~~[(d) A company electing incentive regulation under Chapter~~
26 ~~58 or 59 may use pricing and packaging flexibility and introduce~~
27 ~~customer promotional offerings only in accordance with the~~

1 ~~applicable provisions of Chapter 58 or 59.~~

2 ~~[Sec. 52.0585. CUSTOMER PROMOTIONAL OFFERINGS. (a) An~~
3 ~~incumbent local exchange company may offer a promotion for a~~
4 ~~regulated service for not more than 90 days in any 12-month period.~~

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

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

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

12 ~~[(c) An incumbent local exchange company is not required to~~
13 ~~obtain commission approval to make a promotional offering described~~
14 ~~by Subsection (b).~~

15 ~~[(d) An incumbent local exchange company may offer a~~
16 ~~promotion of any regulated service as part of a package of services~~
17 ~~consisting of any regulated service with any other regulated or~~
18 ~~unregulated service or any service of an affiliate.~~

19 ~~[Sec. 52.059. RATES TO COVER APPROPRIATE COSTS. (a) The~~
20 ~~commission by rule shall adopt standards necessary to ensure that a~~
21 ~~rate established under this subchapter covers appropriate costs as~~
22 ~~determined by the commission.~~

23 ~~[(b) Until standards are set under Subsection (a), the~~
24 ~~commission shall use a costing methodology that is in the public~~
25 ~~interest to determine whether a rate established under this~~
26 ~~subchapter covers appropriate costs.~~

27 ~~[Sec. 52.060. ADMINISTRATIVE FEE OR ASSESSMENT. The~~

1 ~~commission may prescribe and collect a fee or assessment from local~~
2 ~~exchange companies necessary to recover the cost to the commission~~
3 ~~and to the office of activities carried out and services provided~~
4 ~~under this subchapter and Section 52.006. SUBCHAPTER C.]~~

5 INTEREXCHANGE TELECOMMUNICATIONS [~~UTILITIES THAT ARE NOT DOMINANT~~
6 ~~CARRIERS~~] SERVICES

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

10 [~~(1) a dominant carrier, or~~

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

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

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

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

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

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

26 [~~(5) to require a telecommunications utility that had~~
27 ~~more than six percent of the total intrastate access minutes of use~~

1 ~~as measured for the most recent 12-month period to pass switched~~
2 ~~access rate reductions under this title to customers as required by~~
3 ~~Section 52.112;~~

4 ~~[(6) to require access to telecommunications service~~
5 ~~under Section 52.105; and~~

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

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

10 Sec. 52.103. REGISTRATION REQUIRED. (a) A provider of
11 interexchange telecommunications [utility] services to customers
12 residing within Texas shall register with the commission not later
13 than the 30th day after the date the [utility] provider commences
14 service to the public.

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

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

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

20 [~~(3) other registration information the commission~~
21 ~~directs.~~]

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

26 [~~Sec. 52.104. COMMISSION MAY INVESTIGATE. (a) The~~
27 ~~commission may investigate as necessary to determine the effect and~~

1 ~~scope of competition in the telecommunications industry. The~~
2 ~~investigation may include:~~

3 ~~[(1) identifying dominant carriers in the local~~
4 ~~telecommunications and intraLATA interexchange telecommunications~~
5 ~~industry; and~~

6 ~~[(2) defining the telecommunications market or~~
7 ~~markets.~~

8 ~~[(b) In conducting an investigation under this section, the~~
9 ~~commission may:~~

10 ~~[(1) hold a hearing,~~

11 ~~[(2) issue a subpoena to compel the attendance of a~~
12 ~~witness or the production of a document; and~~

13 ~~[(3) make findings of fact and decisions to administer~~
14 ~~this title or a rule, order, or other action of the commission.~~

15 ~~[Sec. 52.105. ACCESS TO CERTAIN SERVICES REQUIRED. (a)~~
16 ~~The commission may require that each local exchange area have~~
17 ~~access to local and interexchange telecommunications service,~~
18 ~~except as otherwise provided by this section.~~

19 ~~[(b) The commission shall allow a telecommunications~~
20 ~~utility to discontinue service to a local exchange area if:~~

21 ~~[(1) comparable service is available in the area; and~~

22 ~~[(2) discontinuing the service is not contrary to the~~
23 ~~public interest.~~

24 ~~[(c) This section does not authorize the commission to~~
25 ~~require a telecommunications utility to initiate service to a local~~
26 ~~exchange area to which the telecommunications utility:~~

27 ~~[(1) did not provide service during the preceding~~

1 ~~12-month period; and~~

2 ~~[(2) has not provided service previously for a~~
3 ~~cumulative period of at least one year.]~~

4 ~~[Sec. 52.106. QUALITY OF SERVICE REQUIRED. The commission~~
5 ~~may require the quality of telecommunications service provided in a~~
6 ~~local exchange in which the commission determines that service has~~
7 ~~deteriorated and become unreliable to be adequate to protect the~~
8 ~~public interest and the interests of customers of that exchange.]~~

9 ~~[Sec. 52.107. PREDATORY PRICING. (a) The commission may~~
10 ~~enter an order necessary to protect the public interest if the~~
11 ~~commission finds by a preponderance of the evidence after notice~~
12 ~~and hearing that an interexchange telecommunications utility has:]~~

13 ~~[(1) engaged in predatory pricing; or~~

14 ~~[(2) attempted to engage in predatory pricing.]~~

15 ~~[(b) A hearing held by the commission under Subsection (a)~~
16 ~~must be based on a complaint from another interexchange~~
17 ~~telecommunications utility.]~~

18 ~~[(c) An order entered under Subsection (a) may include the~~
19 ~~imposition on a specific service of the commission's full~~
20 ~~regulatory authority under:]~~

21 ~~[(1) this chapter;~~

22 ~~[(2) Chapters 14, 15, 51, 53, and 54; and~~

23 ~~[(3) Subchapters A, D, and H, Chapter 55.]~~

24 ~~[(d) This section applies only to an interexchange~~
25 ~~telecommunications utility.]~~

26 Sec. 52.108. OTHER PROHIBITED PRACTICES. The commission
27 may enter any order necessary to protect the public interest if the

1 commission finds after notice and hearing that a provider of
2 interexchange telecommunications [~~utility~~] services has[+]

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

4 [~~(2) abandoned~~] ceased interexchange [~~message~~]
5 telecommunications service to a local exchange area [~~in a manner~~
6 ~~contrary to the public interest, or~~] where no competitive
7 alternative exists.

8 [~~(3) engaged in a pattern of preferential or~~
9 ~~discriminatory activities prohibited by Section 53.003, 55.005, or~~
10 ~~55.006, or~~

11 [~~(4) failed to pass switched access rate reductions to~~
12 ~~customers under Chapter 56 or other law, as required by Section~~
13 ~~52.112.]~~

14 SUBCHAPTER C.

15 [~~Sec. 52.109. AVAILABILITY OF SERVICE. (a) The commission~~
16 ~~may require a telecommunications utility that provides a service to~~
17 ~~make that service available in an exchange served by the~~
18 ~~telecommunications utility within a reasonable time after receipt~~
19 ~~of a bona fide request for the service in that exchange.~~

20 [~~(b) A telecommunications utility may not be required to~~
21 ~~extend a service to an area if:~~

22 [~~(1) the local exchange company is unable to provide~~
23 ~~the required access or other service, or~~

24 [~~(2) extending the service would, after consideration~~
25 ~~of the public interest to be served, impose unreasonable costs on or~~
26 ~~require unreasonable investments by the telecommunications~~
27 ~~utility.~~

1 ~~[(c) The commission may require from a telecommunications~~
2 ~~utility or a local exchange company information necessary to~~
3 ~~enforce this section.~~

4 ~~[Sec. 52.110. BURDEN OF PROOF. (a) In a proceeding before~~
5 ~~the commission in which it is alleged that a telecommunications~~
6 ~~utility engaged in conduct in violation of Section 52.107, 52.108,~~
7 ~~52.109, or 52.112 the burden of proof is on:~~

8 ~~[(1) a telecommunications utility complaining of~~
9 ~~conduct committed against it in violation of this subchapter; or~~

10 ~~[(2) except as provided by Subsection (b), the~~
11 ~~responding telecommunications utility if the proceedings are:~~

12 ~~[(A) brought by a customer or customer~~
13 ~~representative who is not a telecommunications utility; or~~

14 ~~[(B) initiated by the commission.~~

15 ~~[(b) The commission may impose the burden of proof on the~~
16 ~~complaining party in a proceeding described by Subsection (a)(2) if~~
17 ~~the commission determines that placing the burden of proof on the~~
18 ~~complaining party is in the public interest.~~

19 ~~[Sec. 52.111. COMMISSION MAY EXEMPT. The commission may~~
20 ~~exempt from a requirement of this subchapter a telecommunications~~
21 ~~utility that:~~

22 ~~[(1) does not have a significant effect on the public~~
23 ~~interest, as determined by the commission; or~~

24 ~~[(2) relies solely on the facilities of others to~~
25 ~~complete long distance calls, if the commission determines that the~~
26 ~~exemption is in the public interest.~~

27 ~~[Sec. 52.112. REDUCTION PASS-THROUGH REQUIRED. (a) Each~~

1 ~~telecommunications utility that had more than six percent of the~~
2 ~~total intrastate access minutes of use as measured for the most~~
3 ~~recent 12-month period shall pass through to customers switched~~
4 ~~access rate reductions under this title. The residential customer~~
5 ~~class shall receive not less than a proportionate share of the~~
6 ~~reductions.]~~

7 REQUIRED FILINGS AND ACCESS RATE PROHIBITIONS

8 Sec. 52.251. TARIFF FILINGS. (a) [~~(b) Within six months~~
9 ~~following each reduction in intrastate switched access rates under~~
10 ~~this title, each telecommunications utility subject to this section~~
11 A certificated provider shall file with the commission a [sworn
12 affidavit confirming] tariff or price list showing each rate
13 [schedule to reflect the per minute reduction in intrastate
14 switched access rates.] that [the utility has reduced the per
15 minute rates it charges under its basic] is:

16 [~~(c) This section expires on the second anniversary]~~

17 (1) subject to the commission's jurisdiction; or

18 (2) in effect for the provision of [the date
19 incumbent] local exchange [companies doing business in the state
20 are no longer prohibited by federal law from offering interLATA and
21 interstate long distance] telephone service.

22 [~~SUBCHAPTER D. CERTIFICATE HOLDERS]~~

23 (b) A provider of local exchange telephone service electing
24 under section 53, section 58 or section 59 shall file as a part of
25 the tariff required under Subsection (a) each rule that relates to
26 or affects:

27 (1) a rate; or

1 (2) the service, product, or commodity furnished.

2 ~~[Sec. 52.151. APPLICABILITY. This subchapter applies only~~
3 ~~to a telecommunications utility that holds a certificate of~~
4 ~~operating authority or a service provider certificate of operating~~
5 ~~authority.]~~

6 ~~[Sec. 52.152. LIMITED REGULATORY AUTHORITY. Except as~~
7 ~~otherwise specifically provided by this title, the commission has~~
8 ~~only the following authority over a telecommunications utility~~
9 ~~subject to this subchapter:]~~

10 ~~[(1) to enforce this title under Subchapter B, Chapter~~
11 ~~15,~~

12 ~~[(2) to assert jurisdiction over a specific service~~
13 ~~under Subchapter E,~~

14 ~~[(3) to require co-carriage reciprocity; and~~

15 ~~[(4) to regulate condemnation and building access.]~~

16 ~~[Sec. 52.153. BOOKS AND RECORDS. The commission may~~
17 ~~prescribe forms of books, accounts, records, and memoranda to be~~
18 ~~kept by a telecommunications utility, but only as necessary to~~
19 ~~enforce the limited jurisdiction over those companies that this~~
20 ~~title provides to the commission.]~~

21 ~~[Sec. 52.154. COMMISSION MAY NOT OVERBURDEN. The~~
22 ~~commission may not, by a rule or regulatory practice adopted under~~
23 ~~this chapter, impose on a telecommunications utility a greater~~
24 ~~regulatory burden than is imposed on a holder of a certificate of~~
25 ~~convenience and necessity serving the same area.]~~

26 Sec. ~~[52.155.]~~ 52.252. PROHIBITION OF EXCESSIVE ACCESS
27 CHARGES. (a) A ~~[telecommunications utility that holds a~~

1 ~~certificate of operating authority or a service]~~ provider
2 [~~certificate]~~ of [~~operating authority]~~ local exchange telephone
3 service which is not an incumbent local exchange service provider
4 may not charge a higher amount for a combined originating [~~or~~] and
5 terminating intrastate switched access than the prevailing rates
6 charged by the [~~holder of the certificate of convenience and~~
7 ~~necessity]~~ incumbent local exchange service provider in whose
8 territory the call originated or terminated unless:

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

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

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

19 [~~SUBCHAPTER E. DEREGULATION OF SERVICE]~~

20 [~~Sec. 52.201. DEREGULATION OF SERVICE. Notwithstanding any~~
21 ~~other provision of this title, the commission may deregulate the~~
22 ~~price of a service in a geographic market if, after notice and~~
23 ~~hearing, the commission determines that:~~

24 [~~(1) the incumbent local exchange company is not~~
25 ~~dominant for the service in that geographic market; or~~

26 [~~(2) the holder of a certificate of operating~~
27 ~~authority who is a dominant carrier is no longer dominant for the~~

1 ~~service in that geographic market.~~

2 ~~[Sec. 52.202. DETERMINATION OF GEOGRAPHIC MARKET. In~~
3 ~~determining the geographic market under Section 52.201, the~~
4 ~~commission shall consider the economic and technical conditions of~~
5 ~~the market.~~

6 ~~[Sec. 52.203. MARKET POWER TEST. (a) To determine whether~~
7 ~~an incumbent local exchange company or holder of a certificate of~~
8 ~~operating authority who is a dominant carrier is no longer dominant~~
9 ~~for a service in a geographic market, the commission must find that:~~

10 ~~[(1) there is an effective competitive alternative,~~
11 ~~and~~

12 ~~[(2) the incumbent local exchange company or~~
13 ~~certificate holder does not have market power sufficient to~~
14 ~~control, in a manner that is adverse to the public interest, the~~
15 ~~price of the service in the geographic area.~~

16 ~~[(b) To determine whether the incumbent local exchange~~
17 ~~company or certificate holder is dominant for a service in the~~
18 ~~geographic area, the commission shall consider:~~

19 ~~[(1) the number and size of telecommunications~~
20 ~~utilities or other persons who provide the same, equivalent, or~~
21 ~~substitutable service in the relevant market,~~

22 ~~[(2) the extent to which the service is available in~~
23 ~~the relevant market,~~

24 ~~[(3) the ability of customers in the relevant market~~
25 ~~to obtain the same, equivalent, or substitutable service at~~
26 ~~comparable rates and on comparable terms,~~

27 ~~[(4) the ability of a telecommunications utility or~~

1 ~~other person to make the same, equivalent, or substitutable service~~
2 ~~readily available in the relevant market at comparable rates and on~~
3 ~~comparable terms;~~

4 ~~[(5) the proportion of the relevant market that is~~
5 ~~being provided the service by a telecommunications utility other~~
6 ~~than the incumbent local exchange company or holder of a~~
7 ~~certificate of operating authority who is a dominant carrier; and~~

8 ~~[(6) other relevant information the commission~~
9 ~~considers necessary.~~

10 ~~[Sec. 52.204. RATE FOR DEREGULATED SERVICE. If the price of~~
11 ~~a service in a geographic market is deregulated under this~~
12 ~~subchapter, the incumbent local exchange company or holder of a~~
13 ~~certificate of operating authority may set the rate for the service~~
14 ~~at any level higher than the service's long run incremental cost.~~

15 ~~[Sec. 52.205. INVESTIGATION OF COMPETITION. (a) On~~
16 ~~request of an incumbent local exchange company or holder of a~~
17 ~~certificate of operating authority who is a dominant carrier made~~
18 ~~in conjunction with an application under this subchapter, the~~
19 ~~commission shall investigate to determine the effect and scope of~~
20 ~~competition in the geographic and service markets at issue.~~

21 ~~[(b) The commission has the power necessary and convenient~~
22 ~~to conduct the investigation. In conducting an investigation, the~~
23 ~~commission may:~~

24 ~~[(1) hold a hearing;~~

25 ~~[(2) issue a subpoena to compel the attendance of a~~
26 ~~witness and the production of a document; and~~

27 ~~[(3) make findings of fact and decisions with respect~~

1 ~~to the markets.~~

2 ~~[(c) A party to a proceeding may use, in an application for~~
3 ~~pricing flexibility, the results of an investigation conducted~~
4 ~~under this section.~~

5 ~~[Sec. 52.206. REREGULATION OF MARKET. The commission, on~~
6 ~~its own motion or on a complaint that the commission considers to~~
7 ~~have merit, may assert regulation over a service in a geographic~~
8 ~~market if:~~

9 ~~[(1) the incumbent local exchange company or holder of~~
10 ~~a certificate of operating authority who was previously a dominant~~
11 ~~carrier is found to again be dominant for the service in that~~
12 ~~geographic market; or~~

13 ~~[(2) the provider of services under a certificate of~~
14 ~~operating authority or service provider certificate of operating~~
15 ~~authority is found to be dominant for the service in that geographic~~
16 ~~market.~~

17 ~~[Sec. 52.207. REPORTS, CONFIDENTIAL INFORMATION. (a) In~~
18 ~~conjunction with the commission's authority to collect and compile~~
19 ~~information, the commission may collect a report from a holder of a:~~

20 ~~[(1) certificate of operating authority; or~~

21 ~~[(2) service provider certificate of operating~~
22 ~~authority.~~

23 ~~[(b) The commission shall maintain the confidentiality of~~
24 ~~information contained in a report collected under this section that~~
25 ~~is claimed to be confidential for competitive purposes. The~~
26 ~~confidential information is exempt from disclosure under Chapter~~
27 ~~552, Government Code.~~

1 ~~[(c) To protect the confidential information, the~~
2 ~~commission shall aggregate the information to the maximum extent~~
3 ~~possible considering the purpose of the proceeding.~~

4 ~~[SUBCHAPTER F. REQUIRED REPORTS AND FILINGS; RECORDS~~

5 ~~[Sec. 52.251. TARIFF FILINGS. (a) A public utility shall~~
6 ~~file with the commission a tariff showing each rate that is:~~

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

8 ~~[(2) in effect for a utility service, product, or~~
9 ~~commodity offered by the utility.~~

10 ~~[(b) The public utility shall file as a part of the tariff~~
11 ~~required under Subsection (a) each rule that relates to or affects:~~

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

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

15 ~~[Sec. 52.252. DEPRECIATION ACCOUNT. The commission shall~~
16 ~~require each public utility to carry a proper and adequate~~
17 ~~depreciation account in accordance with:~~

18 ~~[(1) the rates and methods prescribed by the~~
19 ~~commission under Section 53.056; and~~

20 ~~[(2) any other rule the commission adopts.~~

21 ~~[Sec. 52.253. ACCOUNTS OF PROFITS AND LOSSES. A public~~
22 ~~utility shall keep separate accounts showing profits or losses from~~
23 ~~the sale or lease of merchandise, including an appliance, a~~
24 ~~fixture, or equipment.~~

25 ~~[Sec. 52.254. REPORT OF CERTAIN EXPENSES. The commission~~
26 ~~may require a public utility to annually report the utility's~~
27 ~~expenditures for:~~

1 ~~[(1) business gifts and entertainment, and~~
2 ~~[(2) advertising or public relations, including~~
3 ~~expenditures for institutional and consumption-inducing purposes.]~~

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

10 Sec. 52.256. PLAN AND REPORT OF WORKFORCE DIVERSITY AND
11 OTHER BUSINESS PRACTICES. (a) In this section, "small business"
12 and "historically underutilized business" have the meanings
13 assigned by Section 481.191, Government Code.

14 ~~[(b) Before January 1, 2000, each telecommunications~~
15 ~~utility shall develop and submit to the commission a comprehensive~~
16 ~~five-year plan to enhance diversity of its workforce in all~~
17 ~~occupational categories and for increasing opportunities for small~~
18 ~~and historically underutilized businesses. The plan must consist~~
19 ~~of:~~

20 ~~[(1) the telecommunications utility's performance~~
21 ~~with regard to workforce diversity and contracting with small and~~
22 ~~historically underutilized businesses,~~

23 ~~[(2) initiatives that the telecommunications utility~~
24 ~~will pursue in these areas over the period of the plan,~~

25 ~~[(3) a listing of programs and activities the~~
26 ~~telecommunications utility will undertake to achieve each of these~~
27 ~~initiatives, and~~

1 ~~[(4) a listing of the business partnership initiatives~~
2 ~~the telecommunications utility will undertake to facilitate small~~
3 ~~and historically underutilized business entry into the~~
4 ~~telecommunications market, taking into account opportunities for~~
5 ~~contracting and joint ventures.~~

6 ~~[(c) Each telecommunications utility]~~

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

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

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

16 (3) the specific ~~[progress made under the plan under~~
17 ~~Subsection (b), (4) the specific]~~ initiatives, programs, and
18 activities undertaken under the plan during the preceding year;

19 (4) ~~[(5)]~~ an assessment of the success of each of
20 those initiatives, programs, and activities;

21 (5) ~~[(4)]~~ the extent to which the
22 ~~[telecommunications]~~ provider ~~[utility]~~ has carried out its
23 initiatives to facilitate opportunities for contracts or joint
24 ventures with small and historically underutilized businesses; and

25 (6) ~~[(7)]~~ the initiatives, programs, and activities
26 the ~~[telecommunications]~~ provider ~~[utility]~~ will pursue during the
27 next year to increase the diversity of its workforce and

1 contracting opportunities for small and historically underutilized
2 businesses.

3 CHAPTER 53. RATES

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 53.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES.

6 (a) The provisions of this chapter apply to any incumbent local
7 exchange company electing under this chapter or failing to file an
8 election as prescribed by Section 51.004(1).

9 (b) [~~(a)~~] Except as otherwise provided by this title, the
10 commission may establish and regulate rates of a public utility and
11 may adopt rules for determining:

12 (1) the classification of customers and services; and

13 (2) the applicability of rates.

14 (c) [~~(b)~~] A rule or order of the commission may not conflict
15 with a ruling of a federal regulatory body.

16 Sec. 53.002. COMPLIANCE WITH TITLE. A utility may not
17 charge or receive a rate for utility service except as provided by
18 this title.

19 Sec. 53.003. JUST AND REASONABLE RATES. (a) The commission
20 shall ensure that each rate a public utility or two or more public
21 utilities jointly make, demand, or receive is just and reasonable.

22 (b) A rate may not be unreasonably preferential,
23 prejudicial, or discriminatory but must be sufficient, equitable,
24 and consistent in application to each class of consumer.

25 (c) A public utility may not:

26 (1) grant an unreasonable preference or advantage
27 concerning rates to a person in a classification;

1 (2) subject a person in a classification to an
2 unreasonable prejudice or disadvantage concerning rates; or

3 (3) establish or maintain an unreasonable difference
4 concerning rates between localities or between classes of service.

5 (d) In establishing a public utility's rates, the
6 commission may treat as a single class two or more municipalities
7 that a public utility serves if the commission considers that
8 treatment to be appropriate.

9 Sec. 53.004. EQUALITY OF RATES AND SERVICES. (a) A public
10 utility may not directly or indirectly charge, demand, or receive
11 from a person a greater or lesser compensation for a service
12 provided or to be provided by the utility than the compensation
13 prescribed by the applicable tariff filed under Section 52.251.

14 (b) A person may not knowingly receive or accept a service
15 from a public utility for a compensation greater or less than the
16 compensation prescribed by the tariff.

17 (c) This title does not prevent a cooperative corporation
18 from returning to its members net earnings resulting from its
19 operations in proportion to the members' purchases from or through
20 the corporation.

21 Sec. 53.005. RATES FOR AREA NOT IN MUNICIPALITY. Without
22 the approval of the commission, a public utility's rates for an area
23 not in a municipality may not exceed 115 percent of the average of
24 all rates for similar services for all municipalities served by the
25 same utility in the same county as that area.

26 Sec. 53.006. BURDEN OF PROOF. (a) In a proceeding
27 involving a proposed rate change, the public utility has the burden

1 of proving that:

2 (1) the rate change is just and reasonable, if the
3 utility proposes the change; or

4 (2) an existing rate is just and reasonable, if the
5 proposal is to reduce the rate.

6 (b) In a proceeding in which the rate of an incumbent local
7 exchange company is in issue, the incumbent local exchange company
8 has the burden of proving that the rate is just and reasonable.

9 Sec. 53.007. LIMIT ON RECONNECTION FEE. The commission
10 shall establish a reasonable limit on the amount that a local
11 exchange company may charge a customer for changing the location at
12 which the customer receives service.

13 SUBCHAPTER B. COMPUTATION OF RATES

14 Sec. 53.051. ESTABLISHING OVERALL REVENUES. In
15 establishing a public utility's rates, the commission shall
16 establish the utility's overall revenues at an amount that will
17 permit the utility a reasonable opportunity to earn a reasonable
18 return on the utility's invested capital used and useful in
19 providing service to the public in excess of the utility's
20 reasonable and necessary operating expenses.

21 Sec. 53.052. ESTABLISHING REASONABLE RETURN. In
22 establishing a reasonable return on invested capital, the
23 commission shall consider applicable factors, including:

- 24 (1) the quality of the utility's services;
25 (2) the efficiency of the utility's operations; and
26 (3) the quality of the utility's management.

27 Sec. 53.053. COMPONENTS OF INVESTED CAPITAL. (a) Public

1 utility rates shall be based on the original cost, less
2 depreciation, of property used by and useful to the utility in
3 providing service.

4 (b) The original cost of property shall be determined at the
5 time the property is dedicated to public use, whether by the utility
6 that is the present owner or by a predecessor.

7 (c) In this section, "original cost" means the actual money
8 cost or the actual money value of consideration paid other than
9 money.

10 Sec. 53.054. CONSTRUCTION WORK IN PROGRESS. (a)
11 Construction work in progress, at cost as recorded on the public
12 utility's books, may be included in the utility's rate base. The
13 inclusion of construction work in progress is an exceptional form
14 of rate relief that the commission may grant only if the utility
15 demonstrates that inclusion is necessary to the utility's financial
16 integrity.

17 (b) Construction work in progress may not be included in the
18 rate base for a major project under construction to the extent that
19 the project has been inefficiently or imprudently planned or
20 managed.

21 Sec. 53.055. SEPARATIONS AND ALLOCATIONS. Costs of
22 facilities, revenues, expenses, taxes, and reserves shall be
23 separated or allocated as prescribed by the commission.

24 Sec. 53.056. DEPRECIATION, AMORTIZATION, AND DEPLETION.

25 (a) The commission shall establish proper and adequate rates and
26 methods of depreciation, amortization, or depletion for each class
27 of property of a public utility.

1 (b) On application of a utility, the commission shall
2 establish depreciation rates that promote the use of new technology
3 and infrastructure. In establishing rates under this subsection,
4 the commission shall consider depreciation practices of
5 nonregulated telecommunications providers.

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

10 (d) Notwithstanding this section, a company electing under
11 Chapter 58 may determine its own depreciation rates and
12 amortizations. The company shall notify the commission of any
13 change in those rates or amortizations.

14 Sec. 53.057. NET INCOME; DETERMINATION OF REVENUES AND
15 EXPENSES. (a) A public utility's net income is the total revenues
16 of the utility less all reasonable and necessary expenses as
17 determined by the commission.

18 (b) The commission shall determine revenues and expenses in
19 a manner consistent with this subchapter.

20 (c) The commission may adopt reasonable rules with respect
21 to whether an expense is allowed for ratemaking purposes.

22 Sec. 53.058. CONSIDERATION OF PAYMENT TO AFFILIATE. (a)
23 Except as provided by Subsection (b), the commission may not allow
24 as capital cost or as expense a payment to an affiliate for:

25 (1) cost of a service, property, right, or other item;

26 or

27 (2) interest expense.

1 (b) The commission may allow a payment described by
2 Subsection (a) only to the extent that the commission finds the
3 payment is reasonable and necessary for each item or class of items
4 as determined by the commission.

5 (c) A finding under Subsection (b) must include:

6 (1) a specific finding of the reasonableness and
7 necessity of each item or class of items allowed; and

8 (2) except as provided by Subsection (d), a finding
9 that the price to the utility is not higher than the prices charged
10 by the supplying affiliate to:

11 (A) its other affiliates or divisions for the
12 same item or class of items; or

13 (B) a nonaffiliated person within the same market
14 area or having the same market conditions.

15 (d) A finding under this section is not required as to the
16 prices charged by the supplying affiliate to its other affiliates
17 or divisions if the supplying affiliate computed its charges to the
18 utility in a manner consistent with Federal Communications
19 Commission rules.

20 (e) If the commission finds that the affiliate expense for
21 the test period is unreasonable, the commission shall:

22 (1) determine the reasonable level of the expense; and

23 (2) include that expense in determining the utility's
24 cost of service.

25 Sec. 53.059. TREATMENT OF CERTAIN TAX BENEFITS. (a) In
26 determining the allocation of tax savings derived from liberalized
27 depreciation and amortization, the investment tax credit, and the

1 application of similar methods, the commission shall:

2 (1) balance equitably the interests of present and
3 future customers; and

4 (2) apportion accordingly the benefits between
5 consumers and the public utility.

6 (b) If a public utility retains a portion of the investment
7 tax credit, that portion shall be deducted from the original cost of
8 the facilities or other addition to the rate base to which the
9 credit applied to the extent allowed by the Internal Revenue Code.

10 Sec. 53.060. COMPUTATION OF INCOME TAX; CONSOLIDATED
11 RETURN. (a) Unless it is shown to the satisfaction of the
12 commission that it was reasonable to choose not to consolidate
13 returns, a public utility's income taxes shall be computed as
14 though a consolidated return had been filed and the utility had
15 realized its fair share of the savings resulting from that return,
16 if:

17 (1) the utility is a member of an affiliated group
18 eligible to file a consolidated income tax return; and

19 (2) it is advantageous to the utility to do so.

20 (b) The amount of income tax that a consolidated group of
21 which a public utility is a member saves, because the consolidated
22 return eliminates the intercompany profit on purchases by the
23 utility from an affiliate, shall be applied to reduce the cost of
24 the property or service purchased from the affiliate.

25 (c) The investment tax credit allowed against federal
26 income taxes, to the extent retained by the utility, shall be
27 applied as a reduction in the rate-based contribution of the assets

1 to which the credit applies, to the extent and at the rate allowed
2 by the Internal Revenue Code.

3 Sec. 53.061. ALLOWANCE OF CERTAIN EXPENSES. (a) The
4 commission may not allow as a cost or expense for ratemaking
5 purposes:

6 (1) an expenditure for legislative advocacy; or

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

12 (b) The commission may allow as a cost or expense reasonable
13 charitable or civic contributions not to exceed the amount approved
14 by the commission.

15 Sec. 53.062. CONSIDERATION OF CERTAIN EXPENSES. The
16 commission may not consider for ratemaking purposes:

17 (1) an expenditure for legislative advocacy, made
18 directly or indirectly, including legislative advocacy expenses
19 included in trade association dues;

20 (2) an expenditure for costs of processing a refund or
21 credit under Section 53.110; or

22 (3) any other expenditure, including an executive
23 salary, advertising expense, legal expense, or civil penalty or
24 fine the commission finds to be unreasonable, unnecessary, or not
25 in the public interest.

26 Sec. 53.063. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR
27 LEASE OF MERCHANDISE. In establishing a public utility's rates,

1 the commission may not consider a profit or loss that results from
2 the sale or lease of merchandise, including appliances, fixtures,
3 or equipment, to the extent that merchandise is not integral to
4 providing utility service.

5 Sec. 53.064. SELF-INSURANCE. (a) A public utility may
6 self-insure all or part of the utility's potential liability or
7 catastrophic property loss, including windstorm, fire, and
8 explosion losses, that could not have been reasonably anticipated
9 and included under operating and maintenance expenses.

10 (b) The commission shall approve a self-insurance plan under
11 this section if the commission finds that:

12 (1) the coverage is in the public interest;

13 (2) the plan, considering all costs, is a lower cost
14 alternative to purchasing commercial insurance; and

15 (3) ratepayers will receive the benefits of the
16 savings.

17 (c) In computing a utility's reasonable and necessary
18 expenses under this subchapter, the commission, to the extent the
19 commission finds is in the public interest, shall allow as a
20 necessary expense money credited to a reserve account for
21 self-insurance. The commission shall determine reasonableness
22 under this subsection:

23 (1) from information provided at the time the
24 self-insurance plan and reserve account are established; and

25 (2) on the filing of a rate case by a utility that has a
26 reserve account.

27 (d) After a reserve account for self-insurance is

1 established, the commission shall:

2 (1) determine whether the account has a surplus or
3 shortage under Subsection (e); and

4 (2) subtract any surplus from or add any shortage to
5 the utility's rate base.

6 (e) A surplus in the reserve account exists if the charges
7 against the account are less than the money credited to the account.
8 A shortage in the reserve account exists if the charges against the
9 account are greater than the money credited to the account.

10 (f) The commission shall adopt rules governing
11 self-insurance under this section.

12 Sec. 53.065. INTEREXCHANGE SERVICES; RATES OF INCUMBENT
13 LOCAL EXCHANGE COMPANY. (a) An incumbent local exchange company's
14 rates for interexchange telecommunications services must be
15 statewide average rates except as ordered by the commission after
16 application and hearing.

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

20 SUBCHAPTER C. GENERAL PROCEDURES FOR RATE CHANGE PROPOSED BY
21 UTILITY

22 Sec. 53.101. DEFINITION. In this subchapter, "major
23 change" means an increase in rates that would increase the
24 aggregate revenues of the applicant more than the greater of
25 \$100,000 or 2-1/2 percent. The term does not include an increase in
26 rates that the commission allows to go into effect or the utility
27 makes under an order of the commission after hearings held with

1 public notice.

2 Sec. 53.102. STATEMENT OF INTENT TO CHANGE RATES. (a) A
3 utility may not change its rates unless the utility files a
4 statement of its intent with the commission at least 35 days before
5 the effective date of the proposed change.

6 (b) The utility shall also mail or deliver a copy of the
7 statement of intent to the appropriate officer of each affected
8 municipality.

9 (c) The statement of intent must include:

10 (1) proposed revisions of tariffs; and

11 (2) a detailed statement of:

12 (A) each proposed change;

13 (B) the effect the proposed change is expected to
14 have on the revenues of the utility;

15 (C) each class and number of utility consumers
16 affected; and

17 (D) any other information required by the
18 commission's rules.

19 Sec. 53.103. NOTICE OF INTENT TO CHANGE RATES. (a) The
20 utility shall:

21 (1) publish, in conspicuous form and place, notice to
22 the public of the proposed change once each week for four successive
23 weeks before the effective date of the proposed change in a
24 newspaper having general circulation in each county containing
25 territory affected by the proposed change; and

26 (2) mail notice of the proposed change to any other
27 affected person as required by the commission's rules.

1 (b) The commission may waive the publication of notice
2 requirement prescribed by Subsection (a) in a proceeding that
3 involves only a rate reduction for each affected ratepayer. The
4 applicant shall give notice of the proposed rate change by mail to
5 each affected utility customer.

6 (c) The commission by rule shall define other proceedings
7 for which the publication of notice requirement prescribed by
8 Subsection (a) may be waived on a showing of good cause. A waiver
9 may not be granted in a proceeding involving a rate increase to any
10 class or category of ratepayer.

11 Sec. 53.104. EARLY EFFECTIVE DATE OF RATE CHANGE. (a) For
12 good cause shown, the commission may allow a rate change, other than
13 a major change, to take effect:

14 (1) before the end of the 35-day period prescribed by
15 Section 53.102; and

16 (2) under conditions the commission prescribes,
17 subject to suspension as provided by this subchapter.

18 (b) The utility shall immediately revise its tariffs to
19 include the change.

20 Sec. 53.105. DETERMINATION OF PROPRIETY OF CHANGE;
21 HEARING. (a) If a tariff changing rates is filed with the
22 commission, the commission shall, on complaint by an affected
23 person, or may, on its own motion, not later than the 30th day after
24 the effective date of the change, enter on a hearing to determine
25 the propriety of the change.

26 (b) The commission shall hold a hearing in every case in
27 which the change constitutes a major change. The commission may,

1 however, use an informal proceeding if the commission does not
2 receive a complaint before the 46th day after the date notice of the
3 change is filed.

4 (c) The commission shall give reasonable notice of the
5 hearing, including notice to the governing body of each affected
6 municipality and county. The utility is not required to provide a
7 formal answer or file any other formal pleading in response to the
8 notice, and the absence of an answer does not affect an order for a
9 hearing.

10 Sec. 53.106. REGIONAL HEARING. The commission shall hold a
11 regional hearing at an appropriate location in a case in which the
12 commission determines it is in the public interest to hear
13 testimony at a regional hearing for inclusion in the record.

14 Sec. 53.107. PREFERENCE TO HEARING. The commission shall:

15 (1) give preference to a hearing under this subchapter
16 and to deciding questions arising under this subchapter and
17 Subchapter E over any other question pending before it; and

18 (2) decide the questions as quickly as possible.

19 Sec. 53.108. RATE SUSPENSION; DEADLINE. (a) Pending the
20 hearing and a decision, the commission, after delivering to the
21 utility a written statement of the commission's reasons, may
22 suspend the rate change for not longer than 150 days after the date
23 the rate change would otherwise be effective.

24 (b) The 150-day period prescribed by Subsection (a) shall be
25 extended two days for each day the actual hearing on the merits of
26 the case exceeds 15 days.

27 (c) If the commission does not make a final determination

1 concerning a rate change before expiration of the suspension
2 period, the commission is considered to have approved the change.
3 This approval is subject to the authority of the commission
4 thereafter to continue a hearing in progress.

5 Sec. 53.109. TEMPORARY RATES. (a) The commission may
6 establish temporary rates to be in effect during the suspension
7 period under Section 53.108.

8 (b) If the commission does not establish temporary rates,
9 the rates in effect when the suspended tariff was filed continue in
10 effect during the suspension period.

11 Sec. 53.110. BONDED RATES. (a) A utility may put a changed
12 rate into effect by filing a bond with the commission if:

13 (1) the 150-day suspension period has been extended
14 under Section 53.108(b); and

15 (2) the commission fails to make a final determination
16 before the 151st day after the date the rate change would otherwise
17 be effective.

18 (b) The bonded rate may not exceed the proposed rate.

19 (c) The bond must be:

20 (1) payable to the commission in an amount, in a form,
21 and with a surety approved by the commission; and

22 (2) conditioned on refund.

23 (d) The utility shall refund or credit against future bills:

24 (1) money collected under the bonded rates in excess
25 of the rate finally ordered; and

26 (2) interest on that money, at the current interest
27 rate as determined by the commission.

1 Sec. 53.111. ESTABLISHMENT OF FINAL RATES. (a) If, after
2 hearing, the commission finds the rates are unreasonable or in
3 violation of law, the commission shall:

4 (1) enter an order establishing the rates the utility
5 shall charge or apply for the service in question; and

6 (2) serve a copy of the order on the utility.

7 (b) The rates established in the order shall be observed
8 thereafter until changed as provided by this title.

9 (c) This section does not apply to a company electing under
10 Chapter 58 or 59 except as otherwise provided by those chapters or
11 by Chapter 60.

12 Sec. 53.112. EXPIRATION OF SUSPENSION; EFFECT ON CERTAIN
13 RATES. (a) Notwithstanding Section 53.111(a), if the commission
14 does not make a final determination concerning an incumbent local
15 exchange company's rate change before expiration of the 150-day
16 suspension period, the rates finally approved by the commission
17 take effect on and the incumbent local exchange company is entitled
18 to collect those rates from the date the 150-day suspension period
19 expired.

20 (b) A surcharge or other charge necessary to effectuate this
21 section may not be recovered over a period of less than 90 days from
22 the date of the commission's final order.

23 Sec. 53.113. FCC-APPROVED TARIFFS FOR SWITCHED-ACCESS
24 SERVICE. (a) An incumbent local exchange company may file with
25 the commission tariffs for switched-access service that have been
26 approved by the Federal Communications Commission. The tariffs
27 must include all rate elements in the company's interstate access

1 tariff other than end-user charges.

2 (b) Not later than the 60th day after the date a company
3 files tariffs under Subsection (a), the commission shall order the
4 rates and terms to be the incumbent local exchange company's
5 intrastate switched-access rates and terms if, on review, the
6 tariffs contain the same rates and terms, excluding end-user
7 charges, as approved by the Federal Communications Commission.

8 SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

9 Sec. 53.151. UNREASONABLE OR VIOLATIVE EXISTING
10 RATES. (a) If the commission, on its own motion or on complaint by
11 an affected person, after reasonable notice and hearing, finds that
12 the existing rates of a public utility for a service are
13 unreasonable or in violation of law, the commission shall:

14 (1) enter an order establishing the just and
15 reasonable rates to be observed thereafter, including maximum or
16 minimum rates; and

17 (2) serve a copy of the order on the utility.

18 (b) The rates established under Subsection (a) constitute
19 the legal rates of the public utility until changed as provided by
20 this title.

21 (c) This section does not apply to a company electing under
22 Chapter 58 or Chapter 59 except as otherwise provided by those
23 chapters.

24 Sec. 53.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM
25 ANOTHER SOURCE. If a public utility does not produce or generate
26 the service that it distributes, transmits, or furnishes to the
27 public for compensation but obtains the service from another

1 source, the commission may investigate the cost of that production
2 or generation in an investigation of the reasonableness of the
3 utility's rates.

4 SUBCHAPTER E. COST RECOVERY AND RATE ADJUSTMENTS

5 Sec. 53.201. AUTOMATIC ADJUSTMENT FOR CHANGE IN COSTS
6 PROHIBITED. The commission may not establish a rate or tariff that
7 authorizes a utility to automatically adjust and pass through to
8 the utility's customers a change in the utility's costs.

9 Sec. 53.202. ADJUSTMENT FOR CHANGE IN TAX LIABILITY. (a)
10 The commission, on its own motion or on the petition of a utility,
11 shall provide for the adjustment of the utility's billing to
12 reflect an increase or decrease in the utility's tax liability to
13 this state if the increase or decrease:

14 (1) results from Chapter 5, Acts of the 72nd
15 Legislature, 1st Called Session, 1991; and

16 (2) is attributable to an activity subject to the
17 commission's jurisdiction.

18 (b) The commission shall apportion pro rata to each type and
19 class of service provided by the utility any billing adjustment
20 under this section. The adjustment:

21 (1) remains effective only until the commission alters
22 the adjustment as provided by this section or enters an order for
23 the utility under Subchapter C or Subchapter D.

24 (c) Each year after an original adjustment, the commission
25 shall:

26 (1) review the utility's increase or decrease of tax
27 liability described by Subsection (a)(1); and

1 (2) alter the adjustment as necessary to reflect the
2 increase or decrease.

3 (d) A proceeding under this section is not a rate case under
4 Subchapter C.

5 SUBCHAPTER F. REGULATORY POLICY FOR SMALL INCUMBENT LOCAL EXCHANGE
6 COMPANIES AND COOPERATIVES

7 Sec. 53.251. GENERAL POLICY. Regulatory policy should
8 recognize that:

9 (1) there are differences between small and large
10 incumbent local exchange companies;

11 (2) there are a large number of customer-owned
12 telephone cooperatives and small, locally owned investor
13 companies; and

14 (3) it is appropriate to provide incentives and
15 flexibility to allow an incumbent local exchange company that
16 serves a rural area to:

17 (A) provide existing services; and

18 (B) introduce new technology and new services in
19 a prompt, efficient, and economical manner.

20 Sec. 53.252. ADOPTION OF CERTAIN POLICIES. Notwithstanding
21 any other provision of this title, the commission shall consider
22 and may adopt policies to:

23 (1) provide for evaluation of the overall
24 reasonableness of the rates of a rural or small incumbent local
25 exchange company or cooperative not more frequently than once every
26 three years;

27 (2) permit consideration of future construction plans

1 and operational changes in evaluating the reasonableness of the
2 rates of a rural or small incumbent local exchange company or
3 cooperative; or

4 (3) allow a rural or small incumbent local exchange
5 company or cooperative to:

6 (A) provide required information by report or by
7 other means, as necessary, including a required rate filing
8 package, in substantially less burdensome and complex form than is
9 required of a larger incumbent local exchange company;

10 (B) change depreciation and amortization rates,
11 if customer rates are not affected, after notice to the commission,
12 subject to commission review in a proceeding under Subchapter C or
13 Subchapter D;

14 (C) adopt for a new service the rates for the same
15 or a substantially similar service offered by a larger incumbent
16 local exchange company, without additional cost justification; and

17 (D) submit to the commission, instead of a
18 management audit otherwise required by law, policy, or rule,
19 financial audits regularly performed by an independent auditor or
20 required and performed as a result of the company's or cooperative's
21 participation in a federal or state financing or revenue-sharing
22 program.

23 SUBCHAPTER G. SPECIAL PROCEDURES FOR SMALL LOCAL EXCHANGE

24 COMPANIES AND COOPERATIVES

25 Sec. 53.301. DEFINITION. (a) In this subchapter, "minor
26 change" means a change, including the restructuring of rates of
27 existing services, that:

1 (1) decreases the rates or revenues of an incumbent
2 local exchange company; or

3 (2) together with any other rate or proposed or
4 approved tariff changes in the 12 months preceding the effective
5 date of the proposed change, increases the company's total
6 regulated intrastate gross annual revenues by not more than five
7 percent.

8 (b) With regard to a change to a basic local access line
9 rate, a "minor change" does not include a change that, together with
10 any other change to the basic local access line rate that took
11 effect during the 12 months preceding the effective date of the
12 proposed change, results in an increase of more than 10 percent.

13 Sec. 53.302. APPLICABILITY. This subchapter does not apply
14 to an incumbent local exchange company that is a cooperative
15 corporation partially deregulated under Subchapter H.

16 Sec. 53.303. PROVISIONS NOT EXCLUSIVE. This subchapter
17 does not prohibit:

18 (1) an incumbent local exchange company from filing
19 for a new service or rate change under another section of this
20 title; or

21 (2) the commission from conducting a review under
22 Subchapter D.

23 Sec. 53.304. PROCEDURE TO OFFER CERTAIN SERVICES OR MAKE
24 MINOR CHANGES. (a) An incumbent local exchange company may offer
25 an extended local calling service or a new service on an optional
26 basis or make a minor change in its rates or tariffs if the company:

27 (1) is a cooperative corporation or has, together with

1 all affiliated incumbent local exchange companies, fewer than
2 31,000 access lines in service in this state;

3 (2) files with the commission and the office a
4 statement of intent, as prescribed by Subsection (b), not later
5 than the 91st day before the effective date of the proposed change;

6 (3) provides notice as prescribed by Section 53.305;
7 and

8 (4) files with the commission affidavits verifying
9 that notice as prescribed by Section 53.305 was provided.

10 (b) The statement of intent must include:

11 (1) a copy of a resolution adopted by the incumbent
12 local exchange company's board of directors approving the proposed
13 change;

14 (2) a description of the services affected by the
15 proposed change;

16 (3) a copy of the proposed tariff for the affected
17 service;

18 (4) a copy of the customer notice required by
19 Subsection (a)(3);

20 (5) the number of access lines the company and each
21 affiliate have in service in this state; and

22 (6) the amount by which the company's total regulated
23 intrastate gross annual revenues will increase or decrease as a
24 result of the proposed change.

25 Sec. 53.305. NOTICE TO AFFECTED CUSTOMERS. (a) A company
26 shall provide notice of a proposed change to affected customers in
27 the manner prescribed by the commission.

1 (b) Notice must:

2 (1) be provided not later than the 61st day before the
3 effective date of the proposed change; and

4 (2) include:

5 (A) a description of the services affected by the
6 proposed change;

7 (B) the effective date of the proposed change;

8 (C) an explanation of the customer's right to
9 petition the commission for a review under Section 53.306,
10 including the number of persons required to petition before a
11 commission review will occur;

12 (D) an explanation of the customer's right to
13 information concerning how to obtain a copy of the proposed tariff
14 from the company;

15 (E) the amount by which the company's total
16 regulated intrastate gross annual revenues will increase or
17 decrease as a result of the proposed change; and

18 (F) a list of rates that are affected by the
19 proposed rate change.

20 Sec. 53.306. COMMISSION REVIEW OF PROPOSED CHANGE. (a)
21 The commission shall review a proposed change filed under this
22 subchapter if:

23 (1) the commission receives complaints relating to the
24 proposed change signed by a number of affected local service
25 customers equal at least to the lesser of 1,500 or five percent of
26 those customers;

27 (2) the commission receives a complaint relating to

1 the proposed change from an affected intrastate access customer, or
2 a group of affected intrastate access customers, that in the
3 preceding 12 months accounted for more than 10 percent of the
4 company's total intrastate gross access revenues;

5 (3) the proposed change is not a minor change;

6 (4) the company does not comply with the procedural
7 requirements of this subchapter; or

8 (5) the proposed change is inconsistent with the
9 commission's substantive policies as expressed in its rules.

10 (b) The commission may suspend a tariff proposed under this
11 subchapter during the review.

12 Sec. 53.307. COMPLIANCE WITH PRINCIPLES; REDUCED RATES. A
13 rate established under this subchapter must be in accordance with
14 the rate-setting principles of this chapter, except that a company
15 may provide to its board members, officers, employees, or agents
16 free or reduced rates for services.

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

22 (1) this subchapter;

23 (2) Section 53.112; and

24 (3) Subchapter H[~~and~~

25 [~~(4) Section 55.004~~].

1 SUBCHAPTER H. PARTIAL DEREGULATION AVAILABLE TO CERTAIN

2 COOPERATIVE CORPORATIONS

3 Sec. 53.351. PROVISIONS NOT EXCLUSIVE. (a) This
4 subchapter does not:

5 (1) prohibit a cooperative from filing for a new
6 service or a rate change under another applicable provision of this
7 title; or

8 (2) affect the application of a provision of this
9 title not directly related to:

10 (A) establishing rates; or

11 (B) the authority of the commission to require a
12 cooperative to file a report required under this title or the
13 commission's rules.

14 (b) Notwithstanding any other provision of this subchapter,
15 the commission may conduct a review under Subchapter D.

16 Sec. 53.352. PARTIAL DEREGULATION BY BALLOT. (a) An
17 incumbent local exchange company that is a cooperative corporation
18 may vote to partially deregulate the cooperative by sending a
19 ballot to each cooperative member. The incumbent local exchange
20 company may include the ballot in a bill or send the ballot
21 separately. The ballot shall be printed to permit voting for or
22 against the proposition: "Authorizing the partial deregulation of
23 the (name of the cooperative)."

24 (b) The cooperative is partially deregulated if a majority
25 of the ballots returned to the cooperative not later than the 45th
26 day after the date the ballots are mailed favor deregulation.

27 Sec. 53.353. VOTING PROCEDURES. The commission by rule

1 shall prescribe the voting procedures a cooperative must use under
2 this subchapter.

3 Sec. 53.354. PROCEDURE TO OFFER CERTAIN SERVICES OR MAKE
4 CERTAIN CHANGES. After the initial balloting, a cooperative may
5 offer extended local calling services, offer new services on an
6 optional basis, or make changes in its rates or tariffs if the
7 cooperative:

- 8 (1) files a statement of intent under Section 53.355;
9 (2) provides notice of the proposed action to each
10 customer and municipality as prescribed by Section 53.356; and
11 (3) files with the commission affidavits verifying
12 that notice was provided as prescribed by Section 53.357.

13 Sec. 53.355. STATEMENT OF INTENT. (a) A cooperative must
14 file a statement of intent to use this subchapter with the
15 commission and the office not later than the 61st day before the
16 effective date of the proposed change.

17 (b) The statement must include:

18 (1) a copy of a resolution, signed by a majority of the
19 members of the cooperative's board of directors, approving the
20 proposed action and authorizing the filing of the statement of
21 intent;

22 (2) a description of the services affected by the
23 proposed action;

24 (3) a copy of the proposed tariff for the affected
25 service; and

26 (4) a copy of the customer notice required by Section
27 53.356.

1 Sec. 53.356. NOTICE TO AFFECTED PERSONS. (a) The
2 cooperative shall provide to each affected customer or party,
3 including a municipality, at least two notices of the proposed
4 action by bill insert or by individual notice.

5 (b) The cooperative shall provide:

6 (1) the first notice not later than the 61st day before
7 the effective date of the proposed action; and

8 (2) the last notice not later than the 31st day before
9 the effective date of the proposed action.

10 (c) A notice prescribed by this section must include:

11 (1) a description of the services affected by the
12 proposed action;

13 (2) the effective date of the proposed action;

14 (3) an explanation of the customer's right to:

15 (A) obtain a copy of the proposed tariff from the
16 cooperative; and

17 (B) petition the commission for a review under
18 Section 53.358;

19 (4) a statement of the amount by which the
20 cooperative's total gross annual revenues will increase or decrease
21 and a statement explaining the effect on the cooperative revenues
22 as a result of the proposed action; and

23 (5) a list of rates that are affected by the proposed
24 rate action, showing the effect of the proposed action on each of
25 those rates.

26 Sec. 53.357. FILING OF AFFIDAVITS VERIFYING NOTICE. Not
27 later than the 15th day before the effective date of a proposed

1 action, the cooperative shall file with the commission affidavits
2 that verify that the cooperative provided each notice required by
3 Section 53.356.

4 Sec. 53.358. COMMISSION REVIEW OF PROPOSED ACTION. (a) The
5 commission shall review a proposed action filed under this
6 subchapter if:

7 (1) the commission receives, not later than the 45th
8 day after the date the first notice is provided under Section
9 53.356, complaints relating to the proposed action:

10 (A) signed by at least five percent of the
11 affected local service customers; or

12 (B) from an affected intrastate access customer,
13 or group of affected intrastate access customers, that in the
14 preceding 12 months accounted for more than 10 percent of the
15 cooperative's total intrastate access revenues;

16 (2) the cooperative does not comply with the
17 procedural requirements of this subchapter; or

18 (3) the proposed action is inconsistent with the
19 commission's substantive policies as expressed in its rules.

20 (b) If the commission conducts a review of the proposed
21 action under this section before the action's effective date, the
22 commission may suspend the proposed action during the review.

23 Sec. 53.359. REVERSAL OF DEREGULATION BY BALLOT. (a) A
24 cooperative that is partially deregulated under this subchapter may
25 vote to reverse the deregulation by sending a ballot to each
26 cooperative member.

27 (b) The cooperative's board of directors may order

1 reballoting on its own motion. If the board receives a written
2 request for that action from at least 10 percent of its members, the
3 board shall reballot not later than the 60th day after the date the
4 board receives that request.

5 (c) The cooperative may include the ballot in a bill or send
6 the ballot separately. The ballot shall be printed to permit voting
7 for or against the proposition: "Reversing the partial
8 deregulation of the (name of the cooperative)."

9 (d) The partial deregulation is reversed if a majority of
10 the ballots returned to the cooperative not later than the 45th day
11 after the date the ballots are mailed favor reversal.

12 CHAPTER 54. CERTIFICATES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 54.001. CERTIFICATE REQUIRED. [~~A person may not~~
15 ~~provide local exchange telephone service, basic local~~
16 ~~telecommunications service, or switched access service unless the~~
17 ~~person obtains a:~~]

18 (1) [~~(1)~~] Effective as of August 31, 2005, each entity
19 holding a certificate of convenience and necessity[+]

20 [~~(2)~~] , certificate of [operating] authority[+] or

21 [~~(3)~~] service provider certificate of [operating]
22 authority[-] as of that date shall be deemed to have a service

23 provider certificate unless prior to such date the certificate
24 holder files with the commission (a) a request for a network

25 provider certificate, or (b) a notice of certificate relinquishment
26 setting forth its qualification for an exemption under Section

27 54.002. A person possessing a certificate of convenience and

1 necessity, certificate of operating authority or service provider
2 certificate of operating authority on August 31, 2005, shall
3 immediately receive a certificate as a network provider or a
4 service provider, as appropriate, from the Commission which new
5 certificate shall be effective on September 1, 2005, should that
6 person present to the Commission its certificate in effect on
7 August 31, 2005.

8 (2) Unless a person qualifies under the exception in
9 Section 54.002, a person may not conduct business in Texas as either
10 a network provider or a service provider as defined in this title
11 without first obtaining a certificate issued by the Commission.

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

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

21 [~~(A) contiguous to the territory the~~
22 ~~telecommunications utility serves,~~

23 [~~(B) not receiving similar service from another~~
24 ~~telecommunications utility, and~~

25 [~~(C) not in another telecommunications utility's~~
26 ~~certificated area,~~

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

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

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

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

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

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

13 Sec. 54.003. ~~[EXCEPTIONS TO CERTIFICATE REQUIREMENT FOR~~
14 ~~CERTAIN SERVICES. A telecommunications utility is not required to~~
15 ~~obtain a certificate of convenience and necessity, a certificate of~~
16 ~~operating authority, or a service provider certificate of operating~~
17 ~~authority for:~~

18 ~~[(1) an interexchange telecommunications service,~~

19 ~~[(2) a nonswitched private line service,~~

20 ~~[(3) a shared tenant service,~~

21 ~~[(4) a specialized communications common carrier~~
22 ~~service,~~

23 ~~[(5) a commercial mobile service, or~~

24 ~~[(6) an operator service as defined by Section 55.081.~~

25 ~~[Sec. 54.004. RELINQUISHMENT PLAN. A holder of a service~~
26 ~~provider certificate of operating authority who applies for a~~
27 ~~certificate of operating authority or a certificate of convenience~~

1 ~~and necessity for the same territory must include with the~~
2 ~~application a plan to relinquish the service provider certificate~~
3 ~~of operating authority.~~

4 ~~[Sec. 54.005.]~~ NOTICE OF AND HEARING ON APPLICATION. (a)
5 When an application for a Network Provider or Service Provider
6 certificate is filed for an entity that did not possess a
7 certificate of convenience and necessity, a certificate of
8 ~~[operating] authority[.]~~ or a service provider certificate of
9 operating authority ~~[is filed,]~~ on August 31, 2005, the commission
10 shall:

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

13 (2) if requested:

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

15 (B) give notice of the hearing.

16 (b) A person interested in the application may intervene at
17 the hearing.

18 Sec. ~~[54.006. REQUEST FOR PRELIMINARY ORDER.]~~
19 54.004. GRANT OR DENIAL OF CERTIFICATE. (a) ~~[A~~
20 ~~telecommunications utility that wants to exercise a right or~~
21 ~~privilege under a franchise or permit that the utility anticipates~~
22 ~~obtaining but has not been granted may apply to the commission for a~~
23 ~~preliminary order under this section.~~

24 ~~[(b) The commission may issue a preliminary order declaring~~
25 ~~that the commission, on application and under commission rules,~~
26 ~~will grant the requested certificate of convenience and necessity,~~
27 ~~certificate of operating authority, or service provider~~

1 ~~certificate of operating authority, on terms the commission~~
2 ~~designates,] The commission must grant or deny a certificate not~~
3 ~~later than the 60th day~~ after the ~~[telecommunications utility~~
4 ~~obtains] date the [franchise or permit] application for the~~
5 ~~certificate is filed.~~

6 (b) The commission shall grant each certificate on a
7 nondiscriminatory basis after considering the technical and
8 financial qualifications of the applicant. No applicant shall
9 receive a certificate if any of its officers or directors has ever
10 been convicted of a felony.

11 ~~[(c) The commission shall grant the certificate on~~
12 ~~presentation of evidence satisfactory to the commission that the~~
13 ~~telecommunications utility has obtained the franchise or permit.~~

14 ~~[Sec. 54.007. FLEXIBILITY PLAN. (a) After the commission~~
15 ~~grants an application for a certificate of convenience and~~
16 ~~necessity, a certificate of operating authority, or a service~~
17 ~~provider certificate of operating authority or determines that a~~
18 ~~certificate is not needed for the applicant to provide the relevant~~
19 ~~services, the commission shall conduct appropriate proceedings to~~
20 ~~establish a transitional flexibility plan for the incumbent local~~
21 ~~exchange company in the same area or areas as the new certificate~~
22 ~~holder.~~

23 ~~[(b) A basic local telecommunications service price of the~~
24 ~~incumbent local exchange company may not be increased before the~~
25 ~~fourth anniversary of the date the certificate is granted to the~~
26 ~~applicant except that the price may be increased as provided by this~~
27 ~~title.]~~

1 Sec. [~~54.008.~~] 54.005. REVOCATION OR AMENDMENT OF
2 CERTIFICATE. [~~(a)~~] The commission [~~may~~] shall revoke or amend a
3 certificate [~~of convenience and necessity, a certificate of~~
4 ~~operating authority or a service provider certificate of operating~~
5 ~~authority~~] after notice and hearing if the commission finds that
6 the certificate holder has never provided or is no longer providing
7 service in all or any part of the certificated area.

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

11 SUBCHAPTER B. [~~CERTIFICATE OF CONVENIENCE AND NECESSITY~~

12 [~~Sec. 54.051. DEFINITION. In this subchapter,~~
13 ~~"certificate" means a certificate of convenience and necessity.~~
14 ~~(Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997.)~~

15 [~~Sec. 54.052. CERTIFICATE REQUIRED FOR PUBLIC UTILITY. (a)~~
16 ~~A public utility may not directly or indirectly provide service to~~
17 ~~the public under a franchise or permit unless the utility first~~
18 ~~obtains from the commission a certificate that states that the~~
19 ~~public convenience and necessity requires or will require the~~
20 ~~installation, operation, or extension of the service.~~

21 [~~(b) Except as otherwise provided by this chapter, a public~~
22 ~~utility may not furnish or make available retail public utility~~
23 ~~service to an area in which retail utility service is being lawfully~~
24 ~~furnished by another public utility unless the utility first~~
25 ~~obtains a certificate that includes the area in which the consuming~~
26 ~~facility is located.~~

27 [~~Sec. 54.053. APPLICATION FOR CERTIFICATE. (a) A public~~

1 ~~utility that wants to obtain or amend a certificate must submit an~~
2 ~~application to the commission.~~

3 ~~[(b) The applicant shall file with the commission evidence~~
4 ~~the commission requires to show the applicant has received the~~
5 ~~consent, franchise, or permit required by the proper municipal or~~
6 ~~other public authority.~~

7 ~~[Sec. 54.054. GRANT OR DENIAL OF CERTIFICATE. (a) The~~
8 ~~commission may approve an application and grant a certificate only~~
9 ~~if the commission finds that the certificate is necessary for the~~
10 ~~service, accommodation, convenience, or safety of the public.~~

11 ~~[(b) The commission may:~~

12 ~~[(1) grant the certificate as requested;~~

13 ~~[(2) grant the certificate for the construction of a~~
14 ~~portion of the requested system, facility, or extension or the~~
15 ~~partial exercise of the requested right or privilege; or~~

16 ~~[(3) refuse to grant the certificate.~~

17 ~~[(c) The commission shall grant each certificate on a~~
18 ~~nondiscriminatory basis after considering:~~

19 ~~[(1) the adequacy of existing service;~~

20 ~~[(2) the need for additional service;~~

21 ~~[(3) the effect of granting the certificate on the~~
22 ~~recipient of the certificate and any public utility of the same kind~~
23 ~~serving the proximate area; and~~

24 ~~[(4) other factors, such as:~~

25 ~~[(A) community values;~~

26 ~~[(B) recreational and park areas;~~

27 ~~[(C) historical and aesthetic values;~~

1 ~~[(D) environmental integrity; and~~

2 ~~[(E) the probable improvement of service or~~
3 ~~lowering of cost to consumers in the area if the certificate is~~
4 ~~granted.~~

5 ~~[SUBCHAPTER C. CERTIFICATE OF OPERATING AUTHORITY~~

6 ~~[Sec. 54.101. DEFINITION. In this subchapter,~~
7 ~~"certificate" means a certificate of operating authority. (Acts~~
8 ~~1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997.)~~

9 ~~[Sec. 54.102. APPLICATION FOR CERTIFICATE. (a) A person~~
10 ~~may apply for a certificate of operating authority.~~

11 ~~[(b) The applicant must file with the application a sworn~~
12 ~~statement that the applicant has applied for each municipal~~
13 ~~consent, franchise, or permit required for the type of services and~~
14 ~~facilities for which the applicant has applied.~~

15 ~~[(c) An affiliate of a person holding a certificate of~~
16 ~~convenience and necessity may hold a certificate of operating~~
17 ~~authority if the holder of the certificate of convenience and~~
18 ~~necessity is in compliance with federal law and Federal~~
19 ~~Communications Commission rules governing affiliates and~~
20 ~~structural separation. An affiliate of a person holding a~~
21 ~~certificate of convenience and necessity may not directly or~~
22 ~~indirectly sell to a non-affiliate any regulated product or service~~
23 ~~purchased from the person holding a certificate of convenience and~~
24 ~~necessity at any rate or price less than the price paid to the~~
25 ~~person holding a certificate of convenience and necessity.~~

26 ~~[(d) A person may hold a certificate for all or any portion~~
27 ~~of a service area for which one or more affiliates of the person~~

1 ~~holds a certificate of operating authority, a service provider~~
2 ~~certificate of operating authority, or a certificate of convenience~~
3 ~~and necessity.~~

4 ~~[(c) An affiliate of a company that holds a certificate of~~
5 ~~convenience and necessity and that serves more than five million~~
6 ~~access lines in this state may hold a certificate of operating~~
7 ~~authority or service provider certificate of operating authority to~~
8 ~~provide service in an area of this state in which its affiliated~~
9 ~~company is the incumbent local exchange company. However, the~~
10 ~~affiliate holding the certificate of operating authority or service~~
11 ~~provider certificate of operating authority may not provide in that~~
12 ~~area any service listed in Sections 58.051(a)(1)-(4) or Sections~~
13 ~~58.151(1)-(4), or any subset of those services, in a manner that~~
14 ~~results in a customer-specific contract so long as the affiliated~~
15 ~~company that is the incumbent local exchange company may not~~
16 ~~provide those services or subsets of services in a manner that~~
17 ~~results in a customer-specific contract under Section 58.003 in~~
18 ~~that area. This subsection does not preclude an affiliate of a~~
19 ~~company holding a certificate of convenience and necessity from~~
20 ~~holding a certificate of operating authority in any area of this~~
21 ~~state to provide advanced services as defined by rules or orders of~~
22 ~~the Federal Communications Commission, or preclude such an advanced~~
23 ~~services affiliate from using any form of pricing flexibility, with~~
24 ~~regard to services other than those subject to the restrictions~~
25 ~~provided by this subsection. This subsection does not preclude a~~
26 ~~long distance affiliate from using any form of pricing flexibility~~
27 ~~with regard to services other than those services subject to the~~

1 ~~restrictions provided by this subsection. In addition, the~~
2 ~~affiliate holding the certificate of operating authority or service~~
3 ~~provider certificate of operating authority may not offer, in an~~
4 ~~area for which the affiliated incumbent local exchange company~~
5 ~~holds a certificate of convenience and necessity, a service listed~~
6 ~~in Sections 58.151(1)-(4) as a component of a package of services,~~
7 ~~as a promotional offering, or with a volume or term discount until~~
8 ~~the affiliated incumbent local exchange company may offer those~~
9 ~~services in pricing flexibility offerings in accordance with~~
10 ~~Section 58.004, unless the customer of one of these pricing~~
11 ~~flexibility offerings is a federal, state, or local governmental~~
12 ~~entity.~~

13 ~~[(f) The commission has the authority to enforce this~~
14 ~~section.~~

15 ~~[Sec. 54.103. GRANT OR DENIAL OF CERTIFICATE. (a) The~~
16 ~~commission must grant or deny a certificate not later than the 60th~~
17 ~~day after the date the application for the certificate is filed.~~
18 ~~The commission may extend the deadline on good cause shown.~~

19 ~~(b) The commission shall grant each certificate on a~~
20 ~~nondiscriminatory basis after considering factors such as:~~

21 ~~[(1) the technical and financial qualifications of the~~
22 ~~applicant, and~~

23 ~~[(2) the applicant's ability to meet the commission's~~
24 ~~quality of service requirements.~~

25 ~~[(c) In an exchange of an incumbent local exchange company~~
26 ~~that serves fewer than 31,000 access lines, in addition to the~~
27 ~~factors described by Subsection (b), the commission shall consider:~~

1 ~~[(1) the effect of granting the certificate on a~~
2 ~~public utility serving the area and on that utility's customers;~~

3 ~~[(2) the ability of that public utility to provide~~
4 ~~adequate service at reasonable rates;~~

5 ~~[(3) the effect of granting the certificate on the~~
6 ~~ability of that public utility to act as the provider of last~~
7 ~~resort; and~~

8 ~~[(4) the ability of the exchange, not the company, to~~
9 ~~support more than one provider of service.~~

10 ~~[(d) Except as provided by Subsections (c) and (f), the~~
11 ~~commission may grant an application for a certificate only for an~~
12 ~~area or areas that are contiguous and reasonably compact and cover~~
13 ~~an area of at least 27 square miles.~~

14 ~~[(e) In an exchange in a county that has a population of less~~
15 ~~than 500,000 and that is served by an incumbent local exchange~~
16 ~~company that has more than 31,000 access lines, an area covering~~
17 ~~less than 27 square miles may be approved if the area is contiguous~~
18 ~~and reasonably compact and has at least 20,000 access lines.~~

19 ~~[(f) In an exchange of a company that serves fewer than~~
20 ~~31,000 access lines in this state, the commission may grant an~~
21 ~~application only for an area that has boundaries similar to the~~
22 ~~boundaries of the serving central office that is served by the~~
23 ~~incumbent local exchange company that holds the certificate of~~
24 ~~convenience and necessity for the area.~~

25 ~~[(g) The commission may not grant a certificate in an~~
26 ~~exchange of an incumbent local exchange company that serves fewer~~
27 ~~than 31,000 access lines. The commission shall require an~~

1 ~~applicant to meet the other appropriate certification provisions of~~
2 ~~this chapter. This subsection expires September 1, 1998.~~

3 ~~[Sec. 54.104. TIME OF SERVICE REQUIREMENTS. (a) The~~
4 ~~commission by rule may prescribe the period within which a~~
5 ~~certificate holder must be able to serve customers.~~

6 ~~[(b) Notwithstanding Subsection (a), a certificate holder~~
7 ~~must serve a customer in the build-out area not later than the 30th~~
8 ~~day after the date the customer requests service.~~

9 ~~[Sec. 54.105. PENALTY FOR VIOLATION OF TITLE. If a~~
10 ~~certificate holder fails to comply with a requirement of this~~
11 ~~title, the commission may:~~

12 ~~[(1) revoke the holder's certificate;~~

13 ~~[(2) impose against the holder administrative~~
14 ~~penalties under Subchapter B, Chapter 15; or~~

15 ~~[(3) take another action under Subchapter B, Chapter~~
16 ~~15.~~

17 ~~[SUBCHAPTER D. SERVICE PROVIDER CERTIFICATE OF OPERATING AUTHORITY~~

18 ~~[Sec. 54.151. DEFINITION. In this subchapter,~~
19 ~~"certificate" means a service provider certificate of operating~~
20 ~~authority. (Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1,~~
21 ~~1997.)~~

22 ~~[Sec. 54.152. LIMITATION ON GRANT OF CERTIFICATE. The~~
23 ~~commission may not grant a certificate to a holder of a:~~

24 ~~[(1) certificate of convenience and necessity for the~~
25 ~~same territory; or~~

26 ~~[(2) certificate of operating authority for the same~~
27 ~~territory.~~

1 ~~[Sec. 54.153. ELIGIBILITY FOR CERTIFICATE. (a) A company~~
2 ~~is not eligible to obtain a certificate under this subchapter if the~~
3 ~~company, together with affiliates, had more than six percent of the~~
4 ~~total intrastate switched access minutes of use as measured for the~~
5 ~~most recent 12-month period.~~

6 ~~[(1) that precedes the date the application is filed,~~
7 ~~and~~

8 ~~[(2) for which the access information is available.~~

9 ~~[(b) The commission shall obtain information necessary to~~
10 ~~determine eligibility from the incumbent local exchange telephone~~
11 ~~companies and the applicant.~~

12 ~~[(c) The commission shall certify eligibility not later~~
13 ~~than the 10th day after the date the application is filed.~~

14 ~~[(d) In this section:~~

15 ~~[(1) "Affiliate" means an entity that, directly or~~
16 ~~indirectly, owns or controls, is owned or controlled by, or is under~~
17 ~~common ownership or control with a company that applies for a~~
18 ~~certificate under this subchapter.~~

19 ~~[(2) "Control" means to exercise substantial~~
20 ~~influence over the policies and actions of another.~~

21 ~~[Sec. 54.154. APPLICATION FOR CERTIFICATE. (a) The~~
22 ~~commission may grant a certificate to encourage an innovative,~~
23 ~~competitive, and entrepreneurial business to provide~~
24 ~~telecommunications services.~~

25 ~~[(b) An applicant for a certificate must:~~

26 ~~[(1) file with the application:~~

27 ~~[(A) a sworn statement that the applicant has~~

1 ~~applied for each municipal consent, franchise, or permit required~~
2 ~~for the type of services and facilities for which the applicant has~~
3 ~~applied; and~~

4 ~~[(B) a description of the services the applicant~~
5 ~~will provide;~~

6 ~~[(2) show the areas in which the applicant will~~
7 ~~provide the services;~~

8 ~~[(3) demonstrate that the applicant has the financial~~
9 ~~and technical ability to provide services; and~~

10 ~~[(4) demonstrate that the services will meet the~~
11 ~~requirements of this subchapter.~~

12 ~~[Sec. 54.155. GRANT OR DENIAL OF CERTIFICATE. (a) The~~
13 ~~commission must grant or deny a certificate not later than the 60th~~
14 ~~day after the date the application for the certificate is filed.~~
15 ~~The commission may extend the deadline on good cause shown.~~

16 ~~[(b) The commission shall grant each certificate on a~~
17 ~~nondiscriminatory basis after considering factors such as:~~

18 ~~[(1) the technical and financial qualifications of the~~
19 ~~applicant; and~~

20 ~~[(2) the applicant's ability to meet the commission's~~
21 ~~quality of service requirements.~~

22 ~~[Sec. 54.156. RESALE OF SERVICES. (a) A certificate holder~~
23 ~~may obtain services under the resale tariffs approved by the~~
24 ~~commission under Subchapter C, Chapter 60, except in a certificated~~
25 ~~area of a company that serves fewer than 31,000 access lines.~~

26 ~~[(b) A certificate holder may obtain for resale the monthly~~
27 ~~recurring flat rate local exchange telephone service and associated~~

1 ~~nonrecurring charges, including any mandatory extended area~~
2 ~~service, of an incumbent local exchange company at a five percent~~
3 ~~discount to the tariffed rate.~~

4 ~~[(c) The incumbent local exchange company shall sell a~~
5 ~~feature service that may be provided to a customer in conjunction~~
6 ~~with local exchange service at a five percent discount to the~~
7 ~~tariffed rate, including any associated nonrecurring charge for~~
8 ~~those services, provided that the incumbent local exchange company~~
9 ~~shall make available to a certificate holder, at an additional five~~
10 ~~percent discount, any discounts made available to customers of the~~
11 ~~incumbent local exchange company who are similarly situated to the~~
12 ~~customers of the certificate holder. In this subsection "feature~~
13 ~~service" includes:~~

14 ~~[(1) toll restriction,~~

15 ~~[(2) call control options,~~

16 ~~[(3) tone dialing,~~

17 ~~[(4) custom calling, and~~

18 ~~[(5) caller identification.~~

19 ~~[(d) A certificate holder and an incumbent local exchange~~
20 ~~company may agree to a rate lower than the tariffed rate or~~
21 ~~discounted rate.~~

22 ~~[(e) The five percent discounts provided by this section do~~
23 ~~not apply in an exchange of a company that has fewer than 31,000~~
24 ~~access lines in this state.~~

25 ~~[(f) If the tariffed rate for a resold service changes, the~~
26 ~~five percent discount prescribed by this section applies to the~~
27 ~~changed rate. The commission may not, for certificate holders,~~

1 ~~create a special class for purposes of resold services.~~

2 ~~[(g) A certificate holder:~~

3 ~~[(1) may not use a resold flat rate local exchange~~
4 ~~telephone service to avoid the rates and terms of an incumbent local~~
5 ~~exchange company's tariffs;~~

6 ~~[(2) may not terminate both flat rate local exchange~~
7 ~~telephone service and services obtained under the resale tariff~~
8 ~~approved under Section 60.041 on the same end user customer's~~
9 ~~premises;~~

10 ~~[(3) may not use resold flat rate local exchange~~
11 ~~telephone services to provide access services to another~~
12 ~~interexchange carrier, cellular carrier, competitive access~~
13 ~~provider, or retail telecommunications provider, but may permit~~
14 ~~customers to use resold local exchange telephone services to access~~
15 ~~such a carrier or provider;~~

16 ~~[(4) may sell the flat rate local exchange telephone~~
17 ~~service only to the same class of customers to which the incumbent~~
18 ~~local exchange company sells that service;~~

19 ~~[(5) may obtain services offered by or negotiated with~~
20 ~~a holder of a certificate of convenience and necessity or a~~
21 ~~certificate of operating authority; and~~

22 ~~[(6) may obtain for resale single or multiple line~~
23 ~~flat rate intraLATA calling service when provided by the local~~
24 ~~exchange company at the tariffed rate for online digital~~
25 ~~communications.~~

26 ~~[Sec. 54.157. OPTIONAL EXTENDED AREA SERVICE OR EXPANDED~~
27 ~~LOCAL CALLING SERVICE. (a) A certificate holder may purchase for~~

1 ~~resale:~~

2 ~~[(1) optional extended area service; and~~

3 ~~[(2) expanded local calling service.~~

4 ~~[(b) The purchase of optional extended area service and~~
5 ~~expanded local calling service may not be discounted.~~

6 ~~[Sec. 54.158. INTERFERENCE WITH RESOLD SERVICES~~
7 ~~PROHIBITED. An incumbent local exchange company may not:~~

8 ~~[(1) delay providing or maintaining a service provided~~
9 ~~under this subchapter;~~

10 ~~[(2) degrade the quality of access the company~~
11 ~~provides to another provider;~~

12 ~~[(3) impair the speed, quality, or efficiency of a~~
13 ~~line used by another provider;~~

14 ~~[(4) fail to fully disclose in a timely manner after a~~
15 ~~request all available information necessary for a certificate~~
16 ~~holder to provide resale services; or~~

17 ~~[(5) refuse to take a reasonable action to allow a~~
18 ~~certificate holder efficient access to the company's ordering,~~
19 ~~billing, or repair management system.~~

20 ~~[Sec. 54.159. RETENTION OF ACCESS SERVICE AND INTRALATA~~
21 ~~TOLL SERVICE. An incumbent local exchange company that sells flat~~
22 ~~rate local exchange telephone service to a certificate holder may~~
23 ~~retain all access service and "1-plus" intraLATA toll service that~~
24 ~~originates over the resold flat rate local exchange telephone~~
25 ~~service.~~

26 ~~[SUBCHAPTER E.] MUNICIPALITIES~~

27 Sec. 54.201. CERTIFICATION PROHIBITED. The commission may

1 not grant to a municipality a[+]

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

3 ~~[(2) certificate of operating authority,~~ network

4 provider or

5 ~~[(3)]~~ service provider certificate ~~[of operating~~

6 ~~authority].~~

7 Sec. 54.202. PROHIBITED MUNICIPAL SERVICES. ~~[(a)]~~ A
8 municipality or ~~[municipal electric system may not]~~ municipally
9 owned utility may not, directly or indirectly, on its own or with
10 another entity, offer [for sale] to the public:

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

14 (2) a service as a network provider; or

15 (3) ~~[(2) a nonswitched]~~ any telecommunications or
16 information service, without regard to the technology platform used
17 to ~~[connect a customer's premises with.]~~ provide the service.

18 ~~[(A) another customer's premises within the~~
19 ~~exchange; or~~

20 ~~[(B) a long distance provider that serves the~~
21 ~~exchange.~~

22 ~~[(b) Subsection (a) applies to a service offered either~~
23 ~~directly or indirectly through a telecommunications provider.]~~

24 Sec. 54.2025. LEASE OF FIBER OPTIC CABLE FACILITIES.
25 Nothing in this subchapter shall prevent a municipality~~[, or]~~ which
26 operates a municipal electric system that is a member of a municipal
27 power agency formed under Chapter 163 by adoption of a concurrent

1 resolution by the participating municipalities on or before August
2 1, 1975, from leasing any of the excess capacity of its fiber optic
3 cable facilities (dark fiber), so long as the rental of the fiber
4 facilities is done on a nondiscriminatory, nonpreferential basis.

5 Sec. 54.203. SERVICE IN ANNEXED OR INCORPORATED AREA. (a)
6 If an area is or will be included within a municipality as the
7 result of annexation, incorporation, or another reason, each
8 ~~[telecommunications utility]~~ person that holds or is entitled to
9 hold a certificate under this title to provide service or operate a
10 facility in the area before the inclusion has the right to continue
11 to provide the service or operate the facility and extend service in
12 the ~~[utility's]~~ person's certificated area within the annexed or
13 incorporated area under the rights granted by the certificate and
14 this title.

15 (b) Notwithstanding any other law, a ~~[certificated~~
16 ~~telecommunications utility]~~ holder of a certificate has the right
17 to:

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

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

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

27 (1) giving the ~~[utility]~~ certificate holder 30 days'

1 notice; and

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

4 (d) This section does not limit the power of a city, town, or
5 village to incorporate or of a municipality to extend its
6 boundaries by annexation.

7 Sec. 54.204. DISCRIMINATION BY MUNICIPALITY PROHIBITED.

8 (a) Notwithstanding Section 14.008, a municipality or a
9 municipally owned utility may not discriminate against a
10 [~~telecommunications~~] certificate [~~utility~~] holder regarding:

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

13 (2) access to a building; or

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

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

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

26 (2) the authorization, placement, replacement, or
27 removal of a [~~telecommunications~~] facility in a public right-of-way

1 and the reasonable compensation for the authorization, placement,
2 replacement, or removal regardless of whether the compensation is
3 in the form of:

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

8 (c) [~~Notwithstanding Subsection (b)(1), a~~] A municipal
9 utility or municipally owned utility may not charge a pole
10 attachment rate or underground conduit rate that exceeds the fee
11 [~~the utility~~] it would be permitted to charge if [~~the utility's~~] its
12 rates were regulated under federal law and the rules of the Federal
13 Communications Commission. Provided further, consistent with the
14 requirement of Sec. 57.002 of this Act, a municipal utility shall
15 charge a certificate holder which also qualifies under Sec. 57.002,
16 the lower of the attachment fee that would apply to networks or
17 facilities carrying voice or to networks or facilities carrying
18 other services including cable television services, consistent
19 with that section.

20 (d) Notwithstanding any other law, the commission has the
21 jurisdiction necessary to enforce this section.

22 Sec. 54.205. MUNICIPALITY'S RIGHT TO CONTROL ACCESS. (a)
23 This title does not restrict a municipality's historical right to
24 control and receive reasonable compensation for access to the
25 municipality's public streets, alleys, or rights-of-way or to other
26 public property.

27 (b) The legislature finds that controversy exists between

1 municipalities and providers of voice and video services over the
 2 appropriate method by which municipalities should be compensated
 3 for use of the public right of way. The commission is directed to
 4 develop a new mechanism that shall be technology neutral for the
 5 compensation of municipalities that shall apply uniformly to
 6 providers of voice and video services that provide that service
 7 including community antenna television services and commercial
 8 mobile service. The new mechanism shall be revenue neutral and
 9 shall replace all current forms of compensation whether by
 10 franchise, ordinance or statute. The commission is granted such
 11 authority as is required to perform this duty; however, this
 12 paragraph shall not be construed to grant any jurisdiction to the
 13 commission to otherwise regulate video services in this state.

14 Sec. 54.206. RECOVERY OF MUNICIPAL FEE. (a) A [~~holder of a~~
 15 ~~certificate of convenience and necessity, a certificate of~~
 16 ~~operating authority, or a service]~~ provider [~~certificate of~~
 17 ~~operating authority]~~ that is required to pay a municipal fee has the
 18 right to collect a fee that a municipality imposes under Section
 19 54.204 or 54.205 through a pro rata charge to the customers in the
 20 boundaries of the municipality.

21 (b) The charge may be shown on the customer's bill as a
 22 separate line item.

23 SUBCHAPTER [~~F~~] C. REGULATION OF SERVICES, AREAS, AND FACILITIES

24 Sec. 54.251. PROVISION OF SERVICE. [~~(a)~~] Except as
 25 provided by this [~~section, Section 54.252, Section 54.253,~~
 26 Subchapter and [~~Section 54.254, a telecommunications utility that~~
 27 ~~holds a certificate of convenience and necessity or a certificate~~

1 ~~of operating authority shall:~~

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

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

6 ~~[(b) Except as specifically determined otherwise by the~~
7 ~~commission under this subchapter or] Subchapter G, [the holder of a~~
8 ~~certificate of convenience and necessity for] an [area] incumbent~~
9 ~~local exchange company has the [obligations] obligation of a~~
10 ~~provider of last resort [regardless of whether another provider has~~
11 ~~a certificate of operating authority or service provider~~
12 ~~certificate of operating authority for that area], although it may~~
13 ~~meet those obligations using any technology available.~~

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

21 (1) nonpayment of charges;

22 (2) nonuse; or

23 (3) another similar reason that occurs in the usual
24 course of business.

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

1 Sec. 54.253. [~~DISCONTINUATION OF SERVICE BY CERTAIN~~
2 ~~CERTIFICATE HOLDERS.~~ (a) A telecommunications utility that holds
3 ~~a certificate of operating authority or a service provider~~
4 ~~certificate of operating authority may:~~

5 ~~[(1) cease operations in the utility's certificated~~
6 ~~area; or~~

7 ~~[(2) discontinue an optional service that is not~~
8 ~~essential to providing basic local telecommunications service.~~

9 ~~[(b) Before the telecommunications utility ceases~~
10 ~~operations or discontinues an optional service, the utility, in the~~
11 ~~manner required by the commission, must give notice of the intended~~
12 ~~action to:~~

13 ~~[(1) the commission;~~

14 ~~[(2) each affected customer;~~

15 ~~[(3) the Commission on State Emergency~~
16 ~~Communications;~~

17 ~~[(4) the office; and~~

18 ~~[(5) each wholesale provider of telecommunications~~
19 ~~facilities or services from which the utility has purchased~~
20 ~~facilities or services.~~

21 ~~[(c) The telecommunications utility is entitled to~~
22 ~~discontinue an optional service on or after the 61st day after the~~
23 ~~date the utility gives the notice.~~

24 ~~[(d) The telecommunications utility may not cease~~
25 ~~operations in its certificated area unless the commission~~
26 ~~authorizes the utility to cease operations and:~~

27 ~~[(1) another provider of basic local~~

1 ~~telecommunications services has adequate facilities and capacity~~
2 ~~to serve the customers in the certificated area; and~~

3 ~~[(2) the utility is an "exiting utility," as that term~~
4 ~~is defined by Section 54.301, no other telecommunications utility~~
5 ~~has facilities sufficient to provide basic local~~
6 ~~telecommunications service in the defined geographic area, and the~~
7 ~~utility acts in good faith to provide for a transition of the~~
8 ~~utility's existing basic local telecommunications service~~
9 ~~customers to another holder of a certificate for that area.~~

10 ~~[(c) The commission may not authorize the~~
11 ~~telecommunications utility to cease operations under Subsection~~
12 ~~(d) before the 61st day after the date the utility gives the notice~~
13 ~~required by Subsection (b). Unless the commission receives a~~
14 ~~complaint from an affected person, the commission may enter an~~
15 ~~order under this subsection administratively.~~

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

22 ~~[Sec. 54.255. TRANSFER OF CERTAIN CERTIFICATES. (a) A~~
23 ~~telecommunications utility may sell, assign, or lease a certificate~~
24 ~~of convenience and necessity or a certificate of operating~~
25 ~~authority or a right obtained under such a certificate if the~~
26 ~~commission determines that the purchaser, assignee, or lessee can~~
27 ~~provide adequate service.~~

1 ~~[(b) The sale, assignment, or lease of a certificate or a~~
2 ~~right is subject to conditions the commission prescribes.~~

3 ~~[Sec. 54.256. APPLICATION OF CONTRACTS. A contract~~
4 ~~approved by the commission between telecommunications utilities~~
5 ~~that designates areas and customers to be served by the utilities.~~

6 ~~[(1) is valid and enforceable; and~~

7 ~~[(2) shall be incorporated into the appropriate areas~~
8 ~~of certification.~~

9 ~~[Sec. 54.257. INTERFERENCE WITH ANOTHER TELECOMMUNICATIONS~~
10 ~~UTILITY. If a telecommunications utility constructing or extending~~
11 ~~the utility's lines, plant, or system interferes or attempts to~~
12 ~~interfere with the operation of a line, plant, or system of another~~
13 ~~utility, the commission by order may:~~

14 ~~[(1) prohibit the construction or extension; or~~

15 ~~[(2) prescribe terms for locating the affected lines,~~
16 ~~plants, or systems.~~

17 ~~[Sec. 54.258. MAPS. A public utility shall file with the~~
18 ~~commission one or more maps that show each utility facility and that~~
19 ~~separately illustrate each utility facility for transmission or~~
20 ~~distribution of the utility's services on a date the commission~~
21 ~~orders.]~~

22 Sec. 54.259. DISCRIMINATION BY PROPERTY OWNER PROHIBITED.

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

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

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

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

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

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

18 (b) Subsection (a) does not apply to an institution of
19 higher education. In this subsection, "institution of higher
20 education" means:

21 (1) an institution of higher education as defined by
22 Section 61.003, Education Code; or

23 (2) a private or independent institution of higher
24 education as defined by Section 61.003, Education Code.

25 (c) Notwithstanding any other law, the commission has the
26 jurisdiction to enforce this section.

27 Sec. 54.260. PROPERTY OWNER'S CONDITIONS. (a)

1 Notwithstanding Section 54.259, if a [~~telecommunications utility~~]
2 holder of a certificate holds a municipal consent, franchise, or
3 permit as determined to be the appropriate grant of authority by the
4 municipality [~~and holds a certificate if required by this title~~], a
5 public or private property owner may:

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

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

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

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

14 (3) impose a reasonable limitation on the number of
15 such utilities that have access to the owner's property, if the
16 owner can demonstrate a space constraint that requires the
17 limitation;

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

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

24 (6) require the [~~utility~~] certificate holder to pay
25 compensation that is reasonable and nondiscriminatory among such
26 [~~telecommunications~~] services [~~utilities~~] providers.

27 (b) Notwithstanding any other law, the commission has the

1 jurisdiction to enforce this section.

2 ~~[Sec. 54.261. SHARED TENANT SERVICES CONTRACT. Sections~~
3 ~~54.259 and 54.260 do not require a public or private property owner~~
4 ~~to enter into a contract with a telecommunications utility to~~
5 ~~provide shared tenant services on a property.]~~

6 SUBCHAPTER ~~[G]~~ D. PROVIDER OF LAST RESORT

7 Sec. 54.301. DEFINITIONS. In this subchapter:

8 (1) "Exiting ~~[utility]~~ provider" means a
9 ~~[telecommunications utility]~~ holder of a local exchange telephone
10 certificate that:

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

13 (A) ~~[(B)]~~ is the ~~[predominant provider of basic]~~
14 dominant local ~~[telecommunications]~~ exchange ~~[service]~~ company in
15 a defined geographic area and provides those services using ~~[the~~
16 ~~utility's]~~ its own facilities; and

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

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

23 (3) "Successor ~~[utility]~~ provider" means a
24 ~~[telecommunications utility that holds]~~ holder of a local exchange
25 telephone certificate ~~[of convenience and necessity, certificate~~
26 ~~of operating authority, or service provider certificate of~~
27 ~~operating authority,]~~ and that is or is designated to become the

1 provider of last resort for the defined geographic area previously
2 served by an exiting [~~utility~~] provider.

3 Sec. 54.302. PROVIDER OF LAST RESORT; FACILITIES-BASED
4 PROVIDERS. (a) Notwithstanding any other provision of this title,
5 if a [~~telecommunications utility~~] holder of a local exchange
6 telephone certificate installs facilities to serve customers
7 located in a defined geographic area to provide telecommunications
8 services, including [~~basic~~] local [~~telecommunications~~] exchange
9 telephone service, before the [~~holder~~] previously-designated
10 provider of [~~the certificate of convenience and necessity~~] last
11 resort installs facilities to serve customers located in that
12 defined geographic area, the [~~holder~~] previously-designated
13 provider of [~~the certificate of convenience and necessity~~] last
14 resort may petition the commission for an order relieving the
15 [~~utility of the utility's designation as the~~]
16 previously-designated provider of last resort of its obligations in
17 that defined geographic area.

18 (b) The commission shall relieve the [~~holder of the~~
19 ~~certificate of convenience and necessity of the~~] entity with prior
20 obligations of service as the provider of last resort for the
21 defined geographic area, and the commission shall designate the
22 facilities-based [~~telecommunications utility~~] holder of a local
23 exchange telephone certificate as the provider of last resort if
24 the commission determines that:

25 (1) the [~~holder of the certificate of convenience and~~
26 ~~necessity~~] previously-designated provider of last resort does not
27 have facilities in place to provide basic local telecommunications

1 service to all customers within that defined geographic area;

2 (2) [~~another certificated telecommunications utility~~]
3 holder of a local exchange telephone certificate has installed
4 facilities adequate to provide that service throughout that area[+
5 ~~and~~].

6 [~~(3) the public interest would be served by~~
7 ~~transferring the provider of last resort obligations for that~~
8 ~~area.~~]

9 (c) The commission shall complete proceedings necessary to
10 make the determinations prescribed by this section not later than
11 the 91st day after the date the petition is filed under Subsection
12 (a).

13 Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS [~~UTILITY~~]
14 SERVICE PROVIDER WHEN NO SUFFICIENT FACILITIES EXIST. (a) When the
15 commission obtains notice as required under Section 54.253 or
16 otherwise that [~~a utility~~] an entity with a certificate to provide
17 local exchange telephone service intends to become an exiting
18 [~~utility~~] provider and no other [~~telecommunications~~] certificate
19 [~~utility~~] holder has facilities sufficient to provide basic local
20 telecommunications service in that defined geographic area, the
21 commission shall open a contested case proceeding to determine[+
22

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

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

(b) On designation as the successor [~~utility~~] provider

1 under this section, the commission, if applicable, shall provide to
2 the successor [~~utility~~] provider:

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

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

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

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 holder of a [~~certificate of operating authority~~

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

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

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

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

16 (B) abandoned the operation of ~~[the utility's]~~
17 its facilities in the defined geographic area that are used to
18 provide ~~[basic]~~ local ~~[telecommunications]~~ exchange telephone
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 ~~[telecommunications]~~ exchange telephone 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 [~~utility's~~] certificate holder'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 [~~utility~~]
8 provider in accordance with Section 54.303 during a proceeding
9 under this section.

10 Sec. 54.305. COMMISSION PARTICIPATION IN BANKRUPTCY
11 PROCEEDINGS. (a) The commission, on written notice that a
12 [~~certificated telecommunications utility~~] holder of a certificate
13 has filed a petition in bankruptcy or is the subject of an
14 involuntary petition in bankruptcy, may inform the appropriate
15 court and parties of the commission's interest in obtaining notice
16 of proceedings.

17 (b) Within the time prescribed by the applicable statutes,
18 rules, and court orders, the commission may intervene and
19 participate in any bankruptcy proceedings that affect customers or
20 providers of telecommunications services in this state.

21 (c) The office may inform the appropriate court and parties
22 of the office's interest in obtaining notice of the proceedings.
23 Within the time prescribed by the applicable statutes, rules, and
24 court orders, the office may intervene and participate in any
25 bankruptcy proceeding on behalf of residential and small commercial
26 customers.

1 CHAPTER 55. REGULATION OF TELECOMMUNICATIONS SERVICES

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 55.001. [~~GENERAL STANDARD~~] EMERGENCY SERVICE. [A
4 ~~public utility shall furnish service, instrumentalities, and~~
5 ~~facilities that are safe, adequate, efficient, and reasonable.~~

6 [~~Sec. 55.002. COMMISSION AUTHORITY CONCERNING STANDARDS.~~
7 ~~The commission, on its own motion or on complaint and after~~
8 ~~reasonable notice and hearing, may:~~

9 [(1) ~~adopt just and reasonable standards,~~
10 ~~classifications, rules, or practices a public utility must follow~~
11 ~~in furnishing a service,~~

12 [(2) ~~adopt adequate and reasonable standards for~~
13 ~~measuring a condition, including quantity and quality, relating to~~
14 ~~the furnishing of a service,~~

15 [(3) ~~adopt reasonable rules for examining, testing,~~
16 ~~and measuring a service, and~~

17 [(4) ~~adopt or approve reasonable rules,~~
18 ~~specifications, and standards to ensure the accuracy of equipment,~~
19 ~~including meters and instruments, used to measure a service.~~

20 [~~Sec. 55.003. RULE OR STANDARD. (a) A public utility may~~
21 ~~not impose a rule except as provided by this title.~~

22 [(b) ~~A public utility may file with the commission a~~
23 ~~standard, classification, rule, or practice the utility follows.~~

24 [(c) ~~The standard, classification, rule, or practice~~
25 ~~continues in force until:~~

26 [(1) ~~amended by the utility, or~~

27 [(2) ~~changed by the commission as provided by this~~

1 subtitle.

2 ~~[Sec. 55.004. LOCAL EXCHANGE COMPANY RULE OR PRACTICE~~
3 ~~CHANGE. (a) To make a change in an incumbent local exchange~~
4 ~~company's tariffed rules or practices that does not affect the~~
5 ~~company's charges or rates, the company must file the proposed~~
6 ~~change with the commission at least 35 days before the effective~~
7 ~~date of the change. The commission may require the incumbent local~~
8 ~~exchange company to provide to ratepayers appropriate notice as~~
9 ~~determined by the commission.~~

10 ~~[(b) The commission, on complaint by an affected person or~~
11 ~~on its own motion and after reasonable notice, may hold a hearing to~~
12 ~~determine the propriety of a change proposed under this section.~~
13 ~~Pending the hearing and decision, the commission may suspend the~~
14 ~~change for not longer than 120 days after the date the change would~~
15 ~~otherwise be effective. The commission shall approve, deny, or~~
16 ~~modify the change before the period of suspension expires.~~

17 ~~[(c) In a proceeding under this section, the incumbent local~~
18 ~~exchange company has the burden of proving the proposed change:~~

19 ~~[(1) is in the public interest, and~~

20 ~~[(2) complies with this title.~~

21 ~~[Sec. 55.005. UNREASONABLE PREFERENCE OR PREJUDICE~~
22 ~~CONCERNING SERVICE PROHIBITED. In providing a service to persons~~
23 ~~in a classification, a public utility may not:~~

24 ~~[(1) grant an unreasonable preference or advantage to~~
25 ~~a person in the classification, or~~

26 ~~[(2) subject a person in the classification to an~~
27 ~~unreasonable prejudice or disadvantage.~~

1 ~~[Sec. 55.006. DISCRIMINATION AND RESTRICTION ON~~
2 ~~COMPETITION. A public utility may not:~~

3 ~~[(1) discriminate against a person who sells or leases~~
4 ~~equipment or performs services in competition with the public~~
5 ~~utility; or~~

6 ~~[(2) engage in a practice that tends to restrict or~~
7 ~~impair that competition.~~

8 ~~[Sec. 55.007. MINIMUM SERVICES. (a) The commission shall~~
9 ~~require a] A holder of a certificate [of convenience and necessity~~
10 ~~or] pursuant to Chapter 54 shall provide access to 911 service~~
11 ~~provided by a [certificate of operating] local authority [to~~
12 ~~provide at the applicable tariff rate, if any, to each customer,~~
13 ~~regardless of race, national origin, income,] or [residence in an~~
14 ~~urban or rural area.~~

15 ~~[(1) single=] dual party relay service[+].~~

16 ~~[(2) tone-dialing service,]~~

17 ~~[(3) basic custom calling features,]~~

18 ~~[(4) equal access for an interLATA interexchange~~
19 ~~carrier on a bona fide request; and~~

20 ~~[(5) digital switching capability in an exchange on~~
21 ~~customer request, provided by a digital switch in the exchange or by~~
22 ~~connection to a digital switch in another exchange.~~

23 ~~[(b) Notwithstanding Subsection (a), an electing incumbent~~
24 ~~local exchange company serving more than 175,000 but fewer than~~
25 ~~1,500,000 access lines on January 1, 1995, shall install a digital~~
26 ~~switch in each central office that serves an exchange of fewer than~~
27 ~~20,000 access lines.~~

1 ~~[(c) The commission may temporarily waive a requirement~~
2 ~~imposed by Subsection (a) or (b) on a showing of good cause.~~

3 ~~[(d) The commission may not consider the cost of~~
4 ~~implementing this section in determining whether an electing~~
5 ~~company is entitled to:~~

6 ~~[(1) a rate increase under Chapter 58 or 59; or~~

7 ~~[(2) increased universal service funds under~~
8 ~~Subchapter B, Chapter 56.~~

9 ~~[(e) A holder of a certificate of convenience and necessity~~
10 ~~or a certificate of operating authority shall comply with~~
11 ~~Subsection (a) not later than December 31, 2000. This subsection~~
12 ~~expires September 1, 2003.~~

13 ~~[(f) An electing incumbent local exchange company subject~~
14 ~~to Subsection (b) shall comply with that subsection not later than~~
15 ~~December 31, 1998. This subsection expires September 1, 2001.~~

16 ~~[Sec. 55.008. IMPROVEMENTS IN SERVICE; INTERCONNECTING~~
17 ~~SERVICE. The commission, after notice and hearing, may:~~

18 ~~[(1) order a public utility to provide specified~~
19 ~~improvements in its service in a specified area if:~~

20 ~~[(A) service in the area is inadequate or~~
21 ~~substantially inferior to service in a comparable area; and~~

22 ~~[(B) requiring the company to provide the~~
23 ~~improved service is reasonable; or~~

24 ~~[(2) order two or more utilities to establish~~
25 ~~specified facilities for interconnecting service.~~

26 ~~[Sec. 55.009. INTRALATA CALLS. (a) If federal law~~
27 ~~prohibits a local exchange company in this state from providing~~

1 ~~interLATA telecommunications services, the local exchange~~
2 ~~companies in this state designated or de facto authorized to~~
3 ~~receive a "0-plus" or "1-plus" dialed intraLATA call are~~
4 ~~exclusively designated or authorized to receive such a call.~~

5 ~~[(b) A telecommunications utility operating under a~~
6 ~~certificate of operating authority or a service provider~~
7 ~~certificate of operating authority is de facto authorized to~~
8 ~~receive a "0-plus" or "1-plus" dialed intraLATA call on the date the~~
9 ~~utility receives its certificate, to the extent the utility is not~~
10 ~~restricted by Section 54.159.~~

11 ~~[(c) If federal law allows all local exchange companies to~~
12 ~~provide interLATA telecommunications services, the commission~~
13 ~~shall ensure that:~~

14 ~~[(1) a customer may designate a provider of the~~
15 ~~customer's choice to carry the customer's "0-plus" and "1-plus"~~
16 ~~dialed intraLATA calls; and~~

17 ~~[(2) equal access in the public network is implemented~~
18 ~~to allow the provider to carry those calls.~~

19 ~~[Sec. 55.010. BILLING FOR SERVICE TO THE STATE. A~~
20 ~~telecommunications utility providing service to the state,~~
21 ~~including service to an agency in any branch of state government,~~
22 ~~may not impose a fee, a penalty, interest, or any other charge for~~
23 ~~delinquent payment of a bill for that service.~~

24 ~~[Sec. 55.011. NOTICE OF IDENTITY OF INTEREXCHANGE CARRIER.~~

25 ~~(a) A local exchange company shall print on the first page of each~~
26 ~~bill sent to a customer of the local exchange company the name of~~
27 ~~the customer's primary interexchange carrier if the company~~

1 ~~provides billing services for that carrier.~~

2 ~~[(b) The bill must contain instructions on how the customer~~
3 ~~can contact the commission if the customer believes that the named~~
4 ~~carrier is not the customer's primary interexchange carrier.~~

5 ~~[(c) The commission may, for good cause, waive the billing~~
6 ~~requirement prescribed by this section in exchanges served by local~~
7 ~~exchange companies serving not more than 31,000 access lines.~~

8 ~~[Sec. 55.012. LIMITATIONS ON DISCONTINUANCE OF BASIC LOCAL~~
9 ~~TELECOMMUNICATIONS SERVICE. (Added by SB 86) (a) A provider of~~
10 ~~basic local telecommunications service may not discontinue that~~
11 ~~service because of nonpayment by a residential customer of charges~~
12 ~~for long distance service. Payment shall first be allocated to~~
13 ~~basic local telecommunications service.~~

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

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

26 ~~[(1) provisions requiring a provider of basic local~~
27 ~~telecommunications service to offer and implement, at the request~~

1 ~~and expense of a long distance service provider, toll blocking~~
2 ~~capability to limit a customer's ability to incur additional~~
3 ~~charges for long distance services after nonpayment for long~~
4 ~~distance services; and~~

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

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

18 ~~[Sec. 55.012. LIFELINE SERVICE. [REPEALED]]~~

19 Sec. 55.013. LIMITATIONS ON DISCONTINUANCE OF BASIC [~~LOCAL~~
20 ~~TELECOMMUNICATIONS]~~ NETWORK SERVICE. [~~Added by SB 560~~] (a) A
21 provider of basic [~~local telecommunications]~~ network service may
22 not discontinue that service because of nonpayment by a residential
23 customer of charges for [~~long distance service~~] Interexchange
24 Telecommunications Service. Payment shall first be allocated to
25 basic [~~local telecommunications]~~ network service.

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

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

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

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

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

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

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

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

6 [~~Sec. 55.014. PROVISION OF ADVANCED TELECOMMUNICATIONS~~
7 ~~SERVICES. (a) In this section, "advanced service" means any~~
8 ~~telecommunications service other than residential or business~~
9 ~~basic local exchange telephone service, caller identification~~
10 ~~service, and customer calling features.~~

11 [~~(b) This section applies to a company electing under~~
12 ~~Chapter 58 or a company that holds a certificate of operating~~
13 ~~authority or service provider certificate of operating authority.~~

14 [~~(c) Notwithstanding any other provision of this title,~~
15 ~~beginning September 1, 2001, a company to which this section~~
16 ~~applies that provides advanced telecommunications services within~~
17 ~~the company's urban service areas, shall, on a bona fide retail~~
18 ~~request for those services, provide in rural areas of this state~~
19 ~~served by the company advanced telecommunications services that~~
20 ~~are reasonably comparable to the advanced services provided in~~
21 ~~urban areas.] The [company shall offer the advanced~~
22 ~~telecommunications services:~~

23 [~~(1) at prices, terms, and conditions that are~~
24 ~~reasonably comparable to the prices, terms, and conditions for~~
25 ~~similar advanced services provided by the company in urban areas,~~
26 ~~and~~

27 [~~(2) within 15 months after the bona fide request for~~

1 ~~those advanced services.~~

2 ~~[(d) Notwithstanding any other provision of this title, a~~
3 ~~company to which this section applies shall, on a bona fide retail~~
4 ~~request for those services, offer caller identification service and~~
5 ~~custom calling features in rural areas served by the company. The~~
6 ~~company shall offer the services:~~

7 ~~[(1) at prices, terms, and conditions reasonably~~
8 ~~comparable to the company's prices, terms, and conditions for~~
9 ~~similar services in urban areas; and~~

10 ~~[(2) within 15 months after the bona fide request for~~
11 ~~those services.~~

12 ~~[(e) This section may not be construed to require a company~~
13 ~~to:~~

14 ~~[(1) begin providing services in a rural area in which~~
15 ~~the company does not provide local exchange telephone service; or~~

16 ~~[(2) provide a service in a rural area of this state~~
17 ~~unless the company provides the service in urban areas of this~~
18 ~~state.~~

19 ~~[(f) For purposes of this section, a company to which this~~
20 ~~section applies is considered to provide services in urban areas of~~
21 ~~this state if the company provides services in a municipality with a~~
22 ~~population of more than 190,000.~~

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

25 Sec. 55.015. LIFELINE SERVICE. [~~Added by SB 560~~] (a) The
26 commission shall adopt rules prohibiting a [~~telecommunications~~
27 ~~provider from discontinuing basic~~] holder of a certificate to

1 provide local exchange telephone service from discontinuing basic
2 network service to a consumer who receives lifeline service because
3 of nonpayment by the consumer of charges for other services billed
4 by the provider, including [~~long distance~~] interexchange service.

5 (b) The commission shall adopt rules providing for
6 automatic enrollment to receive lifeline service for eligible
7 consumers. The Texas Department of Human Services, on request of
8 the commission, shall assist in the adoption and implementation of
9 those rules. The commission and the Texas Department of Human
10 Services shall enter into a memorandum of understanding
11 establishing the respective duties of the commission and department
12 in relation to the automatic enrollment.

13 (c) A [~~telecommunications provider~~] certificate holder may
14 block a lifeline service participant's access to all [~~long~~
15 ~~distance~~] interexchange service except toll-free numbers when the
16 participant owes an outstanding amount for that service. The
17 [~~telecommunications~~] certificate [~~provider~~] holder shall remove
18 the block without additional cost to the participant on payment of
19 the outstanding amount.

20 (d) A [~~telecommunications provider~~] certificate holder
21 shall offer a consumer who applies for or receives lifeline service
22 the option of blocking all toll calls or, if technically capable,
23 placing a limit on the amount of toll calls. The provider may not
24 charge the consumer an administrative charge or other additional
25 amount for the blocking service.

26 (e) In this section, "lifeline service" means a retail local
27 service offering described by 47 C.F.R. Section 54.401(a), as

1 amended.

2 ~~[Sec. 55.016. TELECOMMUNICATIONS BILLING. (Added by SB~~
 3 ~~560) (a) The proliferation of charges for separate services,~~
 4 ~~products, surcharges, fees, and taxes on a bill for~~
 5 ~~telecommunications products or services has increased the~~
 6 ~~complexity of those bills to such an extent that in some cases the~~
 7 ~~bills have become difficult for customers to understand.~~

8 ~~[(b) A bill from a local exchange company for~~
 9 ~~telecommunications products or services should be consistent with~~
 10 ~~providing customers sufficient information about the charges~~
 11 ~~included in the bill to understand the basis and source of the~~
 12 ~~charges.~~

13 ~~(f) [(c) To the extent permitted by law, a monthly bill from~~
 14 ~~a local exchange company for] A holder of a certificate to provide~~
 15 ~~local exchange telephone service shall [clearly identify all~~
 16 ~~charges including basic local] provide access to lifeline service~~
 17 ~~[charges] to any customer with an income at or below 150% of the~~
 18 ~~federal poverty guidelines, [fees] or receiving benefits from any~~
 19 ~~of the following programs: Medicaid, [carrier's] food~~
 20 ~~[charges] stamps, [assessments] Supplemental Security Income (SSI),~~
 21 ~~[surcharges] federal public housing assistance, [optional services,~~
 22 ~~and taxes] or Low Income Energy Assistance Program (LIHEAP).~~

23 ~~[(d) Local exchange carriers shall annually file a copy of~~
 24 ~~that portion of their bill that has not been previously approved by~~
 25 ~~the commission for compliance review with this section.~~

26 ~~[(e) The commission shall have all necessary authority to~~
 27 ~~enforce this section.]~~

1 SUBCHAPTER B. EXTENDED AREA SERVICE

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

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

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

9 Sec. 55.022. MANDATORY SERVICE. The commission may order
10 mandatory extended area service in a specified metropolitan area
11 if:

12 (1) there is a sufficient community of interest in the
13 area; and

14 (2) the company can reasonably provide the service.

15 Sec. 55.023. OPTIONAL EXTENDED AREA SERVICE. (a) The
16 commission may order optional extended area service in a specified
17 calling area if:

18 (1) each affected company and the representatives of
19 at least one political subdivision in the proposed calling area
20 agree to the service; and

21 (2) the proposed common calling area has a single,
22 continuous boundary.

23 (b) The commission may not adopt rules that diminish in any
24 manner the ability of an affected company or a political
25 subdivision to enter into joint agreements for optional extended
26 area service under this section.

27 (c) In this section, "political subdivision" means:

- 1 (1) a county;
- 2 (2) a municipality; or
- 3 (3) an unincorporated town or village that has 275 or
- 4 more access lines.

5 ~~[Sec. 55.024. CHARGE FOR EXTENDED AREA SERVICE. (a) An~~
6 ~~incumbent local exchange company that provides mandatory two-way~~
7 ~~extended area service to customers shall impose for that service a~~
8 ~~separately stated monthly charge of \$3.50 a line for a residential~~
9 ~~customer and \$7 a line for a business customer if, on September 1,~~
10 ~~1995, the company:~~

11 ~~[(1) served more than 1,000,000 access lines in this~~
12 ~~state; and~~

13 ~~[(2) imposed a separately stated monthly charge for~~
14 ~~mandatory two-way extended area service of more than \$3.50 a line~~
15 ~~for a residential customer and more than \$7 a line for a business~~
16 ~~customer.~~

17 ~~[(b) The company shall recover all costs incurred and all~~
18 ~~loss of revenue that results from imposition of the rates~~
19 ~~prescribed by Subsection (a) in the manner prescribed by Section~~
20 ~~55.048(c).~~

21 ~~[(c) The rate limitation prescribed by Subsection (a) does~~
22 ~~not apply to a separately stated monthly charge for:~~

23 ~~[(1) extended area service in or into a metropolitan~~
24 ~~exchange; or~~

25 ~~[(2) extended metropolitan service.~~

26 ~~[Sec. 55.025. HUNTING SERVICE. (a) A local exchange~~
27 ~~company shall make available, at a reasonable tariffed rate,~~

1 ~~hunting service from local exchange lines to extended metropolitan~~
2 ~~service lines.~~

3 ~~(b) The company may not require a customer to purchase~~
4 ~~additional extended metropolitan service to obtain the hunting~~
5 ~~service.]~~

6 SUBCHAPTER C. EXPANDED TOLL-FREE LOCAL CALLING AREAS

7 Sec. 55.041. DEFINITIONS. In this subchapter,
8 "metropolitan exchange," "local calling area of a metropolitan
9 exchange," and "exchange" have the meanings and boundaries assigned
10 by the commission on September 1, 1993.

11 Sec. 55.042. CONTIGUOUS EXCHANGE. The commission may
12 expand a toll-free local calling area into an exchange that is not
13 in a metropolitan exchange but is in a local calling area that is
14 contiguous to a metropolitan exchange that the commission
15 determines has a community of interest with the exchange for which a
16 petition is filed under this subchapter.

17 Sec. 55.043. SPLITTING EXCHANGES PROHIBITED.
18 Notwithstanding any other provision of this subchapter, the
19 commission may not split a petitioning or requested exchange in
20 establishing a toll-free local calling area.

21 Sec. 55.044. EXEMPTION. (a) The commission may not require
22 an incumbent local exchange company serving the petitioning or
23 requested exchange to expand the company's toll-free local calling
24 area under this subchapter if:

25 (1) the incumbent local exchange company has fewer
26 than 10,000 access lines;

27 (2) the petitioning or requested exchange is served by

1 a telephone cooperative corporation;

2 (3) extended area service or extended metropolitan
3 service is available between the exchanges;

4 (4) the petitioning or requested exchange is a
5 metropolitan exchange; or

6 (5) the commission determines that the company has
7 shown that to serve the area is not geographically or
8 technologically feasible.

9 (b) To promote the wide dispersion of pay telephones, the
10 commission may:

11 (1) exempt pay telephones from this subchapter; or

12 (2) change the rates charged for calls from pay
13 telephones.

14 Sec. 55.045. ELIGIBILITY TO PETITION. The telephone
15 subscribers of an incumbent local exchange company exchange that
16 serves not more than 10,000 access lines may petition the
17 commission for expansion of the company's toll-free local calling
18 area if:

19 (1) the petitioning exchange's central switching
20 office is located within 22 miles, using vertical and horizontal
21 geographic coordinates, of the central switching office of the
22 exchange requested for expanded local calling service; or

23 (2) the petitioning exchange's central office is not
24 more than 50 miles from the central office of the exchange requested
25 for expanded local calling service and the exchanges share a
26 community of interest.

27 Sec. 55.046. PETITION REQUIREMENTS. (a) A petition under

1 this subchapter must be signed by a number of the exchange's
2 subscribers equal at least to the lesser of 100 of the exchange's
3 subscribers or five percent of the exchange's subscribers.

4 (b) An exchange that petitions under Section 55.045(2) must
5 demonstrate in the petition that the exchange shares a community of
6 interest with the requested exchange.

7 (c) For purposes of this section, the relationships between
8 exchanges that create a community of interest include:

9 (1) a relationship because of schools, hospitals,
10 local governments, or business centers; or

11 (2) other relationships that would make the
12 unavailability of expanded local calling service a hardship for the
13 residents of the area.

14 Sec. 55.047. BALLOTING AND CONSIDERATION. (a) If the
15 commission receives a petition that complies with this subchapter,
16 the commission shall order the incumbent local exchange company to
17 provide ballots to the subscribers in the petitioning exchange.

18 (b) The commission shall consider the request for expansion
19 of the toll-free local calling area if at least 70 percent of the
20 subscribers who vote do so in favor of the expansion.

21 (c) The commission by rule shall provide for an expedited
22 hearing on the issue of expansion.

23 Sec. 55.048. CHARGES. ~~[(a)]~~ The incumbent local exchange
24 company ~~[shall recover all costs incurred and all loss of revenue~~
25 ~~from an expansion of]~~ impose a ~~[toll-free local calling area under~~
26 ~~this subchapter through a request other than a revenue requirement~~
27 ~~showing by imposing a]~~ monthly fee ~~[under Subsection (b) or (c), or~~

1 ~~both.] against each residential and business customer in the~~
2 ~~petitioning exchange.~~

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

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

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

19 SUBCHAPTER D. OPERATOR SERVICE PROVIDERS

20 Sec. 55.081. DEFINITION. In this subchapter, "operator
21 service" means a service using live operator or automated operator
22 functions to handle telephone service such as toll calling using
23 collect, third-number billing, and calling card services. The term
24 does not include a call for which the called party has arranged to
25 be billed (800 service).

26 ~~[Sec. 55.082. APPLICABILITY. Except as provided by Section~~
27 ~~55.088, this subchapter applies only to a telecommunications~~

1 ~~utility that is not a dominant carrier.~~

2 ~~[Sec. 55.083. RULES AND PROCEDURES. (a) The commission may~~
3 ~~adopt rules and establish procedures to enforce and implement this~~
4 ~~subchapter.~~

5 ~~[(b) A rule adopted under this subchapter must be~~
6 ~~nondiscriminatory and designed to promote competition that~~
7 ~~facilitates consumer choice.]~~

8 Sec. 55.084. INFORMATION DISPLAYED ON PUBLIC USE TELEPHONE.

9 (a) An operator service provider shall furnish each entity with
10 which it contracts to provide operator service a sticker, card, or
11 other form of information approved by the commission for each
12 telephone that:

- 13 (1) has access to the service; and
14 (2) is intended for use by the public.

15 (b) The commission may grant the owner of a telephone
16 approval for an alternative form of information.

17 (c) The information must state:

- 18 (1) the provider's name;
19 (2) that the operator service provider will provide
20 rate information on a caller's request;
21 (3) that a caller, on the caller's request, will be
22 informed of the method of access to the local exchange carrier
23 operator; and

24 (4) that a complaint about the service may be made to
25 the provider or to the commission at the designated telephone
26 number.

27 (d) The operator service provider shall by contract require

1 an entity receiving information to display the information on or
2 near each telephone for which the operator service provider is
3 required to furnish the information.

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

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

10 Sec. 55.086. INFORMATION REQUIRED ON ACCESS TO LOCAL
11 EXCHANGE COMPANY OPERATOR. (a) An operator service provider, on a
12 caller's request, shall inform the caller of the method of access to
13 the local exchange carrier operator serving the exchange from which
14 the call is made.

15 (b) A charge may not be made for information provided under
16 this section.

17 Sec. 55.087. ACCESS TO LOCAL EXCHANGE COMPANY [~~AND OTHER~~
18 ~~UTILITIES REQUIRED~~]. (a) The commission by rule shall require an
19 operator service provider to include in its contract with each
20 entity through which it provides operator service a provision that
21 requires each telephone subscribed to its service to allow access
22 to[+]

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

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

26 (b) To prevent fraudulent use of its service, an operator
27 service provider or an entity through which it provides operator

1 service may block the access described by Subsection (a) by
2 obtaining a waiver for this purpose from the commission or the
3 Federal Communications Commission. The commission by rule shall
4 establish the procedure and criteria for obtaining a waiver from
5 the commission.

6 Sec. 55.088. ACCESS TO LIVE OPERATOR REQUIRED. (a) [~~A~~
7 ~~dominant or nondominant telecommunications utility~~] Any entity
8 that provides operator service shall ensure that a caller has
9 access to a live operator [~~at~~] during the [~~beginning of a live or~~
10 ~~mechanized operator-assisted~~] call through a method designed to be
11 easily and clearly understandable and accessible to the caller.

12 [~~(b) A telecommunications utility described by Subsection~~
13 ~~(a) shall submit to the commission for review the method by which~~
14 ~~the utility will provide access to a live operator.~~

15 [~~(c) This section applies regardless of the method by which~~
16 ~~the telecommunications utility provides operator service.]~~

17 [~~(d)~~] (b) This section does not apply to a telephone located
18 in a prison or jail facility.

19 Sec. 55.089. COMMISSION MAY INVESTIGATE AND ACT ON
20 VIOLATION. (a) If the commission determines that an operator
21 service provider has violated or is about to violate this
22 subchapter, the commission, after notice and evidentiary hearing,
23 may take action to stop, correct, or prevent the violation.

24 (b) The commission may investigate a complaint that it
25 receives concerning an operator service.

26 SUBCHAPTER E. [~~CALLER IDENTIFICATION SERVICE~~]

27 [~~Sec. 55.101. DEFINITIONS. In this subchapter:~~

1 ~~[(1) "Caller identification information" means any~~
2 ~~information that may be used to identify the specific originating~~
3 ~~number or originating location of a wire or electronic~~
4 ~~communication transmitted by a telephone, including the telephone~~
5 ~~listing number or the name of the customer from whose telephone a~~
6 ~~telephone number is dialed.~~

7 ~~[(2) "Caller identification service" means a service~~
8 ~~that provides caller identification information to a device that~~
9 ~~can display the information.~~

10 ~~[(3) "Per-call blocking" means a telecommunications~~
11 ~~service that prevents caller identification information from being~~
12 ~~transmitted to a called party on an individual call when the calling~~
13 ~~party affirmatively acts to prevent the transmission.~~

14 ~~[(4) "Per-line blocking" means a telecommunications~~
15 ~~service that prevents caller identification information from being~~
16 ~~transmitted to a called party on each call unless the calling party~~
17 ~~affirmatively acts to permit the transmission.~~

18 ~~[Sec. 55.102. APPLICABILITY. (a) This subchapter applies~~
19 ~~only to the provision of caller identification service.~~

20 ~~[(b) This subchapter does not apply to:~~

21 ~~[(1) an identification service that is used in a~~
22 ~~limited system, including a central office based PBX-type system;~~

23 ~~[(2) information that is used on a public agency's~~
24 ~~emergency telephone line or on a line that receives the primary~~
25 ~~emergency telephone number (911);~~

26 ~~[(3) information exchanged between telecommunications~~
27 ~~utilities, enhanced service providers, or other entities that is~~

1 ~~necessary for the setting up, processing, transmission, or billing~~
2 ~~of telecommunications or related services;~~

3 ~~[(4) information provided in compliance with~~
4 ~~applicable law or legal process; or~~

5 ~~[(5) an identification service provided in connection~~
6 ~~with a 700, 800, or 900 access code telecommunications service.~~

7 ~~[Sec. 55.103. PROVISION OF SERVICE. (a) A~~
8 ~~telecommunications utility may offer caller identification~~
9 ~~services under this subchapter only if the utility obtains written~~
10 ~~authorization from the commission.~~

11 ~~[(b) A commercial mobile service provider may offer caller~~
12 ~~identification services in accordance with Sections 55.104,~~
13 ~~55.105, 55.106, 55.1065, and 55.107.~~

14 ~~[Sec. 55.104. USE OF INFORMATION. (a) A person may not use~~
15 ~~a caller identification service to compile and sell specific local~~
16 ~~call information without the affirmative approval of the~~
17 ~~originating telephone customer.~~

18 ~~[(b) This section does not prohibit a provider of caller~~
19 ~~identification service from:~~

20 ~~[(1) verifying network performance or testing the~~
21 ~~caller identification service;~~

22 ~~[(2) compiling, using, and disclosing aggregate~~
23 ~~caller identification information; or~~

24 ~~[(3) complying with applicable law or legal process.~~

25 ~~[Sec. 55.105. PER-CALL BLOCKING. Except as provided by~~
26 ~~Section 55.1065, the commission shall require that a provider of~~
27 ~~caller identification service offer free per-call blocking to each~~

1 ~~telephone subscriber in the specific area in which the service is~~
2 ~~offered.~~

3 ~~[Sec. 55.106. PER-LINE BLOCKING. (a) Except as provided by~~
4 ~~Section 55.1065, the commission shall require that a provider of~~
5 ~~caller identification service offer free per-line blocking to a~~
6 ~~particular customer if the commission receives from the customer~~
7 ~~written certification that the customer has a compelling need for~~
8 ~~per-line blocking.~~

9 ~~[(b) A provider who is ordered to offer per-line blocking~~
10 ~~under this section shall notify the customer by mail of the date the~~
11 ~~blocking will begin.~~

12 ~~[(c) If a customer removes and later reinstates the per-line~~
13 ~~block, the provider may assess a service order charge in an amount~~
14 ~~approved by the commission for the provider's administrative~~
15 ~~expenses relating to the reinstatement.~~

16 ~~[(d) The commission may impose a fee or assessment on a~~
17 ~~provider in an amount sufficient to cover the additional expenses~~
18 ~~the commission incurs in implementing the customer certification~~
19 ~~provisions of this section.~~

20 ~~[(e) Information received under this section by the~~
21 ~~commission or by a provider is confidential and may be used only to~~
22 ~~administer this section.~~

23 ~~[Sec. 55.1065. USE OF BLOCKING BY TELEPHONE SOLICITOR.~~
24 ~~REPEALED~~

25 ~~[Sec. 55.107. LIMITATION ON COMMISSION AUTHORITY. The~~
26 ~~commission may prescribe in relation to blocking only a requirement~~
27 ~~authorized by Sections 55.105, 55.106, and 55.1065.~~

1 ~~[Sec. 55.108. CALLER ID CONSUMER EDUCATION PANEL. (a) The~~
2 ~~Caller ID Consumer Education Panel is composed of:~~

3 ~~[(1) one person appointed by the governor;~~

4 ~~[(2) one person appointed by the presiding officer of~~
5 ~~the commission after the presiding officer consults with the Texas~~
6 ~~Council on Family Violence; and~~

7 ~~[(3) one person appointed by the counsellor.~~

8 ~~[(b) The panel shall:~~

9 ~~[(1) meet at least quarterly;~~

10 ~~[(2) file an annual report with the commission~~
11 ~~regarding:~~

12 ~~[(A) the level of effort and effectiveness of~~
13 ~~consumer education materials; and~~

14 ~~[(B) the panel's recommendations for:~~

15 ~~[(i) increasing the safe use of caller ID~~
16 ~~services and the privacy of the calling customer; and~~

17 ~~[(ii) decreasing the likelihood of harm~~
18 ~~resulting from the use of caller ID services; and~~

19 ~~[(3) investigate whether educational caller ID~~
20 ~~materials are distributed in as effective a manner as marketing~~
21 ~~caller ID materials.~~

22 ~~[(c) A provider of caller ID services shall file with the~~
23 ~~panel all caller ID materials as the materials become available.~~

24 ~~[(d) The panel is abolished and this section expires~~
25 ~~September 1, 1999.~~

26 ~~[(e) In this section:~~

27 ~~[(1) "Caller ID service" has the meaning assigned by~~

1 ~~Section 55.110.~~

2 ~~[(2) "Caller ID materials" means any disseminated~~
3 ~~information relating to caller ID services, including~~
4 ~~advertisements, educational material, training material, and audio~~
5 ~~and video marketing devices.~~

6 ~~[Sec. 55.109. IMPLEMENTATION OF PANEL RECOMMENDATIONS. The~~
7 ~~commission may implement the recommendations of the Caller ID~~
8 ~~Consumer Education Panel and interested parties to the extent~~
9 ~~consistent with the public interest.~~

10 ~~[Sec. 55.110. REPORT OF BLOCKING FAILURE. (a) A provider~~
11 ~~of caller ID services who becomes aware of the failure of per-call~~
12 ~~or per-line blocking to block identification of a customer shall~~
13 ~~report that failure to the commission, the Caller ID Consumer~~
14 ~~Education Panel, and the customer whose identification was not~~
15 ~~blocked.~~

16 ~~[(b) The provider shall make a reasonable effort to notify~~
17 ~~the customer within 24 hours after the provider becomes aware of the~~
18 ~~failure. The provider is not required to notify the customer if the~~
19 ~~customer reported the failure.~~

20 ~~[(c) In this section, "caller ID service" means a service~~
21 ~~that permits the called party to determine the identity, telephone~~
22 ~~number, or address of the calling party. The term does not include~~
23 ~~911 services.~~

24 ~~[SUBCHAPTER F. AUTOMATIC DIAL ANNOUNCING DEVICES~~

25 ~~[Sec. 55.121. DEFINITION. In this subchapter, "automated~~
26 ~~dial announcing device" means automated equipment used for~~
27 ~~telephone solicitation or collection that can:~~

1 ~~[(1) store telephone numbers to be called or produce~~
2 ~~numbers to be called through use of a random or sequential number~~
3 ~~generator, and~~

4 ~~[(2) convey, alone or in conjunction with other~~
5 ~~equipment, a prerecorded or synthesized voice message to the number~~
6 ~~called without the use of a live operator.~~

7 ~~[Sec. 55.122. EXEMPTIONS. This subchapter does not apply~~
8 ~~to the use of an automated dial announcing device:~~

9 ~~[(1) to make a call relating to an emergency or a~~
10 ~~public service under a program developed or approved by the~~
11 ~~emergency management coordinator of the county in which the call is~~
12 ~~received; or~~

13 ~~[(2) by a public or private primary or secondary~~
14 ~~school system to locate or account for a truant student.~~

15 ~~[Sec. 55.123. NOTICE OF USE OF DEVICE TO TELECOMMUNICATIONS~~
16 ~~UTILITY. A person may not use an automated dial announcing device~~
17 ~~to make a telephone call in which the device plays a recorded~~
18 ~~message when the connection is completed unless the person gives to~~
19 ~~each telecommunications utility over whose system the device is to~~
20 ~~be used written notice specifying the type of device to be used.~~

21 ~~[Sec. 55.124. RANDOM OR SEQUENTIAL NUMBER CALLING. A~~
22 ~~person may not use an automated dial announcing device for random~~
23 ~~number dialing or to dial numbers determined by successively~~
24 ~~increasing or decreasing integers if the person uses the device to~~
25 ~~make a telephone call in which the device plays a recorded message~~
26 ~~when the connection is completed.~~

27 ~~[Sec. 55.125. HOURS WHEN USE PROHIBITED. (a) A person may~~

1 ~~not use an automated dial announcing device to make a telephone~~
2 ~~solicitation call terminating in this state in which the device~~
3 ~~plays a recorded message when the connection is completed if the~~
4 ~~call is made:~~

5 ~~[(1) before noon or after 9 p.m. on a Sunday, or~~

6 ~~[(2) before 9 a.m. or after 9 p.m. on a weekday or a~~
7 ~~Saturday.~~

8 ~~[(b) A person may not use an automated dial announcing~~
9 ~~device to make a telephone collection call terminating in this~~
10 ~~state in which the device plays a recorded message when the~~
11 ~~connection is completed if the call is made at an hour at which~~
12 ~~collection calls are prohibited under the federal Fair Debt~~
13 ~~Collection Practices Act (15 U.S.C. Section 1692 et seq.).~~

14 ~~[Sec. 55.126. DEVICE DISCONNECTION. A person may not use an~~
15 ~~automated dial announcing device to make a telephone call in which~~
16 ~~the device plays a recorded message when the connection is~~
17 ~~completed unless the device disconnects from the called person's~~
18 ~~line not later than five seconds after the call is terminated by~~
19 ~~either party. If the device cannot disconnect during that period, a~~
20 ~~live operator must introduce the call and receive the called~~
21 ~~person's oral consent before beginning a prerecorded or synthesized~~
22 ~~voice message.~~

23 ~~[Sec. 55.127. CONTENTS OF RECORDED MESSAGE. (a) A person~~
24 ~~may not use an automated dial announcing device to make a telephone~~
25 ~~call in which the device plays a recorded message when the~~
26 ~~connection is completed unless the recorded message states during~~
27 ~~the first 30 seconds of the call:~~

1 ~~[(1) the nature of the call,~~

2 ~~[(2) the identity of the person, company, or~~
3 ~~organization making the call, and~~

4 ~~[(3) the telephone number from which the call is made.~~

5 ~~[(b) In addition to the requirements prescribed by~~
6 ~~Subsection (a), a call during which a cross-promotion or reference~~
7 ~~to a pay-per-call information service is made must include a~~
8 ~~statement of:~~

9 ~~[(1) the fact that a caller who makes a call to a~~
10 ~~pay-per-call information service's telephone number will be~~
11 ~~charged for that call,~~

12 ~~[(2) the amount of the flat-rate or cost-per-minute~~
13 ~~charge the caller will incur or the amount of both if both charges~~
14 ~~will be incurred, and~~

15 ~~[(3) the estimated amount of time required to receive~~
16 ~~all the information offered by the service during a call.~~

17 ~~[(c) Subsection (a) does not apply to the use of a device if~~
18 ~~the device is used:~~

19 ~~[(1) for debt collection purposes in compliance with~~
20 ~~applicable federal law and regulations, and~~

21 ~~[(2) by a live operator for automated dialing or hold~~
22 ~~announcement purposes.~~

23 ~~[(d) In this section, "pay-per-call information service"~~
24 ~~means a service that routinely delivers, for a predetermined and~~
25 ~~sometimes time-sensitive fee, a prerecorded or live message or~~
26 ~~interactive program after the caller dials a specified 900 or 976~~
27 ~~number.~~

1 ~~[Sec. 55.128. DURATION OF RECORDED MESSAGE. A person may~~
2 ~~not use an automated dial announcing device to make for~~
3 ~~solicitation purposes a telephone call in which the device plays a~~
4 ~~recorded message when the connection is completed unless:~~

5 ~~[(1) the recorded message is shorter than 30 seconds,~~
6 ~~or~~

7 ~~[(2) the device has the technical capacity to:~~
8 ~~[(A) recognize a telephone answering device on~~
9 ~~the called person's line; and~~
10 ~~[(B) terminate the call within 30 seconds.~~

11 ~~[Sec. 55.129. PERMIT REQUIRED. A person may not use an~~
12 ~~automated dial announcing device to make a telephone call in which~~
13 ~~the device plays a recorded message when the connection is~~
14 ~~completed unless the person has a permit under Section 55.130.~~

15 ~~[Sec. 55.130. PERMIT. (a) A person may not use an~~
16 ~~automated dial announcing device without a permit issued by the~~
17 ~~commission.~~

18 ~~[(b) An applicant for an original permit must submit to the~~
19 ~~commission an application on a form that:~~

20 ~~[(1) is prescribed by the commission; and~~

21 ~~[(2) contains:~~

22 ~~[(A) the telephone number of each automated dial~~
23 ~~announcing device that the person will use; and~~

24 ~~[(B) the physical address from which each~~
25 ~~automated dial announcing device will operate.~~

26 ~~[(c) An original permit is valid for one year and may be~~
27 ~~renewed annually by filing with the commission the information~~

1 ~~required by Subsection (b)(2).~~

2 ~~[(d) An application for an original permit or a filing~~
3 ~~required for the renewal of the permit must be accompanied by the~~
4 ~~appropriate fee prescribed by Section 55.131.~~

5 ~~[(e) In determining whether to deny an application for an~~
6 ~~original permit or renewal of the permit, the commission shall~~
7 ~~consider the compliance record of the owner or operator of the~~
8 ~~automated dial announcing device and may deny the application based~~
9 ~~on that record.~~

10 ~~[Sec. 55.131. PERMIT FEE. (a) The commission shall~~
11 ~~prescribe a fee for an original permit or renewal of a permit.~~

12 ~~[(b) The amount of the original permit fee must be~~
13 ~~reasonable and cover the enforcement cost to the commission but may~~
14 ~~not exceed \$500.~~

15 ~~[(c) The fee for renewal of a permit may not exceed \$100.~~

16 ~~[Sec. 55.132. NOTIFICATION OF CHANGE. (a) The owner or~~
17 ~~operator of an automated dial announcing device shall notify the~~
18 ~~commission if the telephone number of the device or the physical~~
19 ~~address from which the device operates changes.~~

20 ~~[(b) The owner or operator shall give the notice by~~
21 ~~certified mail not later than the 48th hour before the hour the~~
22 ~~device begins operating with the new telephone number or at the new~~
23 ~~address.~~

24 ~~[(c) If the owner or operator of a device fails to give~~
25 ~~notice as required by Subsection (b), the person's permit is~~
26 ~~invalid.~~

27 ~~[Sec. 55.133. NOTIFICATION OF LOCAL EXCHANGE COMPANY. The~~

1 ~~commission shall provide to a local exchange company on request a~~
2 ~~copy of a permit issued under this subchapter and of any change~~
3 ~~relating to the permit.~~

4 ~~[Sec. 55.134. COMPLAINTS AND ENFORCEMENT. (a) The~~
5 ~~commission shall:~~

6 ~~[(1) investigate complaints relating to the use of an~~
7 ~~automated dial announcing device; and~~

8 ~~[(2) enforce this subchapter.~~

9 ~~[(b) A local exchange company that receives a complaint~~
10 ~~relating to the use of an automated dial announcing device shall~~
11 ~~send the complaint to the commission. The commission by rule shall~~
12 ~~prescribe the procedures and requirements for sending a complaint~~
13 ~~to the commission.~~

14 ~~[Sec. 55.135. REVOCATION OF PERMIT. The commission may~~
15 ~~revoke a person's permit if the person fails to comply with this~~
16 ~~subchapter.~~

17 ~~[Sec. 55.136. DISCONNECTION OF SERVICE. (a) If the~~
18 ~~commission or a court determines that a person has violated this~~
19 ~~subchapter, the commission or court shall require a~~
20 ~~telecommunications utility to disconnect service to the person.~~

21 ~~[(b) The telecommunications utility may reconnect service~~
22 ~~to the person only on a determination by the commission that the~~
23 ~~person will comply with this subchapter.~~

24 ~~[(c) Not later than the third day before the date of the~~
25 ~~disconnection, the telecommunications utility shall give notice to~~
26 ~~the person using the device of its intent to disconnect service.~~
27 ~~However, if the device is causing network congestion or blockage,~~

1 ~~the notice may be given on the day before the date of disconnection.~~

2 ~~[(d) A telecommunications utility, without an order by the~~
3 ~~commission or a court, may disconnect or refuse to connect service~~
4 ~~to a person using or intending to use an automated dial announcing~~
5 ~~device if the utility determines that the device would cause or is~~
6 ~~causing network harm.~~

7 ~~[Sec. 55.137. ADMINISTRATIVE PENALTY. (a) The commission~~
8 ~~may impose an administrative penalty against a person who owns or~~
9 ~~operates an automated dial announcing device in violation of this~~
10 ~~subchapter or a commission rule or order.~~

11 ~~[(b) The penalty for a violation may be in an amount not to~~
12 ~~exceed \$1,000 for each day or portion of a day during which the~~
13 ~~device operates in violation of this subchapter or a commission~~
14 ~~rule or order.~~

15 ~~[(c) The administrative penalty is civil in nature and is in~~
16 ~~addition to any other penalty provided by law.~~

17 ~~[(d) The commission by rule shall prescribe the procedures~~
18 ~~for assessing an administrative penalty under this section. The~~
19 ~~procedures must require proper notice and hearing in accordance~~
20 ~~with Chapter 2001, Government Code.~~

21 ~~[(e) A person may appeal the final order of the commission~~
22 ~~under Chapter 2001, Government Code. The substantial evidence rule~~
23 ~~applies on appeal.~~

24 ~~[(f) The proceeds of administrative penalties collected~~
25 ~~under this section shall be deposited to the credit of the~~
26 ~~commission. The commission shall use the proceeds to enforce this~~
27 ~~subchapter.~~

1 ~~[Sec. 55.138. CRIMINAL PENALTY. (a) A person commits an~~
2 ~~offense if the person owns or operates an automated dial announcing~~
3 ~~device that the person knows is operating in violation of this~~
4 ~~subchapter.~~

5 ~~[(b) An offense under this section is a Class A misdemeanor.]~~

6 ~~[SUBCHAPTER C. [REPEALED]]~~

7 ~~[SUBCHAPTER H.] PAY TELEPHONES~~

8 ~~[Sec. 55.171. DEFINITION. In this subchapter, "provider"~~
9 ~~means an entity that provides pay telephone service, including:~~

10 ~~[(1) an incumbent local exchange company; and~~

11 ~~[(2) a subscriber to a customer-owned pay telephone~~
12 ~~service.]~~

13 ~~[Sec. 55.172. LIMITATION. This subchapter prescribes the~~
14 ~~limits of:~~

15 ~~[(1) the right of a provider to set the provider's~~
16 ~~rates and charges for pay telephone services; and~~

17 ~~[(2) the commission's authority over the pay telephone~~
18 ~~service rates of an incumbent local exchange company.]~~

19 Sec. 55.173. REGISTRATION. (a) A person may not provide
20 pay telephone service in this state unless the person is registered
21 with the commission.

22 (b) This section does not apply to a provider who holds a
23 certificate ~~[of convenience and necessity]~~ as a Network Provider
24 or a Services Provider.

25 Sec. 55.174. PROHIBITION ON CHARGE FOR CERTAIN CALLS. A
26 provider may not charge a person making a call on a pay telephone
27 for:

1 ~~[(1) local directory assistance, or~~
2 ~~[(2)] a call made under Chapter 771 or 772, Health and~~
3 ~~Safety Code.~~

4 Sec. 55.175. ~~[CHARGE FOR LOCAL CALLS. (a) The commission~~
5 ~~shall establish the limit on the amount a provider may charge for a~~
6 ~~pay telephone coin sent-paid call in the local exchange company's~~
7 ~~toll-free calling area.~~

8 ~~[(b) The commission may establish a statewide ceiling on the~~
9 ~~amount a provider may charge for a local pay telephone call that is:~~

10 ~~[(1) collect,~~

11 ~~[(2) operator assisted, or~~

12 ~~[(3) paid by credit card or calling card.~~

13 ~~[(c) The commission may not establish the ceiling under~~
14 ~~Subsection (b) at an amount that is less than the applicable local~~
15 ~~rates for such a call imposed by any of the four largest~~
16 ~~interexchange telecommunications carriers operating in this state.~~

17 ~~[Sec. 55.176. CHARGE FOR 800-TYPE CALLS. (a) A provider~~
18 ~~may charge at a pay telephone a fee of not more than 25 cents for~~
19 ~~initiating an 800-type call.~~

20 ~~[(b) A provider may impose the fee only if:~~

21 ~~[(1) the pay telephone is registered with the~~
22 ~~commission, and~~

23 ~~[(2) the provider certifies that the pay telephone~~
24 ~~complies with commission rules regarding the provision of pay~~
25 ~~telephone service.~~

26 ~~[(c) Subsection (b) does not apply to a local exchange~~
27 ~~company pay telephone.~~

1 ~~[(d) A provider may not impose the fee if imposition is~~
2 ~~inconsistent with federal law.~~

3 ~~[(e) A provider may not impose the fee for a:~~

4 ~~[(1) local call,~~

5 ~~[(2) 911 call,~~

6 ~~[(3) local directory assistance call, or~~

7 ~~[(4) call that is covered by the Telephone Operator~~
8 ~~Consumer Services Improvement Act of 1990 (47 U.S.C. Section 226).~~

9 ~~[(f) A provider who imposes the fee must post on each pay~~
10 ~~telephone notice that the fee will be charged. The provider must~~
11 ~~post the notice:~~

12 ~~[(1) in plain sight of the user, and~~

13 ~~[(2) in a manner consistent with existing commission~~
14 ~~requirements for posting information.~~

15 ~~[(g) The commission may not impose on a local exchange~~
16 ~~company the duty or obligation to:~~

17 ~~[(1) record the use of pay telephone service,~~

18 ~~[(2) bill or collect for the use of the pay telephone,~~

19 ~~or~~

20 ~~[(3) remit to the provider the fee authorized by this~~
21 ~~section.~~

22 ~~[Sec. 55.177. CHARGE FOR CREDIT CARD, CALLING CARD, OR~~
23 ~~OPERATOR-ASSISTED CALLS. (a) A provider may not impose for a~~
24 ~~credit card, calling card, or live or automated operator-assisted~~
25 ~~call a rate or charge that is greater than the authorized rates and~~
26 ~~charges published on March 18, 1995, in the eight newspapers having~~
27 ~~the largest circulation in this state.~~

1 ~~[(b) The published rates may not be changed.]~~

2 ~~[(c) This section does not apply to a local exchange~~
3 ~~company. Chapter 58 governs the pay telephone rates of an incumbent~~
4 ~~local exchange company that elects incentive regulation under that~~
5 ~~chapter.]~~

6 ~~[Sec. 55.178.]~~ NOTICE OF INABILITY TO RECEIVE CALLS. (a) A
7 provider may not display the telephone number of a pay telephone
8 that cannot receive telephone calls.

9 (b) A provider shall place in a conspicuous location on each
10 pay telephone that cannot receive telephone calls a notice stating
11 in letters one-fourth inch high: "THIS TELEPHONE CANNOT RECEIVE
12 TELEPHONE CALLS."

13 (c) A provider that violates this section or a rule or order
14 adopted by the commission under this section is subject to a civil
15 penalty as provided by Section 15.028 unless the provider takes
16 corrective action to comply with this section or the rule or order
17 not later than the 14th day after the date the provider receives
18 written notice of the violation.

19 (d) The commission has jurisdiction over a provider to the
20 extent necessary to enforce this section regardless of whether a
21 provider is a telecommunications utility regulated under this
22 title.

23 (e) The commission may establish procedures to enforce this
24 section.

25 ~~[Sec. 55.179. INFORMATION REQUIREMENTS. (a) The~~
26 ~~commission by rule may prescribe the information that must be~~
27 ~~posted on a pay telephone.]~~

1 ~~[(b) A commission rule may not require a provider or an~~
2 ~~affiliate of a provider to police compliance by another provider~~
3 ~~with the commission's rules.]~~

4 Sec. ~~[55.180.]~~ 55.176. VIOLATIONS. The commission may
5 order the disconnection of pay telephone service for not more than
6 one year for repeat violations of commission rules.

7 SUBCHAPTER ~~[±]~~ F. DIRECTORY LISTINGS ~~[AND ASSISTANCE]~~

8 Sec. 55.201. TERMS OF DIRECTORY LISTINGS ~~[AND ASSISTANCE]~~.

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

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

16 (1) resolve a dispute between the parties; and

17 (2) issue an order setting the terms of the directory
18 listings or directory assistance, if necessary.

19 ~~[(c) This section does not affect the authority of an~~
20 ~~incumbent local exchange company to voluntarily conduct~~
21 ~~negotiations with an applicant for a certificate of convenience and~~
22 ~~necessity, a certificate of operating authority, or a service~~
23 ~~provider certificate of operating authority.]~~

24 ~~[Sec. 55.202. DIRECTORY PUBLISHED BY TELECOMMUNICATIONS~~
25 ~~UTILITY. A telecommunications utility or an affiliate of that~~
26 ~~utility that publishes a residential or business telephone~~
27 ~~directory that is distributed to the public shall publish in the~~

1 ~~directory the name of each state senator or representative who~~
2 ~~represents all or part of the geographical area for which the~~
3 ~~directory contains listings.]~~

4 Sec. 55.203. DIRECTORY PUBLISHED BY PRIVATE PUBLISHER. (a)
5 A private for-profit publisher of a residential telephone directory
6 that is distributed to the public at minimal or no cost shall
7 include in the directory:

8 (1) a listing of any toll-free and local telephone
9 numbers of:

10 (A) state agencies;

11 (B) state public services; and

12 (C) each state elected official who represents
13 all or part of the geographical area for which the directory
14 contains listings; and

15 (2) the Internet address of TexasOnline and a
16 statement that Internet sites for state agencies may be accessed
17 through TexasOnline.

18 (b) The listing required by this section must be:

19 (1) clearly identified; and

20 (2) located or clearly referenced at the front of the
21 directory before the main listing of residential and business
22 telephone numbers.

23 (c) The ~~[commission by rule may specify:~~

24 ~~[(1)]~~ Commission shall not promulgate rules that
25 dictate the format or content of [the listing, and

26 ~~[(2) criteria for inclusion of agencies, services, and~~
27 ~~officials]~~ a directory or otherwise create requirements beyond

1 those contained in this subchapter.

2 ~~[(d) The commission's rules must require a publisher to~~
3 ~~list:~~

4 ~~[(1) the telephone number for state government~~
5 ~~information; and~~

6 ~~[(2) telephone numbers alphabetically by:~~

7 ~~[(A) the subject matter of agency programs; and~~

8 ~~[(B) agency name.~~

9 ~~[(e) The commission, with the cooperation of other state~~
10 ~~agencies, shall:~~

11 ~~[(1) compile relevant information to ensure accuracy~~
12 ~~of information in the listing; and~~

13 ~~[(2) provide the information to a telecommunications~~
14 ~~utility or telephone directory publisher within a reasonable time~~
15 ~~after a request by the utility or publisher.~~

16 ~~[(f) The General Service Commission shall cooperate with~~
17 ~~the commission and with publishers to ensure that the subject~~
18 ~~matter listing of programs and telephone numbers in the telephone~~
19 ~~directories are consistent with the categorization developed by the~~
20 ~~Records Management Interagency Coordinating Council under Section~~
21 ~~441.203(j), Government Code.~~

22 ~~[(g) The rules adopted under Subsection (d) must provide~~
23 ~~that a telecommunications utility that publishes and distributes to~~
24 ~~the public a residential or business telephone directory shall list~~
25 ~~prominently in the directory the contact information for the~~
26 ~~specialized telecommunications assistance program established~~
27 ~~under Subchapter E, Chapter 56.]~~

1 SUBCHAPTER [J] G. TELECOMMUNICATIONS SERVICE BY CERTAIN PROVIDERS

2 Sec. 55.251. [~~CHARGE FOR HOTEL OR MOTEL CALL. A hotel or~~
3 ~~motel may not charge more than 50 cents for:~~

4 [(1) ~~a local telephone call;~~

5 [(2) ~~a credit card telephone call;~~

6 [(3) ~~a collect telephone call; or~~

7 [(4) ~~any other local telephone call for which~~
8 ~~assistance from the hotel or motel operator is not required.~~

9 [~~Sec. 55.252.~~] 900 SERVICE USED BY PROBATIONERS OR
10 PAROLEES. (a) This section applies only to a [~~telecommunications~~
11 ~~utility~~] service provider that transports or provides an intrastate
12 900 service that is:

13 (1) covered by a contract authorized by Chapter 76 or
14 508, Government Code; and

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

18 (A) pay a fee or cost; or

19 (B) comply with telephone reporting
20 requirements.

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

27 Sec. [~~55.253.~~] 55.252. TELEPHONE PREPAID CALLING SERVICES.

1 (a) In this section:

2 (1) "Prepaid calling card company" means a company
3 that provides a prepaid calling service to the public using its own
4 network or resold services.

5 (2) "Prepaid calling service" means a prepaid
6 telecommunications service that allows an end user to originate a
7 call using an access number and authorization code.

8 (b) The commission by rule may prescribe standards
9 regarding the information a prepaid calling card company shall
10 disclose to customers in relation to the rates and terms of service
11 for prepaid calling services offered in this state.

12 (c) The commission is granted all necessary jurisdiction to
13 adopt rules under this section and to enforce those rules and this
14 section.

15 (d) A violation of a rule adopted under this section is
16 subject to enforcement under Subchapter B, Chapter 15.

17 ~~[SUBCHAPTER K. SELECTION OF TELECOMMUNICATIONS UTILITIES~~

18 ~~[Sec. 55.301. STATE POLICY. It is the policy of this state~~
19 ~~to ensure that all customers are protected from the unauthorized~~
20 ~~switching of a telecommunications utility selected by the customer~~
21 ~~to provide telecommunications service.~~

22 ~~[Sec. 55.302. COMMISSION RULES. (a) The commission shall~~
23 ~~adopt nondiscriminatory and competitively neutral rules to~~
24 ~~implement this subchapter, including rules that:~~

25 ~~[(1) ensure that customers are protected from~~
26 ~~deceptive practices in the obtaining of authorizations and~~
27 ~~verifications required by this subchapter,~~

1 ~~[(2) are applicable to all local exchange telephone~~
2 ~~services, interexchange telecommunications service, and other~~
3 ~~telecommunications service provided by telecommunications~~
4 ~~utilities in this state;~~

5 ~~[(3) are consistent with the rules and regulations~~
6 ~~prescribed by the Federal Communications Commission for the~~
7 ~~selection of telecommunications utilities;~~

8 ~~[(4) permit telecommunications utilities to select~~
9 ~~any method of verification of a change order authorized by Section~~
10 ~~55.303;~~

11 ~~[(5) require the reversal of certain changes in the~~
12 ~~selection of a customer's telecommunications utility in accordance~~
13 ~~with Section 55.304(a);~~

14 ~~[(6) prescribe, in accordance with Section 55.304(b),~~
15 ~~the duties of a telecommunications utility that initiates an~~
16 ~~unauthorized customer change; and~~

17 ~~[(7) provide for corrective action and the imposition~~
18 ~~of penalties in accordance with Sections 55.305 and 55.306.~~

19 ~~[(b) The commission is granted all necessary jurisdiction~~
20 ~~to adopt rules required by this subchapter and to enforce those~~
21 ~~rules and this subchapter.~~

22 ~~[(c) The commission may notify customers of their rights~~
23 ~~under the rules.~~

24 ~~[Sec. 55.303. VERIFICATION OF CHANGE. A telecommunications~~
25 ~~utility may verify a change order by:~~

26 ~~[(1) obtaining written authorization from the~~
27 ~~customer;~~

1 ~~[(2) obtaining a toll-free electronic authorization~~
2 ~~placed from the telephone number that is the subject of the change~~
3 ~~order, or~~

4 ~~[(3) an oral authorization obtained by an independent~~
5 ~~third party.~~

6 ~~[Sec. 55.304. UNAUTHORIZED CHANGE. (a) If a change in the~~
7 ~~selection of a customer's telecommunications utility is not made or~~
8 ~~verified in accordance with this subchapter, the change, on request~~
9 ~~by the customer, shall be reversed within a period established by~~
10 ~~commission ruling.~~

11 ~~[(b) A telecommunications utility that initiates an~~
12 ~~unauthorized customer change shall:~~

13 ~~[(1) pay all usual and customary charges associated~~
14 ~~with returning the customer to its original telecommunications~~
15 ~~utility,~~

16 ~~[(2) pay the telecommunications utility from which the~~
17 ~~customer was changed any amount paid by the customer that would have~~
18 ~~been paid to that telecommunications utility if the unauthorized~~
19 ~~change had not been made,~~

20 ~~[(3) return to the customer any amount paid by the~~
21 ~~customer that exceeds the charges that would have been imposed for~~
22 ~~identical services by the telecommunications utility from which the~~
23 ~~customer was changed if the unauthorized change had not been made,~~
24 ~~and~~

25 ~~[(4) provide to the original telecommunications~~
26 ~~utility from which the customer was changed all billing records to~~
27 ~~enable that telecommunications utility to comply with this~~

1 ~~subchapter.~~

2 ~~[(c) The telecommunications utility from which the customer~~
3 ~~was changed shall provide to the customer all benefits associated~~
4 ~~with the service on receipt of payment for service provided during~~
5 ~~the unauthorized change.~~

6 ~~[(d) A customer is not liable for charges incurred during~~
7 ~~the first 30 days after the date of an unauthorized carrier change.~~

8 ~~[Sec. 55.305. CORRECTIVE ACTION AND PENALTIES. (a) If the~~
9 ~~commission finds that a telecommunications utility has repeatedly~~
10 ~~violated the commission's telecommunications utility selection~~
11 ~~rules, the commission shall order the utility to take corrective~~
12 ~~action as necessary. In addition, the utility may be subject to~~
13 ~~administrative penalties under Sections 15.023-15.027.~~

14 ~~[(b) An administrative penalty collected under this section~~
15 ~~shall be used to enforce this subchapter.~~

16 ~~[Sec. 55.306. REPEATED AND RECKLESS VIOLATION. If the~~
17 ~~commission finds that a telecommunications utility has repeatedly~~
18 ~~and recklessly violated the commission's telecommunications~~
19 ~~utility selection rules, the commission may, if consistent with the~~
20 ~~public interest, suspend, restrict, deny, or revoke the~~
21 ~~registration or certificate, including an amended certificate, of~~
22 ~~the telecommunications utility and, by taking that action, deny the~~
23 ~~telecommunications utility the right to provide service in this~~
24 ~~state.~~

25 ~~[Sec. 55.307. DECEPTIVE OR FRAUDULENT PRACTICE. The~~
26 ~~commission may prohibit a utility from engaging in a deceptive or~~
27 ~~fraudulent practice, including a marketing practice, involving the~~

1 ~~selection of a customer's telecommunications utility. The~~
2 ~~commission may define deceptive and fraudulent practices to which~~
3 ~~this section applies.~~

4 ~~[Sec. 55.308. CONSISTENCY WITH FEDERAL LAW.~~
5 ~~Notwithstanding any other provision of this subchapter, rules~~
6 ~~adopted by the commission under this subchapter shall be consistent~~
7 ~~with applicable federal laws and rules.]~~

8 CHAPTER 56. TELECOMMUNICATIONS ASSISTANCE AND UNIVERSAL SERVICE

9 FUND

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 56.001. DEFINITIONS. In this chapter:

12 (1) "Department" means the Texas Department of Human
13 Services.

14 (2) "Designated provider" means a telecommunications
15 provider designated by the commission to provide services to an
16 uncertificated area under Subchapter F.

17 Sec. 56.002. CONFLICT OF PROVISIONS. If this chapter
18 conflicts with another provision of this title, this chapter
19 prevails.

20 SUBCHAPTER B. UNIVERSAL SERVICE FUND

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

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

27 (2) reimburse the telecommunications carrier that

1 provides the statewide telecommunications relay access service
2 under Subchapter D;

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

5 (4) reimburse the department, the Texas Commission for
6 the Deaf and Hard of Hearing, and the commission for costs incurred
7 in implementing this chapter and Chapter 57;

8 (5) reimburse a [~~telecommunications carrier~~] local
9 exchange company providing lifeline service as provided by 47
10 C.F.R. Part 54, Subpart E, as amended;

11 (6) finance the implementation and administration of
12 an integrated eligibility process created under Section [~~17.007~~]
13 64.005 for customer service discounts relating to
14 [~~telecommunications services~~] local exchange telephone service,
15 including outreach expenses the commission determines are
16 reasonable and necessary;

17 (7) reimburse a designated provider under Subchapter
18 F [~~, and~~].

19 [~~(8) reimburse a successor utility under Subchapter~~
20 ~~G.~~]

21 Sec. 56.022. UNIFORM CHARGE. (a) The universal service
22 fund is funded by a statewide uniform charge payable by each
23 [~~telecommunications~~] provider that has access to the customer base.

24 (b) [~~A telecommunications~~] provider shall pay the charge in
25 accordance with procedures approved by the commission.

26 (c) The uniform charge is on services and at rates the
27 commission determines. In establishing the charge and the services

1 to which the charge will apply, the commission may not:

2 (1) grant an unreasonable preference or advantage to a
3 ~~[telecommunications]~~ provider;

4 (2) assess the charge on pay telephone service; or

5 (3) subject a ~~[telecommunications]~~ provider to
6 unreasonable prejudice or disadvantage.

7 Sec. 56.023. COMMISSION POWERS AND DUTIES. (a) The
8 commission shall:

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

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

17 (3) determine the amount of and approve a procedure
18 for reimbursement to telecommunications providers of revenue lost
19 in providing tel-assistance service under Subchapter C;

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

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

26 (b) The eligibility criteria must require that ~~[a~~
27 ~~telecommunications providers, in compliance with the commission's~~

1 ~~quality of service requirements]~~ local exchange companies:

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

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

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

18 (d) The commission shall adopt rules for the administration
19 of the universal service fund and this chapter and may act as
20 necessary and convenient to administer the fund and this chapter.

21 ~~[(c) A successor utility, as that term is defined by section
22 54.301, that is or becomes an eligible telecommunications carrier
23 under 47 U.S.C. Section 214(e)(2), as amended, is entitled to
24 receive universal service fund distributions for costs in
25 accordance with Subsection C.]~~

26 Sec. 56.024. REPORTS [~~, CONFIDENTIALITY.~~ [(a)] The
27 commission may require a [~~telecommunications~~] provider to provide a

1 report or information necessary to assess contributions and
2 disbursements to the universal service fund.

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

5 ~~[Sec. 56.025. MAINTENANCE OF RATES AND EXPANSION OF FUND~~
6 ~~FOR CERTAIN COMPANIES. (a) In addition to the authority provided~~
7 ~~by Section 56.021, for each local exchange company that serves~~
8 ~~fewer than five million access lines, the commission:~~

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

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

13 ~~[(b) The commission shall implement a mechanism through the~~
14 ~~universal service fund to replace the reasonably projected~~
15 ~~reduction in high cost assistance revenue caused by a commission~~
16 ~~order, rule, or policy. This subsection does not apply to an order~~
17 ~~entered in a proceeding related to an individual company's revenue~~
18 ~~requirements.~~

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

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

24 ~~[(2) costs or revenue assigned to the intrastate~~
25 ~~jurisdiction.~~

26 ~~[(d) The commission shall implement a mechanism to replace~~
27 ~~the reasonably projected reduction in contribution caused by a~~

1 ~~change of commission policy regarding intraLATA "1-plus" dialing~~
2 ~~access. In this subsection, "contribution" means the average~~
3 ~~intraLATA long distance message telecommunications service revenue~~
4 ~~per minute, including intraLATA toll pooling and associated~~
5 ~~impacts, less the average message telecommunications service cost~~
6 ~~per minute less the average contribution from switched access~~
7 ~~multiplied by the projected change in intraLATA "1-plus" minutes of~~
8 ~~use.~~

9 ~~[(c) The commission shall implement a mechanism to replace~~
10 ~~the reasonably projected increase in costs or decrease in revenue~~
11 ~~of the intrastate jurisdiction caused by another governmental~~
12 ~~agency's order, rule, or policy.]~~

13 ~~[(f) A mechanism implemented under Subsection (c), (d), or~~
14 ~~(e) must be through:~~

15 ~~[(1) an increase in rates, if the increase would not~~
16 ~~adversely affect universal service; or~~

17 ~~[(2) the universal service fund.]~~

18 Sec. 56.026. UNIVERSAL SERVICE FUND DISBURSEMENTS. ~~[(a) A~~
19 ~~revenue requirement showing is not required for a disbursement from~~
20 ~~the universal service fund under this subchapter.]~~

21 ~~[(b)]~~ (a) The commission shall make each disbursement from
22 the universal service fund promptly and efficiently so that a
23 telecommunications provider does not experience an unnecessary
24 cash-flow change as a result of a change in governmental policy.

25 ~~[(c)]~~ (b) Notwithstanding any other provision of this
26 title, if ~~[an electing]~~ a local exchange company reduces rates in
27 conjunction with receiving disbursements from the universal

1 service fund, the commission may not reduce the amount of those
2 disbursements, except that:

3 (1) if a local end user customer of the ~~[electing]~~
4 local exchange company switches to another local service provider
5 that serves the customer entirely through the use of its own
6 facilities and not partially or solely through the use of unbundled
7 network elements, the ~~[electing company's]~~ disbursement ~~[may]~~ to
8 the prior local exchange company shall be reduced by the amount
9 attributable to that customer under Section 56.021(1); or

10 (2) if a local end user customer of ~~[the electing]~~ a
11 local exchange company switches to another local service provider,
12 and the new local service provider serves the customer partially or
13 solely through the use of unbundled network elements ~~[provided by~~
14 ~~the electing company]~~, the ~~[electing company's]~~ disbursement
15 attributable to that customer under Section 56.021(1) may be
16 reduced only if the commission establishes an equitable allocation
17 formula for the disbursement, such that the entity providing the
18 unbundled network elements to the new local service provider is
19 fully compensated for its costs.

20 ~~[(d)] (c) [Any reductions in switched access service rates~~
21 ~~for local exchange companies with more than 125,000 access lines in~~
22 ~~service in this state on December 31, 1998, that are made in~~
23 ~~accordance with this section] Providers electing under chapter 58
24 shall not be ~~[proportional, based on equivalent minutes of use,]~~
25 entitled to receive disbursements from the universal service fund
26 to offset reductions in ~~[intraLATA toll rates, and those reductions~~
27 ~~shall be offset by equal disbursements from the universal]~~ access~~

1 ~~program under Section 55.015, Utilities Code, and~~

2 ~~(2) all persons receiving benefits under the~~
3 ~~tel-assistance service program shall be automatically enrolled in~~
4 ~~the lifeline service program.~~

5 ~~[SECTION 5:~~

6 ~~[If a person receiving benefits under the tel-assistance~~
7 ~~service program immediately before the effective date of this Act~~
8 ~~receives a greater benefit under the tel-assistance service program~~
9 ~~than]~~

10 (a) Not later than October 1, 2005, the ~~[person will receive~~
11 ~~under the lifeline service program, the telecommunications~~
12 ~~provider] commission shall [continue the higher benefit] commence a~~
13 review and ~~[may be reimbursed for the higher benefit from]~~
14 evaluation of the universal service fund. The ~~[provider must~~
15 ~~continue to provide that] review shall constitute a comprehensive~~
16 assessment of the appropriate use of universal service [until]
17 funds collected and the [person discontinues basic local service in
18 the exchange in which the person is receiving service] method of
19 collecting and distributing those funds.

20 (b) With respect to companies electing under section
21 51.004(2), by January 1, 2006, the commission shall have concluded
22 the following determinations and entered the appropriate enabling
23 orders to accomplish the following:

24 (1) Require such companies to provide to the
25 commission:

26 (a) the numbers of business and residential
27 customers subscribing only to basic local exchange

1 telecommunications service in each geographic area for which
2 universal service funds were received in 2004;

3 (b) the amount of state universal service funds
4 received by the company during 2004 to support each such customer;
5 and

6 (c) all known competitive alternative service
7 providers offering basic local exchange telecommunications service
8 to such customers.

9 (c) With respect to companies electing under chapters 53, 58
10 or 59, the study referenced in paragraph (a) above shall also
11 include the following:

12 (1) the cost of building and maintaining the network
13 and associated costs necessary to provide basic local exchange
14 telecommunications service in each geographic area for which
15 universal service funds were received in 2004;

16 (2) the in service dates of and depreciation schedule
17 associated with the network described in (1) above;

18 (3) the numbers of residential and business customers
19 who subscribe to only basic local exchange telecommunications
20 service in each such geographic area, the number of such customers
21 added to the network in each year for the last five years, and the
22 net gain or loss of such customer numbers in each year for the last
23 five years;

24 (4) identify the capital expenditures specifically
25 associated with the customers added to the network who subscribe to
26 only basic local exchange telecommunications service in each such
27 geographic area in each of the last five years and state separately

1 other incremental costs associated with providing such customers
2 basic local exchange telecommunications service.

3 (5) an accounting of the use of the universal service
4 funds received in each geographic area in each of the three previous
5 years;

6 (6) each known competitive alternative service
7 provider actually offering basic local exchange telecommunications
8 service to residential and business customers in such geographic
9 areas;

10 (7) the incremental cost, in relation to the costs
11 identified in subparagraph (1) above, to deploy broadband service
12 in each geographic area identified by the commission for which
13 universal service funds are received, identifying the incremental
14 costs specific to each broadband technology determined by the
15 commission to be a viable alternative technology to deliver
16 broadband services.

17 (8) such other information as will enable the
18 Commission to determine the actual cost which is unrecovered
19 through revenues to the ILEC, to build, expand, maintain and
20 operate the network necessary to provide basic local
21 telecommunications service in those areas currently receiving USF.

22 (d) The commission may group companies as it deems
23 appropriate for purposes of efficiency and may permit companies to
24 share the cost of developing data the commission determines is
25 necessary to discharge its responsibilities under this section.

26 (e) Not later than September 1, 2006 the commission shall
27 conclude the study and make the following determinations:

1 (1) whether any company has received USF funds which,
2 when combined with revenues to the ILEC from that USF supported
3 area, exceed its costs in such area of providing basic local
4 telecommunications service as determined by the Commission by more
5 than 5% in two out of the last three years;

6 (2) whether any company has used USF funds for any
7 purpose other than providing basic local telecommunications in the
8 geographic area for which the funds were authorized.

9 If either (1) or (2) above are found, the Commission shall reduce
10 the overall fund and the funds available to each company to the
11 amount necessary to cover only the costs as determined by the
12 Commission.

13 (f) The commission shall deliver its report on the results
14 of this study to the legislature on or before September 1, 2006,
15 along with the commission's recommendations concerning changes in
16 universal service funding including changes in how universal
17 service funds should be collected, how they should be dispersed and
18 the purposes for which they should be used.

19 SUBCHAPTER D. STATEWIDE TELECOMMUNICATIONS RELAY ACCESS SERVICE

20 Sec. 56.101. PURPOSE. The purpose of this subchapter is to
21 provide for the uniform and coordinated provision by one
22 telecommunications carrier of a statewide telecommunications relay
23 access service for persons with an impairment of hearing or speech.

24 Sec. 56.102. TELECOMMUNICATIONS RELAY ACCESS SERVICE. (a)
25 The commission shall adopt and enforce rules establishing a
26 statewide telecommunications relay access service for the use of a
27 person with an impairment of hearing or speech.

1 (b) The commission rules shall provide that the service
2 must:

3 (1) use specialized communications equipment, such as
4 a telecommunications device for the deaf, and operator
5 translations; and

6 (2) meet the criteria provided by Sections 56.103,
7 56.104, and 56.105.

8 Sec. 56.103. TELECOMMUNICATIONS RELAY ACCESS SERVICE
9 REQUIREMENTS. (a) The telecommunications relay access service
10 shall provide a person with an impairment of hearing or speech with
11 access to the telecommunications network in this state equivalent
12 to the access provided other customers.

13 (b) The service consists of:

14 (1) switching and transmission of the call;

15 (2) live or automated verbal and print translations of
16 communications between a person with an impairment of hearing or
17 speech who uses a telecommunications device for the deaf or a
18 similar automated device and a person who does not have such
19 equipment; and

20 (3) other service enhancements proposed by the carrier
21 and approved by the commission.

22 Sec. 56.104. TELECOMMUNICATIONS RELAY ACCESS SERVICE
23 CHARGES. (a) For a call made using the telecommunications relay
24 access service, the person calling or called:

25 (1) may not be charged for a call that originates and
26 terminates in the same local calling area; and

27 (2) shall pay one-half of the total charges

1 established by contract with the commission for intrastate
2 interexchange calls.

3 (b) Charges related to providing the service that, under
4 Subsection (a), are not charged to a person calling or called shall
5 be funded from the universal service fund, as specified by the
6 service provider's contract with the commission.

7 (c) A local exchange company may not impose an interexchange
8 carrier access charge on a call using the service that originates
9 and terminates in the same local calling area.

10 (d) A local exchange company shall provide billing and
11 collection services for the service at just and reasonable rates.

12 Sec. 56.105. TRIAL SERVICE COSTS AND DESIGN INFORMATION.
13 If the commission orders a local exchange company to provide for a
14 trial telecommunications relay access service for persons with an
15 impairment of hearing or speech, all pertinent costs and design
16 information from the trial must be made available to the public.

17 Sec. 56.106. TELECOMMUNICATIONS RELAY ACCESS SERVICE
18 ASSESSMENTS. (a) The commission shall set appropriate assessments
19 for all telecommunications [~~utilities~~] providers to fund the
20 telecommunications relay access service.

21 (b) In setting an assessment, the commission shall
22 consider:

23 (1) the aggregate calling pattern of service users;
24 and

25 (2) any other factor the commission finds appropriate
26 and in the public interest.

27 (c) The commission shall:

1 (1) review the assessments annually; and

2 (2) adjust the assessments as appropriate.

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

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

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

14 Sec. 56.108. SELECTION OF TELECOMMUNICATIONS RELAY ACCESS
15 SERVICE CARRIER. (a) The commission shall select one
16 telecommunications carrier to provide the statewide
17 telecommunications relay access service.

18 (b) The commission shall make a written award of the
19 contract to the telecommunications carrier whose proposal is the
20 most advantageous to this state, considering:

21 (1) price;

22 (2) the interests of the community of persons with an
23 impairment of hearing or speech in having access to a high quality
24 and technologically advanced telecommunications system; and

25 (3) any other factor listed in the commission's
26 request for proposals.

27 (c) The commission shall consider each proposal in a manner

1 that does not disclose the contents of the proposal to a
2 telecommunications carrier making a competing proposal.

3 (d) The commission's evaluation of a telecommunications
4 carrier's proposal shall include the:

- 5 (1) charges for the service;
- 6 (2) service enhancements proposed by the carrier;
- 7 (3) technological sophistication of the network
8 proposed by the carrier; and
- 9 (4) date proposed for beginning the service.

10 Sec. 56.1085. SPECIAL FEATURES FOR RELAY ACCESS SERVICE.

11 (a) The commission may contract for a special feature for the
12 state's telecommunications relay access service if the commission
13 determines:

- 14 (1) the feature will benefit the communication of
15 persons with an impairment of hearing or speech;
- 16 (2) installation of the feature will be of benefit to
17 the state; and
- 18 (3) the feature will make the relay access service
19 available to a greater number of users.

20 (b) If the carrier selected to provide the
21 telecommunications relay access service under Section 56.108 is
22 unable to provide the special feature at the best value to the
23 state, the commission may make a written award of a contract for a
24 carrier to provide the special feature to the telecommunications
25 carrier whose proposal is most advantageous to the state,
26 considering:

- 27 (1) the factors provided by Section 56.108(b); and

1 (2) the past performance, demonstrated capability,
2 and experience of the carrier.

3 (c) The commission shall consider each proposal in a manner
4 that does not disclose the contents of the proposal to a
5 telecommunications carrier making a competing proposal.

6 (d) The commission's evaluation of a telecommunications
7 carrier's proposal shall include the considerations provided by
8 Section 56.108(d).

9 Sec. 56.109. COMPENSATION OF CARRIER. (a) The
10 telecommunications carrier selected to provide the
11 telecommunications relay access service under Section 56.108 or the
12 carrier selected to provide a special feature for the
13 telecommunications relay access service under Section 56.1085
14 shall be compensated at rates and on terms provided by the carrier's
15 contract with the commission.

16 (b) The compensation may include:

17 (1) a return on the investment required to provide the
18 service; and

19 (2) compensation for unbillable or uncollectible
20 calls placed through the service.

21 (c) Compensation for unbillable or uncollectible calls is
22 subject to a reasonable limitation determined by the commission.

23 Sec. 56.110. ADVISORY COMMITTEE. (a) An advisory
24 committee to assist the commission in administering this subchapter
25 is composed of the following persons appointed by the commission:

26 (1) two persons with disabilities that impair the
27 ability to effectively access the telephone network other than

1 disabilities described by Subdivisions (2)-(7);

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

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

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

8 (5) one person with a hearing impairment recommended
9 by the American Association of Retired Persons;

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

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

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

20 (9) two persons, at least one of whom is deaf, with
21 experience in providing relay services recommended by the 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 (b) Members of the advisory committee serve two-year terms.
26 A member whose term has expired shall continue to serve until a
27 qualified replacement is appointed.

1 Sec. 56.111. ADVISORY COMMITTEE DUTIES. The advisory
2 committee shall:

3 (1) monitor the establishment, administration, and
4 promotion of the statewide telecommunications relay access
5 service;

6 (2) advise the commission in pursuing a service that
7 meets the needs of persons with an impairment of hearing or speech
8 in communicating with other telecommunications services users; and

9 (3) advise the commission and the Texas Commission for
10 the Deaf and Hard of Hearing, at the request of either commission,
11 regarding any issue related to the specialized telecommunications
12 assistance program established under Subchapter E, including:

13 (A) devices or services suitable to meet the
14 needs of persons with disabilities in communicating with other
15 users of telecommunications services; and

16 (B) oversight and administration of the program.

17 Sec. 56.112. ADVISORY COMMITTEE SUPPORT AND COSTS. (a) The
18 commission shall provide to the advisory committee:

19 (1) clerical and staff support; and

20 (2) a secretary to record committee meetings.

21 (b) The costs associated with the advisory committee shall
22 be reimbursed from the universal service fund.

23 Sec. 56.113. ADVISORY COMMITTEE COMPENSATION AND EXPENSES.

24 A member of the advisory committee serves without compensation but
25 is entitled to reimbursement at rates established for state
26 employees for travel and per diem incurred in the performance of the
27 member's official duties.

1 SUBCHAPTER E. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

2 Sec. 56.151. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE
3 PROGRAM. The commission and the Texas Commission for the Deaf and
4 Hard of Hearing by rule shall establish a specialized
5 telecommunications assistance program to provide financial
6 assistance to individuals with disabilities that impair the
7 individuals' ability to effectively access the telephone network to
8 assist the individuals with the purchase of basic specialized
9 equipment or services to provide the individuals with telephone
10 network access that is functionally equivalent to that enjoyed by
11 individuals without disabilities. The agencies may adopt joint
12 rules that identify devices and services eligible for vouchers
13 under the program.

14 Sec. 56.152. ELIGIBILITY. The Texas Commission for the
15 Deaf and Hard of Hearing by rule shall prescribe eligibility
16 standards for individuals, including deaf individuals and
17 individuals who have an impairment of hearing or speech, to receive
18 an assistance voucher under the program. To be eligible, an
19 individual must be a resident of this state with a disability that
20 impairs the individual's ability to effectively access the
21 telephone network.

22 Sec. 56.153. VOUCHERS. (a) The Texas Commission for the
23 Deaf and Hard of Hearing shall determine a reasonable price for a
24 basic specialized telecommunications device that permits, or basic
25 specialized services that permit, telephone network access and
26 distribute to each eligible applicant a voucher that guarantees
27 payment of that amount to a distributor of new specialized

1 telecommunications devices described by Section 56.151 or to a
2 provider of services described by that section. The Texas
3 Commission for the Deaf and Hard of Hearing may issue a voucher for
4 a service only if the service is less expensive than a device
5 eligible for a voucher under the program to meet the same need.

6 (b) A voucher must have the value printed on its face. The
7 individual exchanging a voucher for the purchase of a specialized
8 telecommunications device or service is responsible for payment of
9 the difference between the voucher's value and the price of the
10 device or service.

11 (c) The commission and the Texas Commission for the Deaf and
12 Hard of Hearing by rule shall provide that a distributor of devices
13 or a provider of services will receive not more than the full price
14 of the device or service if the recipient of a voucher exchanges the
15 voucher for a device or service that the distributor or provider
16 sells for less than the voucher's value.

17 (d) An individual who has exchanged a voucher for a
18 specialized telecommunications device is not eligible to receive
19 another voucher before the fifth anniversary of the date the
20 individual exchanged the previously issued voucher unless, before
21 that date, the recipient develops a need for a different type of
22 telecommunications device or service under the program because the
23 recipient's disability changes or the recipient acquires another
24 disability.

25 (e) Except as provided by rules adopted under this
26 subsection, an individual is not eligible for a voucher if the Texas
27 Commission for the Deaf and Hard of Hearing has issued a voucher for

1 a device or service to another individual with the same type of
2 disability in the individual's household. The Texas Commission for
3 the Deaf and Hard of Hearing by rule may provide for financially
4 independent individuals who reside in a congregate setting to be
5 eligible for a voucher regardless of whether another individual
6 living in that setting has received a voucher.

7 (f) The Texas Commission for the Deaf and Hard of Hearing
8 shall determine eligibility of each person who files an application
9 for a voucher and issue each eligible applicant an appropriate
10 voucher.

11 (g) The Texas Commission for the Deaf and Hard of Hearing
12 shall maintain a record regarding each individual who receives a
13 voucher under the program.

14 (h) The Texas Commission for the Deaf and Hard of Hearing
15 shall deposit money collected under the program to the credit of the
16 universal service fund.

17 Sec. 56.154. COMMISSION DUTIES. (a) Not later than the
18 45th day after the date the commission receives a voucher a
19 telecommunications device distributor presents for payment or a
20 voucher a telecommunications service provider presents for
21 payment, the commission shall pay to the distributor or service
22 provider the lesser of the value of a voucher properly exchanged for
23 a specialized telecommunications device or service or the full
24 price of the device or service for which a voucher recipient
25 exchanges the voucher. The payments must be made from the universal
26 service fund.

27 (b) The commission may investigate whether the presentation

1 of a voucher for payment represents a valid transaction for a
2 telecommunications device or service under the program. The Texas
3 Commission for the Deaf and Hard of Hearing shall cooperate with and
4 assist the commission in an investigation under this subsection.

5 (c) Notwithstanding Section 56.153(a), the commission may:

6 (1) delay payment of a voucher to a distributor of
7 devices or a service provider if there is a dispute regarding the
8 amount or propriety of the payment or whether the device or service
9 is appropriate or adequate to meet the needs of the person to whom
10 the Texas Commission for the Deaf and Hard of Hearing issued the
11 voucher until the dispute is resolved;

12 (2) provide that payment of the voucher is conditioned
13 on the return of the payment if the device is returned to the
14 distributor or if the service is not used by the person to whom the
15 voucher was issued; and

16 (3) provide an alternative dispute resolution process
17 for resolving a dispute regarding a subject described by
18 Subdivision (1) or (2).

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

25 (b) The commission shall specify how each [~~utility~~]
26 telecommunications provider must determine the amount of the
27 surcharge and by rule shall prohibit a [~~utility~~] telecommunications

1 provider from recovering an aggregation of more than 12 months of
2 assessments in a single surcharge. The rules must require a
3 ~~[utility]~~ provider to apply for approval of a surcharge before the
4 91st day after the date the period during which the aggregated
5 surcharges were assessed closes. If a ~~[utility]~~ provider chooses
6 to impose the surcharge, the ~~[utility]~~ provider shall include the
7 surcharge in the "universal service fund surcharge [~~listing as~~
8 ~~provided by Section 3.604(c) of this Act~~].

9 Sec. 56.156. PROMOTION OF PROGRAM. The Texas Commission
10 for the Deaf and Hard of Hearing may promote the program established
11 under this subchapter by means of participation in events,
12 advertisements, pamphlets, brochures, forms, pins, or other
13 promotional items or efforts that provide contact information for
14 persons interested in applying for a voucher under the program.

15 SUBCHAPTER F. SERVICE TO UNCERTIFICATED AREA

16 Sec. 56.201. DEFINITION. In this subchapter, "permanent
17 residential or business premises" means a premises that has
18 permanent facilities for water, wastewater, and electricity.

19 Sec. 56.202. DESIGNATION OF PROVIDER. (a) Notwithstanding
20 Section 54.001, the commission may designate a ~~[telecommunications~~
21 ~~provider under this section]~~ local exchange company to provide
22 voice-grade services to permanent residential or business premises
23 that are not included within the certificated area of a ~~[holder of a~~
24 ~~certificate of convenience and necessity]~~ local exchange company.

25 (b) The commission may designate a provider only if the
26 provider is otherwise eligible to receive universal service funds
27 under Section 56.023(b).

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 holder of a certificate [~~of convenience and necessity~~] to
5 provide local exchange telephone service may petition the
6 commission to designate a telecommunications provider to provide to
7 those premises voice-grade services supported by state and federal
8 universal service support mechanisms.

9 Sec. 56.204. CONTENTS OF PETITION. [~~(a)~~] A petition for
10 designation of a service provider must:

11 [~~(1)~~] (a) state with reasonable particularity the
12 locations of the permanent residential or business premises for
13 which the petitioners are requesting service;

14 [~~(2)~~] (b) establish that those locations are within
15 reasonable proximity to one another so that the petitioners possess
16 a sufficient community of interest to warrant the designation of a
17 provider and the expenditure of universal service funds necessary
18 to establish service;

19 [~~(3)~~] (c) except as provided by Subsection (b), be
20 signed by at least five persons who:

21 [~~(A)~~] (1) are not members of the same household;

22 [~~(B)~~] (2) reside in the permanent residential
23 premises or are the owners of the permanent residential or business
24 premises for which service is sought and that are not located within
25 a certificated area;

26 [~~(C)~~] (3) want service to those premises; and

27 [~~(D)~~] (4) commit to pay the aid to construction

1 charges for service to those premises as determined by the
2 commission;

3 ~~[(4)]~~ (d) nominate as potential providers of service
4 not more than five telecommunications providers serving territory
5 that is contiguous to the location of the permanent residential or
6 business premises using wireless or wireline facilities, resale, or
7 unbundled network elements; and

8 ~~[(5)]~~ (e) include as an attachment or an appendix
9 documentation indicating the required residence or ownership,
10 including a state-issued license or identification, tax records,
11 deeds, or voter registration materials.

12 ~~[(b) The commission may accept a petition that is signed by
13 fewer than five persons if a petitioner provides an affidavit
14 stating that the petitioners have taken all reasonable steps to
15 secure the signatures of the residents of permanent residential
16 premises or the owners of permanent residential or business
17 premises within reasonably close proximity to the petitioning
18 premises who are not receiving telephone service when the petition
19 is filed and who want telephone service initiated.]~~

20 Sec. 56.205. HEARING. If the commission finds that the
21 petition complies with Section 56.204, the commission shall hold an
22 evidentiary hearing to determine if a telecommunications provider
23 is willing to be designated to provide service to those premises or,
24 if a provider is not willing to be designated, to determine the
25 telecommunications provider that is best able to serve those
26 premises under the criteria prescribed by this subchapter.

27 Sec. 56.206. DENIAL OF PETITION. The commission shall deny

1 a petition if the commission determines that services cannot be
2 extended to the petitioning premises at a reasonable cost. In
3 making that determination, the commission shall consider all
4 relevant factors, including:

5 (1) the original cost to be incurred by a designated
6 provider to deploy service to the petitioning premises, and the
7 effect of reimbursement of those costs on the state universal
8 service fund;

9 (2) the number of access lines requested by the
10 petitioners for the petitioning premises;

11 (3) the size of the geographic territory in which the
12 petitioning premises are included;

13 (4) the proximity of existing facilities and the
14 existence of a preferred designated provider under Section 56.213;
15 and

16 (5) any technical barriers to the provision of
17 service.

18 Sec. 56.207. ORDER. In any order granting a petition, the
19 commission shall:

20 (1) approve the facilities to be deployed based on the
21 estimated costs of deployment submitted in accordance with Section
22 56.208(a);

23 (2) approve the amount of original cost of deployment
24 to be recovered from the state universal service fund and the terms
25 of original cost recovery under Section 56.209; and

26 (3) approve the recurring cost recovery under Section
27 56.209, including the monthly rate for services and the monthly per

1 line fee to be recovered from the state universal service fund under
2 that section.

3 Sec. 56.208. DESIGNATION OF PROVIDER. (a) In determining
4 which nominated telecommunications provider the commission will
5 designate to provide service to the petitioning premises, the
6 commission shall consider the relative estimated cost to be
7 incurred by contiguous providers to serve the petitioning premises
8 and give preference to the provider having the least cost
9 technology that meets the quality of service standards prescribed
10 by the commission applicable to that provider.

11 (b) The commission may not designate a telecommunications
12 provider to serve the petitioning premises unless the premises are
13 located in an area that is contiguous to an area in which the
14 telecommunications provider has previously been designated
15 eligible to receive universal service funding under Section
16 56.023(b). This subsection does not apply if the commission
17 designates the provider after the provider voluntarily agrees to
18 provide service to the petitioning premises.

19 Sec. 56.209. RECOVERY OF COSTS. (a) If, after a hearing,
20 the commission designates a telecommunications provider to serve
21 the petitioning premises, the commission shall permit the
22 designated provider to recover from the state universal service
23 fund the provider's actual costs of providing service to the
24 premises, including the provider's original cost of deployment and
25 actual recurring costs.

26 (b) The reimbursable original cost of deploying facilities
27 to the petitioning premises is the original cost of the

1 telecommunications provider's facilities installed in, or upgraded
2 to permit the provision of service to, the petitioning premises as
3 determined by the financial accounting standards applicable to the
4 provider, including an amount for the recovery of all costs that are
5 typically included as capital costs for accounting purposes, that
6 are not recovered through an aid to construction charge assessed to
7 the petitioners. The final order permitting or requiring the
8 designated provider to provide service to the petitioning premises
9 shall ensure that all the original cost of the provider shall be
10 amortized and recovered from the state universal service fund,
11 together with interest at the prevailing commercial lending rate:

12 (1) not later than the third anniversary of the date of
13 the order, for a deployment with an original cost of \$1 million or
14 less;

15 (2) not later than the fifth anniversary of the date of
16 the order, for a deployment with an original cost of more than \$1
17 million, but not more than \$2 million; and

18 (3) not later than the seventh anniversary of the date
19 of the order, for a deployment with an original cost of more than \$2
20 million.

21 (c) The designated provider shall recover the provider's
22 actual recurring costs of service, including maintenance and the
23 ongoing operational costs of providing service after deployment of
24 the facilities to the petitioning premises and a reasonable
25 operating margin, from:

26 (1) the monthly rate charged the customer; and

27 (2) a monthly per line state universal service fund

1 payment in an amount equal to the unrecovered recurring costs
2 incurred in providing service divided by the access lines served in
3 the petitioning premises.

4 (d) The monthly per line fee established under Subsection
5 (c) is in addition to the universal service funds associated with
6 the recovery of the original cost of deployment and interest
7 authorized by Subsection (b) and in addition to the universal
8 service funds the designated provider receives to provide service
9 in other areas of this state.

10 (e) The commission may not authorize or require any services
11 to be provided to petitioning premises under this subchapter during
12 a fiscal year if the total amount of required reimbursements of
13 actual original cost of deployment to all approved petitioning
14 premises under this section, together with interest, including
15 obligations for reimbursements from preceding years, would equal an
16 amount that exceeds 0.02 percent of the annual gross revenues
17 reported to the state universal service fund during the preceding
18 fiscal year.

19 Sec. 56.210. AID TO CONSTRUCTION CHARGE; CONTRACT FOR
20 SERVICES. The commission shall establish a reasonable aid to
21 construction charge, not to exceed \$3,000, to be assessed each
22 petitioner. The commission may not require a designated provider to
23 begin construction until:

24 (1) each petitioner has paid or executed an agreement
25 acceptable to the provider to pay the aid to construction charge;
26 and

27 (2) each petitioner has executed an assignable

1 agreement for subscription to basic local service to the
2 petitioning premises from the designated provider for a period at
3 least equal to the period during which the provider will receive
4 reimbursement for the original cost of deployment under Section
5 56.209(b).

6 Sec. 56.211. PERMANENT PREMISES REQUIRED. A
7 telecommunications provider may not under any circumstances be
8 required to extend service to a location that is not a permanent
9 residential or business premises or be required to provide service
10 to the petitioning premises before the 180th day after the date the
11 provider was designated to provide service to the petitioning
12 premises.

13 Sec. 56.212. SUBSEQUENT RELATED PETITIONS. (a) If the
14 commission approves a petition requesting service, residents of
15 permanent residential premises or owners of permanent residential
16 or business premises in reasonable proximity to the premises that
17 were the subject of an approved petition who did not sign the prior
18 petition requesting service are not entitled to receive service
19 under this subchapter until the fifth anniversary of the date the
20 prior petition was filed unless the residents or owners file a new
21 petition under this subchapter and agree to pay aid to construction
22 charges on the same terms as applicable to the prior petitioners.

23 (b) The designated provider shall receive reimbursement for
24 the original cost of deployment and actual recurring costs of
25 providing service to those additional residents in the same manner
26 as the provider received reimbursement of those costs in relation
27 to the prior petitioners. The provider may not receive

1 reimbursement for the original cost of deployment under a
2 subsequent petition if the provider previously received complete
3 reimbursement for those costs from the state universal service
4 fund. If the state universal service fund has completely
5 reimbursed the original cost of deployment as provided by this
6 subchapter, each subsequent petitioner must pay into the state
7 universal service fund an amount equal to the aid to construction
8 charge paid by each prior petitioner.

9 Sec. 56.213. PREFERRED PROVIDER. (a) A provider who is
10 designated to serve petitioning premises located within an
11 uncertificated area under this subchapter is the preferred provider
12 for any permanent residential or business premises in reasonable
13 proximity to those petitioning premises for later petitions filed
14 under Section 56.212.

15 (b) A preferred designated provider is entitled to an
16 opportunity for a hearing under Section 56.205 on a petition filed
17 under Section 56.203.

18 Sec. 56.214. CERTIFICATE NOT AMENDED. The designation of a
19 provider to serve permanent residential or business premises within
20 an uncertificated area under this subchapter does not have the
21 effect of:

22 (1) amending the boundaries of the provider's
23 certificate to provide local exchange service; or

24 (2) imposing carrier of last resort responsibilities
25 on the provider.

26 [~~SUBCHAPTER C. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES~~

27 [~~Sec. 56.251. DEFINITION. In this subchapter, "successor~~

1 utility" has the meaning assigned by Section 54.301.

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

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

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

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

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

22 [~~Sec. 56.254. RECOVERY OF COSTS. The commission order~~
23 ~~designating the successor utility under Section 54.303 shall~~
24 ~~authorize the utility to recover the costs determined under Section~~
25 ~~56.253. The costs may be amortized and recovered from the state~~
26 ~~universal service fund, together with interest at the prevailing~~
27 ~~commercial lending rate.~~

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

3 ~~[(2) not later than the second anniversary of the date~~
4 ~~of the order if the costs are more than \$1 million but no more than~~
5 ~~\$2 million; and~~

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

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

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

11 Sec. 57.001. ~~[CONFLICT]~~ STATEMENT OF ~~[PROVISIONS]~~ STATE
12 GOAL. (a) It is the goal of this state to facilitate and promote
13 the deployment of an advanced broadband infrastructure to spur
14 economic development throughout this state. This state should be
15 among the leaders in achieving this objective.

16 (b) The primary means of achieving this goal is through
17 encouraging private investment in this state's broadband
18 infrastructure by creating incentives for that investment and
19 promoting the development of competition.

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

27 Sec. 57.002. ENCOURAGEMENT OF BROADBAND NETWORK DEPLOYMENT

1 FOR ALL TEXANS. [~~If this chapter conflicts with another~~]

2 (1) Notwithstanding any other provision of this title, [this
3 chapter prevails.] beginning September 1, 2005, an incumbent local
4 exchange company electing pursuant to Section 51.004 (2):

5 (a) shall, on a bona fide retail request for those
6 services, provide in rural areas of this state served by the
7 company, advanced services that are reasonably comparable to the
8 advanced services it provides in non-rural areas of the state. The
9 company shall offer the advanced services:

10 (i) at prices, terms, and conditions that are
11 reasonably comparable to the prices, terms, and conditions for
12 similar advanced services provided by the company in non-rural
13 areas; and

14 (ii) within 15 months after the bona fide request
15 of a minimum of 50 customers for those advanced services.

16 (b) Notwithstanding any other provision of this title,
17 such incumbent local exchange company on a bona fide retail request
18 for those services, shall offer caller identification service and
19 custom calling features in rural areas served by the company. The
20 company shall offer the services:

21 (i) at prices, terms, and conditions reasonably
22 comparable to the company's prices, terms, and conditions for
23 similar services in urban areas; and

24 (ii) within 15 months after the bona fide request
25 for those services.

26 (c) This section may not be construed to require such
27 incumbent local exchange company to:

1 (i) begin providing services in a rural area in
2 which the company does not provide local exchange telephone
3 service; or

4 (ii) provide a service in a rural area of this
5 state unless the company provides the service in non-rural areas of
6 this state.

7 (d) For purposes of this section, a rural area is any
8 community located in a county not included within any Metropolitan
9 Statistical Area (MSA) boundary, as defined by the United States
10 Office of Management and Budget, and any community within an MSA
11 with a population of 20,000 or fewer not adjacent to the primary MSA
12 city.

13 (e) Notwithstanding any other provision of this title,
14 beginning September 1, 2005, such incumbent local exchange company
15 which deploys broadband networks and provides advanced services
16 within a non-rural area shall deploy such networks and provide such
17 services throughout that non-rural area at reasonably comparable
18 prices, terms and conditions. Beginning September 1, 2005, such
19 incumbent local exchange company shall submit to the governing body
20 of each such non-rural area its construction plans for any
21 deployment or expansion of its broadband network, including maps
22 and a build-out schedule showing completion of the build-out
23 throughout the non-rural area within four years of the commencement
24 of the construction.

25 (2) In furtherance of the goals and policies of this State
26 set forth in this title to encourage the deployment of competitive
27 broadband networks through private investment, no provider,

1 utility, agency or political subdivision of the State of Texas,
2 either directly or through a separate enterprise entity such as a
3 municipally-owned utility, may:

4 (a) enforce, impose or permit the imposition on such
5 networks or such broadband network providers of any regulation,
6 fee, tax, assessment or other form of economic burden greater than
7 is imposed on networks carrying voice or other services, including
8 cable television and other video services, whichever is lower, and
9 in no event shall such networks or such broadband network providers
10 be subject to multiple assessments for the carriage of multiple
11 services over a single network; or

12 (b) enforce or impose on a broadband network provider
13 any regulation, fee, tax, assessment or other economic burden in
14 connection with its services, including intrastate services, which
15 originate on such provider's broadband network, greater than is
16 imposed in connection with functionally-similar services over
17 which federal jurisdiction has been asserted for any purpose,
18 including but not limited to voice over the internet (VoIP)
19 services.

20 (3) Notwithstanding any other provision of this title, the
21 commission has all jurisdiction necessary to enforce this section,
22 including authority to determine compliance with these provisions,
23 remedy noncompliance, impose fines up to \$25,000 per day for
24 failure to comply, and redress complaints from competing providers
25 negatively impacted by such noncompliance. A party aggrieved by
26 any entity's failure to comply with this section may also, or in the
27 alternative, pursue private remedies, including damages and

1 injunctive relief, in an appropriate court of law.

2 SUBCHAPTER B. [~~DISTANCE LEARNING AND INFORMATION SHARING~~

3 [~~Sec. 57.021. DEFINITIONS. In this subchapter:~~

4 [~~(1) "Distance learning" means an instruction,~~
5 ~~learning, or training resource, including video, data, voice, or~~
6 ~~electronic information, that is:~~

7 [~~(A) used by an educational institution~~
8 ~~predominantly for instruction, learning, or training; and~~

9 [~~(B) transmitted from a site to one or more other~~
10 ~~sites by a telecommunications service.~~

11 [~~(2) "Educational institution" includes:~~

12 [~~(A) an accredited primary or secondary school,~~

13 [~~(B) an institution of higher education as~~
14 ~~defined by Section 61.003, Education Code,~~

15 [~~(C) a private institution of higher education~~
16 ~~accredited by a recognized accrediting agency as defined by Section~~
17 ~~61.003, Education Code,~~

18 [~~(D) the Texas Education Agency and its~~
19 ~~successors and assigns,~~

20 [~~(E) a regional education service center~~
21 ~~established and operated in accordance with Chapter 8, Education~~
22 ~~Code, or~~

23 [~~(F) the Texas Higher Education Coordinating~~
24 ~~Board and its successors and assigns.~~

25 [~~(3) "Library" means:~~

26 [~~(A) a public library or regional library system~~
27 ~~as defined by Section 441.122, Government Code, or~~

1 ~~[(B) a library operated by an institution of~~
2 ~~higher education or a school district.~~

3 ~~[Sec. 57.022. REDUCED RATES FOR DISTANCE LEARNING OR~~
4 ~~INFORMATION SHARING SERVICES. (a) The commission by rule shall~~
5 ~~require a dominant carrier to file a tariff that includes a reduced~~
6 ~~rate for a telecommunications service the commission finds is~~
7 ~~directly related to:~~

8 ~~[(1) a distance learning activity that is or could be~~
9 ~~conducted by an educational institution in this state; or~~

10 ~~[(2) an information sharing program that is or could~~
11 ~~be conducted by a library in this state.~~

12 ~~[(b) The commission rules shall specify:~~

13 ~~[(1) each telecommunications service to which~~
14 ~~Subsection (a) applies;~~

15 ~~[(2) the process for an educational institution or~~
16 ~~library to qualify for a reduced rate;~~

17 ~~[(3) the date by which a dominant carrier is required~~
18 ~~to file a tariff;~~

19 ~~[(4) guidelines and criteria that require the services~~
20 ~~and reduced rates to further the goals prescribed by Section~~
21 ~~57.023; and~~

22 ~~[(5) any other requirement or term that the commission~~
23 ~~determines to be in the public interest.~~

24 ~~[(c) The commission is not required to determine the long~~
25 ~~run incremental cost of providing a service before approving a~~
26 ~~reduced rate for the service.~~

27 ~~[(d) Until cost determination rules are developed and the~~

1 ~~rates established under this section are changed as necessary to~~
2 ~~ensure proper cost recovery, the reduced rates established by the~~
3 ~~commission shall be equal to 75 percent of the otherwise applicable~~
4 ~~rate.~~

5 ~~[(c) After the commission develops cost determination rules~~
6 ~~for telecommunications services generally, the commission shall~~
7 ~~ensure that a reduced rate approved under this section.~~

8 ~~[(1) recovers service-specific long run incremental~~
9 ~~costs; and~~

10 ~~[(2) avoids subsidizing an educational institution or~~
11 ~~a library.~~

12 ~~[Sec. 57.023. SERVICE AND RATE REQUIREMENTS. The services~~
13 ~~and reduced rates must be designed to:~~

14 ~~[(1) encourage the development and offering of:~~

15 ~~[(A) distance learning activities by educational~~
16 ~~institutions; and~~

17 ~~[(B) information sharing programs of libraries;~~

18 ~~[(2) meet the:~~

19 ~~[(A) distance learning needs identified by the~~
20 ~~educational community; and~~

21 ~~[(B) information sharing needs identified by~~
22 ~~libraries; and~~

23 ~~[(3) recover the long run incremental costs of~~
24 ~~providing the services, to the extent those costs can be~~
25 ~~identified, to avoid subsidizing an educational institution or a~~
26 ~~library.~~

27 ~~[Sec. 57.024. TARIFF FILINGS. A tariff filed by a dominant~~

1 ~~carrier under Section 57.022:~~

2 ~~[(1) may concern the implementation of this subchapter~~
3 ~~only;~~

4 ~~[(2) is not a rate change under Subchapter C, Chapter~~
5 ~~53; and~~

6 ~~[(3) does not affect the carrier's other rates or~~
7 ~~services.~~

8 ~~[Sec. 57.025. CHANGES IN RATE PROGRAM. (a) An educational~~
9 ~~institution, library, or dominant carrier may request the~~
10 ~~commission to:~~

11 ~~[(1) provide for a reduced rate for a service that:~~

12 ~~[(A) is directly related to a distance learning~~
13 ~~activity or an information sharing program; and~~

14 ~~[(B) is not covered by commission rules;~~

15 ~~[(2) change a rate;~~

16 ~~[(3) amend a tariff; or~~

17 ~~[(4) amend a commission rule.~~

18 ~~[(b) The commission shall take the action requested under~~
19 ~~Subsection (a) if the commission determines the action is~~
20 ~~appropriate.~~

21 ~~[SUBCHAPTER C.] TELECOMMUNICATIONS INFRASTRUCTURE FUND~~

22 ~~Sec. 57.041. FINDINGS AND POLICY. (a) The legislature~~
23 ~~finds that commercial mobile service providers:~~

24 ~~(1) benefit from the public telecommunications~~
25 ~~network by the ability to originate and terminate calls that~~
26 ~~traverse the mobile and cellular network; and~~

27 ~~(2) will benefit by the advancement of the public~~

1 telecommunications network through projects funded under this
2 subchapter.

3 (b) It is the policy of this state that commercial mobile
4 service providers contribute an appropriate amount to the
5 telecommunications infrastructure fund.

6 Sec. 57.042. DEFINITIONS. In this subchapter:

7 (1) "Ambulatory health care center" means a health
8 care clinic or an association of such a clinic that is:

9 (A) exempt from federal income taxation under
10 Section 501(a), Internal Revenue Code of 1986, as amended, as an
11 organization described by Section 501(c)(3), as amended; and

12 (B) funded wholly or partly by a grant under 42
13 U.S.C. Section 254b, 254c, or 256, as amended.

14 (2) "Board" means the telecommunications
15 infrastructure fund board.

16 (3) "Commercial mobile service provider" means a
17 provider of commercial mobile service as defined by Section 332(d),
18 Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal
19 Communications Commission rules, and the Omnibus Budget
20 Reconciliation Act of 1993 (Pub. L. No. 103-66).

21 (4) "Fund" means the telecommunications
22 infrastructure fund.

23 (5) "Institution of higher education" means:

24 (A) an institution of higher education as defined
25 by Section 61.003, Education Code; or

26 (B) a private or independent institution of
27 higher education as defined by Section 61.003, Education Code.

1 (6) "Library" means:

2 (A) a public library or regional library system
3 as those terms are defined by Section 441.122, Government Code; or

4 (B) a library operated by an institution of
5 higher education or a school district; or

6 (C) a library operated by a nonprofit corporation
7 as defined by Section 441.221(3), Government Code.

8 (7) "Public not-for-profit health care facility"
9 means a rural or regional hospital or other entity such as a rural
10 health clinic that:

11 (A) is supported by local or regional tax
12 revenue;

13 (B) is a certified not-for-profit health
14 corporation, under federal law; or

15 (C) is an ambulatory health care center.

16 (8) "School district" includes an independent school
17 district, a common school district, and a rural high school
18 district.

19 (9) "Public school" means a public elementary or
20 secondary school, including an open-enrollment charter school, a
21 home-rule school district school, and a school with a campus or
22 campus program charter.

23 (10) "Taxable telecommunications receipts" means
24 taxable telecommunications receipts reported under Chapter 151,
25 Tax Code.

26 (11) "Telehealth service" means a health service,
27 other than a telemedicine medical service, delivered by a licensed

1 or certified health professional acting within the scope of the
2 health professional's license or certification who does not perform
3 a telemedicine medical service that requires the use of advanced
4 telecommunications technology, other than by telephone or
5 facsimile, including:

6 (A) compressed digital interactive video, audio,
7 or data transmission;

8 (B) clinical data transmission using computer
9 imaging by way of still-image capture and store and forward; and

10 (C) other technology that facilitates access to
11 health care services or medical specialty expertise.

12 (13) "Telemedicine medical service" means a health
13 care service initiated by a physician or provided by a health
14 professional acting under physician delegation and supervision for
15 purposes of patient assessment by a health professional, diagnosis
16 or consultation by a physician, treatment, or the transfer of
17 medical data, that requires the use of advanced telecommunications
18 technology, other than by telephone or facsimile, including:

19 (A) compressed digital interactive video, audio,
20 or data transmission;

21 (B) clinical data transmission using computer
22 imaging by way of still-image capture; and

23 (C) other technology that facilitates access to
24 health care services or medical specialty expertise.

25 (2003 Amendments: HB 3506 § 2 (137).)

26 (12) "Telepharmacy system" means a system that
27 monitors the dispensing of prescription drugs and provides for

1 related drug use review and patient counseling services by an
2 electronic method, including the use of the following types of
3 technology:

- 4 (A) audio and video;
- 5 (B) still image capture; and
- 6 (C) store and forward.

7 Sec. 57.043. TELECOMMUNICATIONS INFRASTRUCTURE FUND AND
8 ACCOUNTS. (a) The telecommunications infrastructure fund is an
9 account in the general revenue fund. The telecommunications
10 infrastructure fund account is composed of the public schools
11 account and the qualifying entities account. Section 403.095,
12 Government Code, does not apply to the telecommunications
13 infrastructure fund account or to the accounts that compose the
14 fund account.

15 (b) The public schools account and qualifying entities
16 account are financed by an annual assessment imposed as prescribed
17 by Section 57.048 on each [~~telecommunications utility and~~
18 provider, including commercial mobile service [~~provider~~
19 providers, doing business in this state.

20 (c) Money in the fund may be appropriated only for a use
21 consistent with the purposes of this subchapter.

22 Sec. 57.044. TELECOMMUNICATIONS INFRASTRUCTURE FUND BOARD.

23 (a) The telecommunications infrastructure fund board consists of:

- 24 (1) three members appointed by the governor;
- 25 (2) three members appointed by the governor from a
26 list of individuals provided by the speaker of the house of
27 representatives; and

1 (3) three members appointed by the lieutenant
2 governor.

3 (b) The governor shall designate the presiding officer of
4 the board.

5 (c) The governor and the lieutenant governor, in making
6 appointments to the board, and the speaker of the house of
7 representatives, in compiling a list of recommended persons, shall
8 attempt to select members who are representative of, but not
9 limited to:

10 (1) urban and rural school districts;

11 (2) institutions of higher education;

12 (3) libraries; and

13 (4) the public.

14 (d) A person may not serve on the board if the person is
15 required to register as a lobbyist under Chapter 305, Government
16 Code, because of the person's activities for compensation on behalf
17 of a profession related to the operation of the board.

18 (e) Members of the board:

19 (1) serve without pay; and

20 (2) are entitled to reimbursement for their actual
21 expenses incurred in attending meetings of the board or attending
22 to other work of the board if approved by the presiding officer.

23 (f) Members of the board serve for staggered, six-year
24 terms, with three members' terms expiring on August 31 of each
25 odd-numbered year.

26 Sec. 57.045. POWERS AND DUTIES OF BOARD. (a) The board
27 shall administer the fund and the two accounts in the fund.

1 (b) The board shall prepare an annual report that:

2 (1) details the revenues deposited to the credit of
3 the fund, including each account; and

4 (2) summarizes the grants and loans made from each
5 account.

6 (c) Not later than January 15 of each year, the board shall
7 submit the report for the preceding year to the governor and to each
8 standing committee in the senate and house of representatives that
9 has jurisdiction over public or higher education.

10 (d) The board may:

11 (1) enter into contracts with state agencies or
12 private entities necessary to perform the board's duties;

13 (2) adopt rules as necessary to administer this
14 chapter;

15 (3) employ personnel reasonably necessary to perform
16 duties delegated by the board;

17 (4) appoint one or more committees to assist the board
18 in performing the board's duties; and

19 (5) accept a gift or grant and use it for the purposes
20 of this subchapter.

21 (e) The board shall establish an assistance program to
22 provide education concerning the telecommunications infrastructure
23 fund and to facilitate access to funds and programs under this
24 subchapter by health care facilities and by physicians licensed to
25 practice medicine in this state. The assistance program must
26 include a toll-free telephone number and provide access to
27 information through the Internet.

1 Sec. 57.0455. MASTER PLAN FOR INFRASTRUCTURE DEVELOPMENT.

2 (a) The board shall adopt a master plan for infrastructure
3 development. The plan must:

4 (1) cover a five-year period;

5 (2) be updated annually; and

6 (3) describe the project, timeline, and resource
7 allocation targets for each year included in the plan.

8 (b) The board shall publish each proposed amendment to the
9 plan and each proposed annual update in the Texas Register in
10 accordance with Subchapter B, Chapter 2002, Government Code.

11 Sec. 57.046. USE OF ACCOUNTS. (a) The board shall use
12 money in the public schools account to:

13 (1) to the extent directed in the General
14 Appropriations Act, fund the technology allotment under Section
15 32.005, Education Code; and

16 (2) award grants and loans in accordance with this
17 subchapter to fund:

18 (A) equipment for public schools, including
19 computers, printers, computer labs, and video equipment; and

20 (B) intracampus and intercampus wiring to enable
21 those public schools to use the equipment.

22 (b) The board shall use money in the qualifying entities
23 account for any purpose authorized by this subchapter, including:

24 (1) equipment;

25 (2) wiring;

26 (3) material;

27 (4) program development;

- 1 (5) training;
- 2 (6) installation costs;
- 3 (7) a statewide telecommunications network; and
- 4 (8) funding an automated system to integrate client
- 5 services and eligibility requirements for health and human services
- 6 across agencies.

7 (c) Section 57.047(d) does not apply to the use of money in
8 the public school account for the purpose specified by Subsection
9 (a)(1).

10 (d) In addition to the purposes for which the qualifying
11 entities account may be used, the board may use money in the account
12 to award grants to the Health and Human Services Commission for
13 technology initiatives of the commission.

14 Sec. 57.047. GRANT AND LOAN PROGRAM. (a) The board may
15 award a grant to a project or proposal that:

16 (1) provides equipment and infrastructure necessary
17 for:

- 18 (A) distance learning;
- 19 (B) an information sharing program of a library;
- 20 (C) telemedicine medical services; or
- 21 (D) telehealth services;
- 22 (E) a telepharmacy system;

23 (2) develops and implements the initial or
24 prototypical delivery of a course or other distance learning
25 material;

26 (3) trains teachers, faculty, librarians, or
27 technicians in the use of distance learning or information sharing

1 materials and equipment;

2 (4) develops a curriculum or instructional material
3 specially suited for telecommunications delivery;

4 (5) provides electronic information; or

5 (6) establishes or carries out an information sharing
6 program.

7 (b) The board may award a loan to a project or proposal to
8 acquire equipment needed for distance learning and telemedicine
9 medical service projects.

10 (c) In awarding a grant or loan under this subchapter, the
11 board shall give priority to a project or proposal that:

12 (1) represents collaborative efforts involving more
13 than one school, university, or library;

14 (2) contributes matching funds from another source;

15 (3) shows promise of becoming self-sustaining;

16 (4) helps users of information learn new ways to
17 acquire and use information through telecommunications;

18 (5) extends specific educational information and
19 knowledge services to a group not previously served, especially a
20 group in an economically depressed, rural, or remote area;

21 (6) results in more efficient or effective learning
22 than through conventional teaching;

23 (7) improves the effectiveness and efficiency of
24 health care delivery;

25 (8) takes advantage of distance learning
26 opportunities in a rural or urban school district with a:

27 (A) disproportionate number of at-risk youths;

1 or

2 (B) high dropout rate; or

3 (9) assists the community telecommunications alliance
4 program created under Subchapter O, Chapter 487, Government Code.

5 (d) In distributing money to public schools, the board
6 shall:

7 (1) consider the relative property wealth per student
8 of the school districts that receive the money; and

9 (2) recognize the unique needs of rural communities.

10 (e) A grant or loan awarded under this section is subject to
11 the limitations prescribed by Section 57.046.

12 Sec. 57.0471. GRANTS TO CERTAIN HEALTH CARE FACILITIES.

13 (As added by SB 1536) (a) A physician, health care professional,
14 or health care facility providing telemedicine medical services or
15 telehealth services and participating in a pilot program under
16 Section 531.02171, Government Code, is eligible to receive a grant
17 under Section 57.047.

18 (b) The physician, health care professional, or health care
19 facility providing telemedicine medical services or telehealth
20 services and participating in a pilot program under Section
21 531.02171, Government Code, is not eligible to receive private
22 network services under Section 58.253(a), except with respect to a
23 project that would have been eligible to be funded by the
24 telecommunications infrastructure fund under this subchapter as it
25 existed on January 1, 2001.

26 Sec. 57.0471. GRANTS TO CERTAIN HEALTH CARE FACILITIES.

27 (As added by HB 2700) (a) A health care facility providing

1 telemedicine medical services or telehealth services and
2 participating in a pilot program under Section 531.02171,
3 Government Code, is eligible to receive a grant under Section
4 57.047.

5 (b) The health care facility is not eligible to receive
6 private network services under Section 58.253(a), except with
7 respect to a project that would have been eligible to be funded by
8 the telecommunications infrastructure fund under this subchapter
9 as it existed on January 1, 2001.

10 Sec. 57.0475. ELIGIBILITY FOR GRANTS TO HEALTH CARE
11 FACILITIES. (a) The board may award a grant under Section
12 57.047(a)(1)(C) only to a health care facility that:

13 (1) is a hospital or other entity, including a health
14 clinic, that:

15 (A) is supported by local or regional tax
16 revenue;

17 (B) is a certified nonprofit health corporation
18 under federal law; or

19 (C) is an ambulatory health care center; or

20 (2) meets the criteria adopted by the board and the
21 Health and Human Services Commission under Subsection (b).

22 (b) The board and the Health and Human Services Commission
23 shall jointly adopt rules prescribing the criteria a health care
24 facility not described by Subsection (a)(1) must meet to be
25 eligible to receive a grant under Section 57.047(a)(1)(C). In
26 determining the criteria, the board and commission shall prioritize
27 health care facilities based on:

1 (1) the amount of charity care provided by each
2 facility during the year preceding the year in which the facility
3 applies for a grant; and

4 (2) the number of Medicaid patients and patients
5 enrolled in the state child health plan treated by each facility
6 during the year preceding the year in which the facility applies for
7 a grant.

8 (c) The criteria adopted under Subsection (b) must provide
9 that a health care facility is not eligible to receive a grant under
10 Section 57.047(a)(1)(C) if the health care facility did not provide
11 any charity care or treat any patients described by Subsection
12 (b)(2) during the year preceding the year in which the facility
13 applies for a grant.

14 Sec. 57.048. ASSESSMENTS AND COLLECTIONS. (a) An annual
15 assessment is imposed on each [~~telecommunications utility and~~
16 provider, including each commercial mobile service provider, doing
17 business in this state.

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

22 (c) The total amount deposited to the credit of the fund,
23 excluding interest and loan repayments, may not exceed \$1.75
24 billion. Not later than August 31 of each year, the comptroller
25 shall determine the total amount, excluding interest and loan
26 repayments, that has been deposited to the credit of the fund during
27 that fiscal year and the preceding fiscal years. If the comptroller

1 determines that a total of \$1.5 billion or more, excluding interest
2 and loan repayments, has been deposited to the credit of the fund,
3 the comptroller shall impose the assessment during the next fiscal
4 year at a rate that the comptroller estimates is sufficient to
5 produce the amount necessary to result in the deposit in the fund of
6 a total of not more than \$1.75 billion, excluding interest and loan
7 repayments.

8 (d) The comptroller may not collect the assessment during a
9 fiscal year if the comptroller determines after the yearly review
10 that the total amount deposited to the credit of the fund during
11 that fiscal year and the preceding fiscal years is \$1.74 billion or
12 more, excluding interest and loan repayments, and it is not
13 possible to impose the assessment during the next fiscal year at a
14 practical rate without collecting more than a total of \$1.75
15 billion, excluding interest and loan repayments.

16 (e) The comptroller may require a [~~telecommunications~~
17 ~~utility~~ or] provider, including commercial mobile service
18 provider, to provide any report or information necessary to fulfill
19 the comptroller's duties under this section. Information provided
20 to the comptroller under this section is confidential and exempt
21 from disclosure under Chapter 552, Government Code.

22 Sec. 57.0485. ACCOUNTS. (a) The comptroller shall deposit
23 50 percent of the money collected by the comptroller under
24 Section 57.048 to the credit of the public schools account in the
25 fund.

26 (b) Interest earned on money in an account shall be
27 deposited to the credit of that account.

1 Sec. 57.049. ISSUANCE OF WARRANTS. From money appropriated
2 to the board, the comptroller shall issue warrants the board
3 requests in accordance with the purposes of this subchapter,
4 including warrants to grantees of the board in amounts the board
5 certifies to the comptroller.

6 Sec. 57.050. ASSISTANCE OF OTHER AGENCIES. The following
7 agencies, in consultation with the board, shall adopt policies and
8 procedures that are designed to aid the board in achieving the
9 purposes of this subchapter:

10 (1) the Texas Higher Education Coordinating Board;

11 (2) the Texas Education Agency; and

12 (3) the Texas State Library and Archives Commission.

13 Sec. 57.051. SUNSET PROVISION. The Telecommunications
14 Infrastructure Fund Board is subject to Chapter 325, Government
15 Code (Texas Sunset Act). Unless continued in existence as provided
16 by that chapter, the board is abolished and this subchapter expires
17 September 1, ~~[2005.]~~ 2010.

18 ~~[SUBCHAPTER D. INTERACTIVE MULTIMEDIA COMMUNICATIONS~~

19 ~~[Sec. 57.071. DEFINITION. In this subchapter, "interactive~~
20 ~~multimedia communications" means real-time, two-way, interactive~~
21 ~~voice, video, and data communications conducted over networks that~~
22 ~~link geographically dispersed locations.~~

23 ~~[Sec. 57.072. RATES FOR INTERACTIVE MULTIMEDIA~~
24 ~~COMMUNICATIONS. (a) The commission shall permit a local exchange~~
25 ~~company that provides an interactive multimedia communications~~
26 ~~service to establish, using sound ratemaking principles, rates~~
27 ~~necessary to recover costs associated with providing the service.~~

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

3 ~~[Sec. 58.003. CUSTOMER-SPECIFIC CONTRACTS. (a)~~
4 ~~Notwithstanding any other provision of this chapter, but subject to~~
5 ~~Subsection (b), an electing company may not offer in an exchange a~~
6 ~~service, or an appropriate subset of a service, listed in Sections~~
7 ~~58.051(a)(1)-(4) or Sections 58.151(1)-(4) in a manner that results~~
8 ~~in a customer-specific contract, unless the other party to the~~
9 ~~contract is a federal, state, or local governmental entity, until~~
10 ~~the earlier of September 1, 2003, or the date on which the~~
11 ~~commission finds that at least 40 percent of the total access lines~~
12 ~~for that service or appropriate subset of that service in that~~
13 ~~exchange are served by competitive alternative providers that are~~
14 ~~not affiliated with the electing company.~~

15 ~~[(b) The requirements prescribed by Subsection (a) do not~~
16 ~~apply to an electing company serving fewer than five million access~~
17 ~~lines after the date on which it completes the infrastructure~~
18 ~~improvements described in this subsection. The electing company~~
19 ~~must also notify the commission of the company's binding commitment~~
20 ~~to make the following infrastructure improvements not later than~~
21 ~~September 1, 2000:~~

22 ~~[(1) install Common Channel Signaling 7 capability in~~
23 ~~each central office; and~~

24 ~~[(2) connect all of the company's serving central~~
25 ~~offices to their respective LATA tandem central offices with~~
26 ~~optical fiber or equivalent facilities.~~

27 ~~[(c) The commission by rule shall prescribe appropriate~~

1 ~~subsets of services.~~

2 ~~[(d) An electing company may file with the commission a~~
3 ~~request for a finding under this section. The filing must include~~
4 ~~information sufficient for the commission to perform a review and~~
5 ~~evaluation in relation to the particular exchange and the~~
6 ~~particular service or appropriate subset of a service for which the~~
7 ~~electing company wants to offer customer-specific contracts. The~~
8 ~~commission must grant or deny the request not later than the 60th~~
9 ~~day after the date the electing company files the request.~~

10 ~~[(e) The commitments described by Subsection (b) do not~~
11 ~~apply to exchanges of the company sold or transferred before, or for~~
12 ~~which contracts for sale or transfer are pending on, September 1,~~
13 ~~2001. In the case of exchanges for which contracts for sale or~~
14 ~~transfer are pending as of March 1, 2001, where the purchaser~~
15 ~~withdrew or defaulted before September 1, 2001, the company shall~~
16 ~~have one year from the date of withdrawal or default to comply with~~
17 ~~the commitments.~~

18 ~~[(f) This section does not preclude an electing company from~~
19 ~~offering a customer-specific contract to the extent allowed by this~~
20 ~~title as of August 31, 1999.~~

21 ~~[Sec. 58.004. PACKAGING, TERM AND VOLUME DISCOUNTS, AND~~
22 ~~PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of~~
23 ~~this chapter, an electing company that has more than five million~~
24 ~~access lines in this state may not offer in an exchange a service~~
25 ~~listed in Sections 58.151(1)-(4) as a component of a package of~~
26 ~~services or as a promotional offering until the company makes the~~
27 ~~reduction in switched access service rates required by Section~~

1 ~~58.301(2) unless the customer of one of the pricing flexibility~~
2 ~~offerings described in this subsection is a federal, state, or~~
3 ~~local governmental entity.~~

4 ~~[(b) Notwithstanding any other provision of this chapter,~~
5 ~~an electing company that has more than five million access lines in~~
6 ~~this state may not offer a volume or term discount on any service~~
7 ~~listed in Sections 58.151(1)-(4) until September 1, 2000, unless~~
8 ~~the customer of one of the pricing flexibility offerings described~~
9 ~~in this subsection is a federal, state, or local governmental~~
10 ~~entity.~~

11 ~~[(c) Notwithstanding any other provision of this chapter,~~
12 ~~an electing company that has more than five million access lines in~~
13 ~~this state may offer in an exchange a service listed in Sections~~
14 ~~58.051(a)(1)-(4) as a component of a package of services, as a~~
15 ~~promotional offering, or with a volume or term discount on and after~~
16 ~~September 1, 1999.~~

17 ~~[SUBCHAPTER B. ELECTION OF INCENTIVE REGULATION~~

18 ~~[Sec. 58.021. ELECTION. (a) An incumbent local exchange~~
19 ~~company may elect to be subject to incentive regulation and to make~~
20 ~~the corresponding infrastructure commitment under this chapter by~~
21 ~~notifying the commission in writing of its election.~~

22 ~~[(b) The notice must include a statement that the company~~
23 ~~agrees to:~~

24 ~~[(1) limit until September 1, 2005, any increase in a~~
25 ~~rate the company charges for basic network services as prescribed~~
26 ~~by Subchapter C, and~~

27 ~~[(2) fulfill the infrastructure commitment prescribed~~

1 ~~by Subchapters F and G.~~

2 ~~[(c) Except as provided in Subsection (d), an election under~~
3 ~~this chapter remains in effect until the legislature eliminates the~~
4 ~~incentive regulation authorized by this chapter and Chapter 59.~~

5 ~~[(d) The commission may allow an electing company serving~~
6 ~~fewer than five million access lines to withdraw the company's~~
7 ~~election under this chapter.~~

8 ~~[(1) on application by the company; and~~

9 ~~[(2) only for good cause.~~

10 ~~[(e) In this section, "good cause" includes only matters~~
11 ~~beyond the control of the company.~~

12 ~~[Sec. 58.022. CHAPTER CONTROLS. This chapter governs the~~
13 ~~regulation of an electing company's telecommunications services~~
14 ~~regardless of whether the company is a dominant carrier.]~~

15 Sec. 58.023. SERVICE CLASSIFICATION. (a) The provisions
16 of this chapter apply to any incumbent local exchange carrier
17 electing under this chapter or chapter 65.

18 ~~[On election, the]~~ (b) The services provided by an Incumbent
19 Local Exchange Company electing [company] under this Chapter are
20 classified into two categories:

21 (1) basic network services governed by Subchapter C;
22 and

23 (2) nonbasic network services governed by Subchapter
24 ~~[E]~~ D.

25 ~~[Sec. 58.024. SERVICE RECLASSIFICATION. (a) The~~
26 ~~commission may reclassify a basic network service as a nonbasic~~
27 ~~service.~~

1 ~~[(b) The commission shall establish criteria for~~
2 ~~determining whether a service should be reclassified. The criteria~~
3 ~~must include consideration of the:~~

4 ~~[(1) availability of the service from other providers,~~

5 ~~[(2) effect of the reclassification on service~~
6 ~~subscribers, and~~

7 ~~[(3) nature of the service.~~

8 ~~[(c) The commission may not reclassify a service until:~~

9 ~~[(1) each competitive safeguard prescribed by~~
10 ~~Subchapters B-H, Chapter 60, is fully implemented; or~~

11 ~~[(2) for a company that serves more than five million~~
12 ~~access lines in this state, the date on which the Federal~~
13 ~~Communications Commission determines in accordance with 47 U.S.C.~~
14 ~~Section 271 that the company or any of its affiliates may enter the~~
15 ~~interLATA telecommunications market in this state.~~

16 ~~[(d) The commission may reclassify a service subject to the~~
17 ~~following conditions:~~

18 ~~[(1) the electing company must file a request for a~~
19 ~~service reclassification including information sufficient for the~~
20 ~~commission to perform a review and evaluation under Subsection (b);~~

21 ~~[(2) the commission must grant or deny the request not~~
22 ~~later than the 60th day after the date the electing company files~~
23 ~~the request for service reclassification; and~~

24 ~~[(3) there is a rebuttable presumption that the~~
25 ~~request for service reclassification by the electing company should~~
26 ~~be granted if the commission finds that there is a competitive~~
27 ~~alternative provider serving customers through means other than~~

1 ~~total service resale.]~~

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

8 ~~[(1)]~~ (a) rates;

9 ~~[(2)]~~ (b) overall revenues;

10 ~~[(3)]~~ (c) return on invested capital; or

11 ~~[(4)]~~ (d) net income.

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

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

17 (1) a consumer's right to complain to the commission
18 about the application of an ambiguous tariff; or

19 (2) the commission's right to determine~~[(A)]~~ the
20 proper application of that tariff~~[, or]~~ .

21 ~~[(B) the proper rate if that tariff does not~~
22 ~~apply.]~~

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

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

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

1 (3) extend the application of a tariff to a new class
2 of customers.

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

5 (1) a consumer's right to complain to the commission
6 about quality of service. [~~+~~ ~~or~~]

7 (2) the commission's right to enforce [~~a quality of~~
8 ~~service standard~~].

9 ~~[Sec. 58.028. REVIEW AND REPORT OF EFFECTS OF ELECTION. (a)~~
10 ~~Not later than January 1, 2004, the commission shall begin a review~~
11 ~~and evaluation of each company that elects under this chapter or~~
12 ~~Chapter 59.~~

13 ~~[(b) The review must include an evaluation of the effects of~~
14 ~~the election, including:~~

15 ~~[(1)]~~ consumer [~~benefits,~~] protection under Chapter
16 64.

17 ~~[(2) impact of competition,~~

18 ~~[(3) infrastructure investments, and~~

19 ~~[(4) quality of service.~~

20 ~~[(c) The commission shall file a report with the legislature~~
21 ~~not later than January 1, 2005. The report must include the~~
22 ~~commission's recommendations as to whether the incentive~~
23 ~~regulation provided by this chapter and Chapter 59 should be~~
24 ~~extended, modified, eliminated, or replaced with another form of~~
25 ~~regulation.~~

26 ~~[(d) This section expires September 1, 2005.]~~

SUBCHAPTER C. BASIC NETWORK SERVICES

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

(1) flat rate residential local exchange telephone service~~[, including primary directory listings and the]~~, if such service is ordered and received ~~[receipt]~~ independent of ~~[a directory and]~~ any ~~[applicable mileage]~~ nonbasic network services, any packages of services that include nonbasic or ~~[zone charges]~~ other services, or another flat-rate residential local exchange service delivered by landline;

(2) residential tone dialing service;

(3) lifeline and tel-assistance service;

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

(5) direct inward dialing service for basic residential services;

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

~~[(7)]~~ (6) call trap and trace service;

~~[(8)]~~ (7) access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service~~[+]~~.

~~[(9) mandatory residential extended area service arrangements;~~

~~[(10) mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and~~

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

2 (b) ~~[Electing]~~ Incumbent local exchange companies that
3 elect under this Chapter shall offer shall offer each basic network
4 service as a separately tariffed service, but may also include
5 basic network service in ~~[addition to]~~ any packages or other
6 pricing flexibility offerings that include those basic network
7 ~~[services]~~ service.

8 ~~[Sec. 58.052. REGULATION OF SERVICES. (a) Except as~~
9 ~~provided by Subchapter E, Chapter 52, basic network services of an~~
10 ~~electing company are regulated:~~

11 ~~[(1) in accordance with this chapter; and~~

12 ~~[(2) to the extent not inconsistent with this chapter,~~
13 ~~in accordance with:~~

14 ~~[(A) Subtitle A;~~

15 ~~[(B) Chapters 51, 54, 60, 62, and 63;~~

16 ~~[(C) Chapter 52, except for Subchapter F;~~

17 ~~[(D) Subchapters C, D, and E, Chapter 53;~~

18 ~~[(E) Chapter 55, except for:~~

19 ~~[(i) Subchapters F and G; and~~

20 ~~[(ii) Sections 55.001, 55.002, 55.003, and~~
21 ~~55.004;~~

22 ~~[(F) Sections 53.001, 53.003, 53.004, 53.006,~~
23 ~~53.065, 55.005, 55.006, 55.009, and 55.010; and~~

24 ~~[(G) commission rules and procedures.~~

25 ~~[(b) The commission must approve a change in the terms of~~
26 ~~the tariff offering of a basic network service.~~

27 ~~[Sec. 58.053. INVESTMENT LIMITATION ON SERVICE STANDARDS.~~

1 ~~(a) The commission may not raise a service standard applicable to~~
2 ~~the provision of local exchange telephone service by an electing~~
3 ~~company if the increased investment required to comply with the~~
4 ~~raised standard in any year exceeds 10 percent of the company's~~
5 ~~average annual intrastate additions in capital investment for the~~
6 ~~most recent five-year period.~~

7 ~~[(b) In computing the average under Subsection (a), the~~
8 ~~company shall exclude:~~

9 ~~[(1) extraordinary investments made during the~~
10 ~~five-year period; and~~

11 ~~[(2) investments required by Section 58.203.~~

12 ~~[Sec. 58.054. RATES CAPPED (a) As a condition of election~~
13 ~~under this chapter, an electing company shall commit to not~~
14 ~~increasing a rate for a basic network service on or before the~~
15 ~~fourth anniversary of its election date.~~

16 ~~[(b) The rates an electing company may charge on or before~~
17 ~~that fourth anniversary are the rates charged by the company on June~~
18 ~~1, 1995, or, for a company that elects under this chapter after~~
19 ~~September 1, 1999, the rates charged on the date of its election,~~
20 ~~without regard to a proceeding pending under:~~

21 ~~[(1) Section 15.001,~~

22 ~~[(2) Subchapter D, Chapter 53, or~~

23 ~~[(3) Subchapter C, Chapter 2001, Government Code.~~

24 ~~[(c) Notwithstanding Subsections (a) and (b), the cap on the~~
25 ~~rates for basic network services for a company electing under this~~
26 ~~chapter may not expire before September 1, 2005.~~

27 ~~[Sec. 58.055. RATE ADJUSTMENT BY COMPANY. (a) An electing~~

1 ~~company may increase a rate for a basic network service during the~~
2 ~~election period prescribed by Section 58.054 only:~~

3 ~~[(1) with commission approval that the proposed change~~
4 ~~is included in Section 58.056, 58.057, or 58.058, and~~

5 ~~[(2) as provided by Sections 58.056, 58.057, 58.058,~~
6 ~~and 58.059.~~

7 ~~[(b) Notwithstanding Subchapter F, Chapter 60, an electing~~
8 ~~company may, on its own initiative, decrease a rate for a basic~~
9 ~~network service during the electing period.~~

10 ~~[(c) The company may decrease the rate for a basic local~~
11 ~~telecommunications service to an amount above the service's~~
12 ~~appropriate cost. If the company has been required to perform or~~
13 ~~has elected to perform a long run incremental cost study, the~~
14 ~~appropriate cost for the service is the service's long run~~
15 ~~incremental cost.~~

16 ~~[Sec. 58.056. RATE ADJUSTMENT FOR CHANGES IN FCC~~
17 ~~SEPARATIONS. The commission, on motion of the electing company or~~
18 ~~on its own motion, shall proportionally adjust rates for services~~
19 ~~to reflect changes in Federal Communications Commission~~
20 ~~separations that affect intrastate net income by at least 10~~
21 ~~percent.~~

22 ~~[Sec. 58.057. RATE ADJUSTMENT FOR CERTAIN COMPANIES. (a)~~
23 ~~An electing company, after the 42nd month after the date the company~~
24 ~~elects incentive regulation under this chapter, may file an~~
25 ~~application for a commission review of the company's need for~~
26 ~~changes in the rates of its services if the company:~~

27 ~~[(1) has fewer than five million access lines in this~~

1 state, and

2 ~~[(2) is complying with:~~

3 ~~[(A) the company's infrastructure commitment,~~

4 ~~[(B) each requirement relating to quality of~~
5 ~~service, and~~

6 ~~[(C) each commission rule adopted under Chapter~~
7 ~~60.~~

8 ~~[(b) The company's application may request that the~~
9 ~~commission adjust rates, implement new pricing plans, restructure~~
10 ~~rates, or rebalance revenues between services to recognize changed~~
11 ~~market conditions and the effects of competitive entry.~~

12 ~~[(c) The commission may use an index and a productivity~~
13 ~~offset in determining the requested changes.~~

14 ~~[(d) The commission may not:~~

15 ~~[(1) order an increase in the rate for residential~~
16 ~~local exchange telephone service that would cause the rate to~~
17 ~~increase by more than the United States Consumer Price Index in any~~
18 ~~12-month period, or~~

19 ~~[(2) set the monthly rate for residential local~~
20 ~~exchange telephone service in an amount that exceeds the nationwide~~
21 ~~average rates for similar local exchange telephone services.~~

22 ~~[Sec. 58.058. RATE GROUP RECLASSIFICATION.~~
23 ~~Notwithstanding Subchapter B, the commission, on request of the~~
24 ~~electing company, shall allow a rate group reclassification that~~
25 ~~results from access line growth.~~

26 ~~[Sec. 58.059. COMMISSION RATE ADJUSTMENT PROCEDURE. (a)~~
27 ~~In accordance with this section, an electing company may request~~

1 ~~and the commission may authorize a rate adjustment under Section~~
2 ~~58.056, 58.057, or 58.058.~~

3 ~~[(b) The electing company must provide to the commission~~
4 ~~notice of its intent to adjust rates. The notice must be~~
5 ~~accompanied by sufficient documentary evidence to demonstrate that~~
6 ~~the rate adjustment is authorized under Section 58.056, 58.057, or~~
7 ~~58.058. The commission by rule or order shall prescribe the~~
8 ~~documentation required under this subsection.~~

9 ~~[(c) The electing company must also provide notice to its~~
10 ~~customers after providing notice to the commission. The notice to~~
11 ~~the customers must:~~

12 ~~[(1) within a reasonable period after notice to the~~
13 ~~commission, be published once in a newspaper of general circulation~~
14 ~~in the affected service area,~~

15 ~~[(2) be included in or printed on each affected~~
16 ~~consumer's bill in the first billing that occurs after notice is~~
17 ~~filed with the commission,~~

18 ~~[(3) have a title that includes the name of the company~~
19 ~~and the words "NOTICE OF POSSIBLE RATE CHANGE", and~~

20 ~~[(4) include:~~

21 ~~[(A) a statement that the consumer's rate may~~
22 ~~change,~~

23 ~~[(B) an estimate of the amount of the annual~~
24 ~~change for the typical residential, business, or access consumer if~~
25 ~~the commission approves the rate change,~~

26 ~~[(C) a statement that a consumer who wants to~~
27 ~~comment on the rate change or who wants additional information~~

1 ~~regarding the rate change may call or write the commission and that~~
2 ~~the information will be provided without cost to the consumer and at~~
3 ~~the expense of the electing company; and~~

4 ~~[(D) the commission's telephone number and~~
5 ~~address.~~

6 ~~[(d) The estimate of the amount of the annual change~~
7 ~~required by Subsection (c)(4)(B) must be printed in a type style and~~
8 ~~size that is distinct from and larger than the type style and size~~
9 ~~of the body of the notice.~~

10 ~~[(e) The commission shall review the proposed rates to~~
11 ~~determine if the rate adjustment is authorized under Section~~
12 ~~58.056, 58.057, or 58.058.~~

13 ~~[(f) The rate adjustment takes effect on the 90th day after~~
14 ~~the date the electing company completes the notice required by this~~
15 ~~section unless the commission suspends the effective date under~~
16 ~~Subsection (g).~~

17 ~~[(g) At any time before a rate adjustment is scheduled to~~
18 ~~take effect, the commission, on its own motion or on complaint by an~~
19 ~~affected party, may suspend the effective date of the rate~~
20 ~~adjustment and conduct a hearing to review the proposed adjustment.~~
21 ~~After the hearing, the commission may issue an order approving the~~
22 ~~adjustment, or if it finds that the adjustment is not authorized~~
23 ~~under Section 58.056, 58.057, or 58.058, issue an order modifying~~
24 ~~or rejecting the adjustment. An order modifying or rejecting a rate~~
25 ~~adjustment must specify:~~

26 ~~[(1) each reason why the proposed adjustment was not~~
27 ~~authorized by Section 58.056, 58.057, or 58.058; and~~

1 ~~[(2) how the proposed adjustment may be changed so~~
2 ~~that it is authorized.~~

3 ~~[(h) Except as provided by this section, a request for a~~
4 ~~rate restructure must comply with the notice and hearing~~
5 ~~requirements prescribed by Sections 53.101-53.106.~~

6 ~~[(i) An electing company that has not more than five percent~~
7 ~~of the total access lines in this state may adopt as the cost for a~~
8 ~~service the cost for the same or substantially similar service~~
9 ~~offered by a larger incumbent local exchange company. The electing~~
10 ~~company may adopt the larger company's cost only if the cost was~~
11 ~~determined based on a long run incremental cost study. An electing~~
12 ~~company that adopts a cost under this subsection is not required to~~
13 ~~present its own long run incremental cost study to support the~~
14 ~~adopted cost.~~

15 ~~[Sec. 58.060. RATE ADJUSTMENT AFTER CAP EXPIRATION. After~~
16 ~~the expiration of the period during which the rates for basic~~
17 ~~network services are capped as prescribed by Section 58.054, an~~
18 ~~electing company may increase a rate for a basic network service~~
19 ~~only:~~

20 ~~[(1) with commission approval subject to this title,~~
21 ~~and~~

22 ~~[(2) to the extent consistent with achieving universal~~
23 ~~affordable service.]~~

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

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

27 ~~[(2)]~~ (1) Subchapter C, Chapter 55; or

1 ~~[(3)]~~ (2) Subchapter B, Chapter 56.

2 ~~[Sec. 58.062. SWITCHED ACCESS RATES. [REPEALED].~~

3 ~~[Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a)~~

4 ~~Notwithstanding Section 58.052(b) or Subchapter F, Chapter 60, an~~
5 ~~electing company may exercise pricing flexibility for basic network~~
6 ~~services, including the packaging of basic network services with~~
7 ~~any other regulated or unregulated service or any service of an~~
8 ~~affiliate. The company may exercise pricing flexibility in~~
9 ~~accordance with this section 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 ~~[(b) An electing company shall set the price of a package of~~
15 ~~services containing basic network services and nonbasic services at~~
16 ~~any level at or above the lesser of:~~

17 ~~[(1) the sum of the long run incremental costs of any~~
18 ~~basic network services and nonbasic services contained in the~~
19 ~~package; or~~

20 ~~[(2) the sum of the tariffed prices of any basic~~
21 ~~network services contained in the package and the long run~~
22 ~~incremental costs of nonbasic services contained in the package.~~

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

26 SUBCHAPTER D. ~~[REPEALED]~~

27 ~~[SUBCHAPTER E.]~~ NONBASIC NETWORK SERVICES

1 Sec. 58.151. SERVICES INCLUDED. The following services
2 offered pursuant to this Chapter are classified as nonbasic network
3 services:

4 (1) any basic network service when ordered and
5 received with any other basic network service or a nonbasic network
6 service;

7 ~~[(1)]~~ (2) flat rate business local exchange telephone
8 service, including primary directory listings and the receipt of a
9 directory, and any applicable mileage or zone charges~~[, except that~~
10 ~~the prices for this service shall be capped until September 1, 2005,~~
11 ~~at the prices in effect on September 1, 1999];~~

12 ~~[(2)]~~ (3) business tone dialing service~~[, except that~~
13 ~~the prices for this service shall be capped until September 1, 2005,~~
14 ~~at the prices in effect on September 1, 1999];~~

15 ~~[(3)]~~ (4) service connection for all business
16 services~~[, except that the prices for this service shall be capped~~
17 ~~until September 1, 2005, at the prices in effect on September 1,~~
18 ~~1999];~~

19 ~~[(4)]~~ (5) direct inward dialing for basic business
20 services~~[, except that the prices for this service shall be capped~~
21 ~~until September 1, 2005, at the prices in effect on September 1,~~
22 ~~1999];~~

23 ~~[(5)]~~ (6) "1-plus" intraLATA message toll services;

24 ~~[(6)]~~ (7) 0+ and 0- operator services;

25 ~~[(7)]~~ (8) call waiting, call forwarding, and custom
26 calling~~[, except that:~~

27 ~~[(A) residential call waiting service shall be~~

1 ~~classified as a basic network service].~~

2 (9) call return, caller identification, and call
3 control options; [and

4 ~~[(B) for an electing company subject to Section~~
5 ~~58.301, prices for residential call forwarding and other custom~~
6 ~~calling services shall be capped at the prices in effect on~~
7 ~~September 1, 1999, until the electing company implements the~~
8 ~~reduction in switched access rates described by Section 58.301(2);~~

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

16 ~~[(9)]~~ (10) central office based PBX-type services;

17 ~~[(10)]~~ (11) billing and collection services,
18 ~~[including]~~ limited to installment billing and late payment charges
19 for retail customers of the ~~[electing]~~ billing [company] provider;

20 ~~[(11)]~~ (12) integrated services digital network
21 (ISDN) services ~~[, except that prices for Basic Rate Interface (BRI)~~
22 ~~ISDN services, which comprise up to two 64 Kbps B-channels and one~~
23 ~~16 Kbps D-channel, shall be capped until September 1, 2005, at the~~
24 ~~prices in effect on September 1, 1999];~~

25 ~~[(12)]~~ (13) new services;

26 ~~[(13)]~~ (14) directory assistance services ~~[, except~~
27 ~~that an electing company shall provide to a residential customer~~

1 ~~the first three directory assistance inquiries in a monthly billing~~
2 ~~cycle at no charge];~~

3 (15) services described in the WATS tariff as the
4 tariff existed on January 1, 1995;

5 ~~[(14) services described in the WATS tariff as the~~
6 ~~tariff existed on January 1, 1995; services described in the WATS~~
7 ~~tariff as the tariff existed on January 1, 1995;~~

8 ~~[(15)]~~ (16) 800 and foreign exchange services;

9 ~~[(16)]~~ (17) private line service;

10 ~~[(17)]~~ (18) special access service;

11 ~~[(18)]~~ (19) services from public pay telephones;

12 ~~[(19)]~~ (20) paging services and mobile services
13 (IMTS);

14 ~~[(20)]~~ (21) 911 services provided to a local authority
15 that are available from another provider;

16 ~~[(21)]~~ (22) speed dialing;

17 ~~[(22)]~~ (23) three-way calling; and

18 ~~[(23)]~~ (24) all other local exchange services subject
19 to the commission's jurisdiction that are not specifically
20 classified as basic network services in Section ~~[58.051, except~~
21 ~~that nothing in this section shall preclude a customer from~~
22 ~~subscribing to a local flat rate residential]~~ 58.051 or ~~[business~~
23 ~~line for a computer modem or a facsimile machine.]~~ as switched
24 access services.

25 Sec. 58.152. PRICES. ~~[(a)]~~ An incumbent local exchange
26 company electing ~~[company]~~ under this Chapter may set the retail
27 price for any nonbasic network service at any level at or above ~~[the~~

1 ~~lesser of the: (1) service's]~~ long run incremental cost [~~in~~
 2 ~~accordance with]~~. Prior to September 1, 2011, an incumbent local
 3 exchange company electing under this Chapter may not raise its
 4 retail price for any basic network service more than 20% percent
 5 higher than the [imputation rules prescribed by or under Subchapter
 6 D, Chapter 60; or] price being charged for the same basic network
 7 service as of January 1, 2005.

8 ~~[(2) price for the service in effect on September 1,~~
 9 ~~1999.~~

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

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

23 ~~[(b) An electing company serving more than five million~~
 24 ~~access lines in this state shall provide notice to any person who~~
 25 ~~holds a certificate of operating authority in the electing~~
 26 ~~company's certificated area or areas or who has an effective~~
 27 ~~interconnection agreement with the electing company of any changes~~

1 ~~in the generally available prices and terms under which the~~
2 ~~electing company offers basic or nonbasic telecommunications~~
3 ~~services regulated by the commission at retail rates to subscribers~~
4 ~~that are not telecommunications providers. Changes requiring~~
5 ~~notice under this subsection include the introduction of any new~~
6 ~~nonbasic services, any new features or functions of basic or~~
7 ~~nonbasic services, promotional offerings of basic or nonbasic~~
8 ~~services, or the discontinuation of then-current features or~~
9 ~~services. The electing company shall provide the notice:~~

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

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

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

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

1 company:

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

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

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

9 Sec. 58.155. INTERCONNECTION. ~~[Because interconnection to~~
10 ~~competitive providers and interconnection for commercial mobile~~
11 ~~service providers are subject to the requirements of Sections 251~~
12 ~~and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and~~
13 ~~252), as amended, and Federal Communications Commission rules,~~
14 ~~including the commission's authority to arbitrate issues,~~
15 ~~interconnection is not addressed in] An incumbent local exchange~~
16 ~~company electing under this [subchapter or Subchapter B.~~

17 ~~[SUBCHAPTER F. GENERAL INFRASTRUCTURE COMMITMENT~~

18 ~~[Sec. 58.201. STATEMENT OF STATE GOAL. (a) It is the goal~~
19 ~~of this state to facilitate and promote the deployment of an~~
20 ~~advanced telecommunications infrastructure to spur economic~~
21 ~~development throughout this state. This state should be among the~~
22 ~~leaders in achieving this objective.~~

23 ~~[(b) The primary means of achieving this goal is through~~
24 ~~encouraging private investment in this state's telecommunications~~
25 ~~infrastructure by creating incentives for that investment and~~
26 ~~promoting the development of competition.~~

27 ~~[(c) The best way to bring the benefits of an advanced~~

1 ~~telecommunications network infrastructure to communities in this~~
2 ~~state is through innovation and competition among all the state's~~
3 ~~communications providers. Competition will provide residents of~~
4 ~~this state with a choice of telecommunications providers and will~~
5 ~~drive technology deployment, innovation, service quality, and~~
6 ~~cost-based prices as competing firms try to satisfy customer needs.~~

7 ~~[Sec. 58.202. POLICY GOALS FOR IMPLEMENTATION. In~~
8 ~~implementing this subchapter, the commission shall consider this~~
9 ~~state's policy goals to:~~

10 ~~[(1) ensure the availability of the widest possible~~
11 ~~range of competitive choices in the provision of telecommunications~~
12 ~~services and facilities;~~

13 ~~[(2) foster competition and rely on market forces~~
14 ~~where competition exists to determine the price, terms, and~~
15 ~~availability of service;~~

16 ~~[(3) ensure the universal availability of basic local~~
17 ~~telecommunications services at reasonable rates;~~

18 ~~[(4) encourage the continued development and~~
19 ~~deployment of advanced and reliable capabilities and services in~~
20 ~~telecommunications networks;~~

21 ~~[(5) ensure interconnection and interoperability,~~
22 ~~based on uniform technical standards, among telecommunications~~
23 ~~carriers;~~

24 ~~[(6) eliminate unnecessary administrative procedures~~
25 ~~that impose regulatory barriers to competition and ensure that~~
26 ~~competitive entry is fostered on an economically rational basis;~~

27 ~~[(7) ensure consumer protection and protection~~

1 ~~against anticompetitive conduct;~~

2 ~~[(8) regulate a provider of services only to the~~
3 ~~extent the provider has market power to control the price of~~
4 ~~services to customers;~~

5 ~~[(9) encourage cost-based pricing of~~
6 ~~telecommunications services so that consumers pay a fair price for~~
7 ~~services they use; and~~

8 ~~[(10) subject to Subchapter C, develop appropriate~~
9 ~~quality of service standards for local exchange companies so as to~~
10 ~~place this state among the leaders in deployment of an advanced~~
11 ~~telecommunications infrastructure.~~

12 ~~[Sec. 58.203. INFRASTRUCTURE GOALS OF ALL ELECTING~~
13 ~~COMPANIES. (a) Recognizing that it will take time for competition~~
14 ~~to develop in the local exchange market, the commission shall, in~~
15 ~~the absence of competition, ensure that each electing company~~
16 ~~achieves the infrastructure goals described by this section.~~

17 ~~[(b) Not later than December 31, 1996, an electing company~~
18 ~~shall make available to each customer in the company's territory~~
19 ~~access to end-to-end digital connectivity.~~

20 ~~[(c) Each new central office switch installed for an~~
21 ~~electing company after September 1, 1995, must be digital or~~
22 ~~technically equal to or superior to digital. In addition, a switch~~
23 ~~installed after September 1, 1997, must, at a minimum, be capable of~~
24 ~~providing integrated services digital network (ISDN) services in a~~
25 ~~manner consistent with generally accepted national standards.~~

26 ~~[(d) Not later than January 1, 2000, 50 percent of the local~~
27 ~~exchange access lines in each electing company's territory must be~~

1 ~~served by a digital central office switch.~~

2 ~~[(c) Not later than January 1, 2000, an electing company's~~
3 ~~public switched network backbone interoffice facilities must~~
4 ~~employ broadband facilities capable of 45 or more megabits a~~
5 ~~second. The company may employ facilities at a lower bandwidth if~~
6 ~~technology permits the delivery of video signal at the lower~~
7 ~~bandwidth at a quality level comparable to a television broadcast~~
8 ~~signal. The requirements of this subsection do not apply to local~~
9 ~~loop facilities.~~

10 ~~[Sec. 58.204. ADDITIONAL INFRASTRUCTURE COMMITMENT OF~~
11 ~~CERTAIN COMPANIES. (a) Not later than December 31, 1998, an~~
12 ~~electing company serving more than one million but fewer than five~~
13 ~~million access lines shall provide digital switching central~~
14 ~~offices in all exchanges.~~

15 ~~[(b) Not later than January 1, 2000, an electing company~~
16 ~~serving more than five million access lines shall:~~

17 ~~[(1) install Common Channel Signaling 7 capability in~~
18 ~~each central office; and~~

19 ~~[(2) connect all of the company's serving central~~
20 ~~offices to their respective LATA tandem central offices with~~
21 ~~optical fiber or equivalent facilities.~~

22 ~~[Sec. 58.205. EXTENSION OR WAIVER OF INFRASTRUCTURE~~
23 ~~REQUIREMENTS. (a) For an electing company that serves more than~~
24 ~~one million but fewer than two million access lines, the commission~~
25 ~~may temporarily extend a deadline prescribed by Section 58.203 if~~
26 ~~the company demonstrates that the extension is in the public~~
27 ~~interest.~~

1 ~~[(b) For an electing company that serves fewer than one~~
2 ~~million access lines, the commission may waive a requirement~~
3 ~~prescribed by Section 58.203 if the company demonstrates that the~~
4 ~~investment is not viable economically.~~

5 ~~[(c) Before granting a waiver under Subsection (b), the~~
6 ~~commission must consider the public benefits that would result from~~
7 ~~compliance with the requirement.~~

8 ~~[Sec. 58.206. IMPLEMENTATION COSTS; INCREASE IN RATES AND~~
9 ~~UNIVERSAL SERVICE FUNDS. The commission may not consider the cost~~
10 ~~of implementing Section 58.203 or 58.204 in determining whether an~~
11 ~~electing company is entitled to:~~

12 ~~[(1) a rate increase under this chapter; or~~

13 ~~[(2) increased universal service funds under~~
14 ~~Subchapter B,] Chapter [56.] is subject to interconnection~~
15 ~~obligations set forth in Chapter 60, Subchapter G.~~

16 SUBCHAPTER G. ~~[INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES~~

17 ~~[Sec. 58.251. INTENT AND GOAL OF SUBCHAPTER. (a) It is the~~
18 ~~intent of this subchapter to establish a telecommunications~~
19 ~~infrastructure that interconnects the public entities described in~~
20 ~~this subchapter. The interconnection of these entities requires~~
21 ~~ubiquitous, broadband, digital services for voice, video, and data~~
22 ~~in the local serving area. The ubiquitous nature of these~~
23 ~~connections must allow individual networks of these entities to~~
24 ~~interconnect and interoperate across the broadband digital service~~
25 ~~infrastructure. The delivery of these advanced telecommunications~~
26 ~~services requires collaborations and partnerships of public,~~
27 ~~private, and commercial telecommunications service network~~

1 providers.

2 ~~[(b) The goal of this subchapter is to interconnect and~~
3 ~~aggregate the connections to every entity described in this~~
4 ~~subchapter, in the local serving area. It is further intended that~~
5 ~~the infrastructure implemented under this subchapter connect each~~
6 ~~entity that requests a service offered under this subchapter.~~

7 ~~[Sec. 58.252. DEFINITIONS. In this subchapter:~~

8 ~~[(1) "Educational institution" has the meaning~~
9 ~~assigned by Section 57.021.~~

10 ~~[(2) "Library" has the meaning assigned by Section~~
11 ~~57.042.~~

12 ~~[(3) "Private network services" means:~~

13 ~~[(A) broadband digital service that is capable of~~
14 ~~providing transmission speeds of 45 megabits a second or greater~~
15 ~~for customer applications; and~~

16 ~~[(B) other customized or packaged network~~
17 ~~services.~~

18 ~~[(4) "Telemedicine center" means a facility that is~~
19 ~~equipped to transmit, by video, data, or voice service, medical~~
20 ~~information for the diagnosis or treatment of illness or disease~~
21 ~~and that is:~~

22 ~~[(A) owned or operated by a public or~~
23 ~~not-for-profit hospital, including an academic health center; or~~

24 ~~[(B) owned by one or more state-licensed health~~
25 ~~care practitioners and operated on a nonprofit basis.~~

26 ~~[Sec. 58.253. PRIVATE NETWORK SERVICES FOR CERTAIN~~
27 ~~ENTITIES. (a) On customer request, an electing company shall~~

1 ~~provide private network services to:~~

2 ~~[(1) an educational institution,~~

3 ~~[(2) a library as defined in Section 57.042(6)(A) and~~
4 ~~(B),~~

5 ~~[(3) a nonprofit telemedicine center,~~

6 ~~[(4) a public or not-for-profit hospital,~~

7 ~~[(5) a project that would have been eligible to be~~
8 ~~funded by the telecommunications infrastructure fund under~~
9 ~~Subchapter C, Chapter 57, as that subchapter existed on January 1,~~
10 ~~2001; or~~

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

14 ~~[(5) a project eligible to have been funded by the~~
15 ~~telecommunications infrastructure fund under Subchapter C, Chapter~~
16 ~~57, as of January 1, 2001; or~~

17 ~~[(6) a legally constituted consortium or group of~~
18 ~~entities listed in this subsection.~~

19 ~~[(b) Except as provided by Section 58.266, the electing~~
20 ~~company shall provide the private network services for the private~~
21 ~~and sole use of the receiving entity.~~

22 ~~[Sec. 58.254. PRIORITIES. An electing company shall give~~
23 ~~priority to serving:~~

24 ~~[(1) rural areas,~~

25 ~~[(2) areas designated as critically underserved~~
26 ~~either medically or educationally; and~~

27 ~~[(3) educational institutions with high percentages~~

1 ~~of economically disadvantaged students.~~

2 ~~[Sec. 58.255. CONTRACTS FOR PRIVATE NETWORK SERVICES. (a)~~
3 ~~An electing company shall provide a private network service under a~~
4 ~~customer specific contract.~~

5 ~~[(b) An electing company shall offer private network~~
6 ~~service contracts under this subchapter at 105 percent of the long~~
7 ~~run incremental cost of providing the private network service,~~
8 ~~including installation.~~

9 ~~[(c) Each contract shall be filed with the commission.~~
10 ~~Commission approval of a contract is not required.~~

11 ~~[(d) Subtitle D, Title 10, Government Code, does not apply~~
12 ~~to a contract entered into under this subchapter.~~

13 ~~[Sec. 58.256. PREFERRED RATE TREATMENT WARRANTED. An~~
14 ~~entity described by Section 58.253(a) warrants preferred rate~~
15 ~~treatment. However, a rate charged for a service must cover the~~
16 ~~service's long run incremental cost.~~

17 ~~[Sec. 58.257. ELECTION OF RATE TREATMENT. An educational~~
18 ~~institution or a library may elect the rate treatment provided by~~
19 ~~this subchapter or the discount provided by Subchapter B, Chapter~~
20 ~~57.~~

21 ~~[Sec. 58.258. PRIVATE NETWORK SERVICES RATES AND TARIFFS.~~
22 ~~(a) Notwithstanding the pricing flexibility authorized by this~~
23 ~~subtitle, an electing company's rates for private network services~~
24 ~~may not be increased on or before the sixth anniversary of the~~
25 ~~company's date of election. However, an electing company may~~
26 ~~increase a rate in accordance with the provisions of a customer~~
27 ~~specific contract.~~

1 ~~[(b) An electing company may not charge an entity described~~
2 ~~by Section 58.253(a) a special construction or installation charge.~~

3 ~~[Sec. 58.259. TARIFF RATE FOR CERTAIN INTRALATA SERVICE.~~

4 ~~(a) An electing company shall file a flat monthly tariff rate for~~
5 ~~point-to-point intraLATA 1.544 megabits a second service for the~~
6 ~~entities described by Section 58.253(a).~~

7 ~~[(b) The tariff rate may not be:~~

8 ~~[(1) distance sensitive; or~~

9 ~~[(2) higher than 105 percent of the service's~~
10 ~~statewide average long run incremental cost, including~~
11 ~~installation.~~

12 ~~[Sec. 58.260. POINT-TO-POINT 45 MEGABITS A SECOND INTRALATA~~
13 ~~SERVICE. (a) On request of an entity described by Section~~
14 ~~58.253(a), an electing company shall provide to the entity~~
15 ~~point-to-point 45 megabits a second intraLATA services.~~

16 ~~[(b) The service must be provided under a customer specific~~
17 ~~contract except that any interoffice portion of the service must be~~
18 ~~recovered on a statewide average basis that is not distance~~
19 ~~sensitive.~~

20 ~~[(c) The rate for the service may not be higher than 105~~
21 ~~percent of the service's long run incremental cost, including~~
22 ~~installation.~~

23 ~~[Sec. 58.261. BROADBAND DIGITAL SPECIAL ACCESS SERVICE.~~

24 ~~(a) An electing company shall provide to an entity described by~~
25 ~~Section 58.253(a) broadband digital special access service to~~
26 ~~interexchange carriers.~~

27 ~~[(b) The rate for the service may not be higher than 105~~

1 ~~percent of the service's long run incremental cost, including~~
2 ~~installation.~~

3 ~~[Sec. 58.262. EXPANDED INTERCONNECTION. (a) On request of~~
4 ~~an entity described by Section 58.253(a), an electing company shall~~
5 ~~provide to the entity expanded interconnection (virtual~~
6 ~~collocation).~~

7 ~~[(b) The company shall provide expanded interconnection:~~

8 ~~[(1) in accordance with commission rules adopted under~~
9 ~~Subchapter H, Chapter 60; and~~

10 ~~[(2) at 105 percent of long run incremental cost,~~
11 ~~including installation.~~

12 ~~[(c) An entity described by Section 58.253(a) is not~~
13 ~~required to qualify for expanded interconnection if expanded~~
14 ~~interconnection is ordered by the commission.~~

15 ~~[Sec. 58.263. INTERNET ACCESS. (a) This section applies~~
16 ~~only to an educational institution or library in an exchange of an~~
17 ~~electing company serving more than five million access lines in~~
18 ~~which toll-free access to the Internet is not available.~~

19 ~~[(b) On request of the educational institution or library,~~
20 ~~the electing company shall make available a toll-free connection or~~
21 ~~toll-free dialing arrangement that the institution or library may~~
22 ~~use to obtain access to the Internet in an exchange in which~~
23 ~~toll-free access to the Internet is available.~~

24 ~~[(c) The electing company shall provide the connection or~~
25 ~~dialing arrangement at no charge to the educational institution or~~
26 ~~library until Internet access becomes available in the exchange of~~
27 ~~the requesting educational institution or library.~~

1 ~~[(d) The electing company is not required to arrange for~~
2 ~~Internet access or to pay Internet charges for the requesting~~
3 ~~educational institution or library.~~

4 ~~[Sec. 58.264. COMPLAINTS LIMITED. (a) Notwithstanding any~~
5 ~~other provision of this title, an electing company is subject to a~~
6 ~~complaint under this subchapter only by an entity described by~~
7 ~~Section 58.253(a).~~

8 ~~[(b) An entity may only complain that the company provided a~~
9 ~~private network service under this subchapter preferentially to a~~
10 ~~similarly situated customer.~~

11 ~~[Sec. 58.265. INTERCONNECTION OF NETWORK SERVICES. The~~
12 ~~private network services provided under this subchapter may be~~
13 ~~interconnected with other similar networks for distance learning,~~
14 ~~telemedicine, and information-sharing purposes.~~

15 ~~[Sec. 58.266. SHARING OR RESALE OF NETWORK SERVICES. (a) A~~
16 ~~private network service may be used by and shared among the entities~~
17 ~~described by Section 58.253(a) but may not be otherwise shared or~~
18 ~~resold to other customers.~~

19 ~~[(b) A service provided under this subchapter may not be~~
20 ~~required to be resold to another customer at a rate provided by this~~
21 ~~subchapter.~~

22 ~~[(c) This section does not prohibit an otherwise permitted~~
23 ~~resale of another service that an electing company may offer~~
24 ~~through the use of the same facilities used to provide a private~~
25 ~~network service offered under this subchapter.~~

26 ~~[Sec. 58.267. IMPLEMENTATION COSTS, INCREASE IN RATES AND~~
27 ~~UNIVERSAL SERVICE FUNDS. The commission may not consider the cost~~

1 ~~of implementing this subchapter in determining whether an electing~~
2 ~~company is entitled to:~~

- 3 ~~[(1) a rate increase under this chapter, or~~
4 ~~[(2) increased universal service funds under~~
5 ~~Subchapter B, Chapter 56.~~

6 ~~[SUBCHAPTER H.] SWITCHED ACCESS SERVICES~~

7 Sec. 58.301. SWITCHED ACCESS RATE REDUCTION. An ILEC
8 electing ~~[company with greater than five million access lines in]~~
9 under this [state] chapter shall reduce its switched access rates
10 on a combined originating and terminating basis as follows:

11 (1) ~~[the electing company shall reduce switched access~~
12 ~~rates on a combined originating and terminating basis in effect on]~~
13 effective September 1, [1999, by one cent] 2005, the company shall
14 reduce intra-state switched access rates on a [minute,] combined
15 originating and terminating basis, by one half of the difference
16 between the intra-state switched access rate in effect on January
17 1, 2005 and the inter-state switched access rate in effect on
18 January 1, 2005; and

19 (2) effective January 1, 2007, the [electing] company
20 shall reduce intra-state switched access rates on a combined
21 originating and terminating basis [by an additional two cents a
22 minute on the earlier of:] to parity with interstate switched
23 access rates

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

25 ~~[(B) the date the electing company, or its~~
26 ~~affiliate formed in compliance with 47 U.S.C. Section 272, as~~
27 ~~amended, actually begins providing interLATA services in this state~~

1 ~~in accordance with the authorization required by 47 U.S.C. Section~~
2 ~~271, as amended.]~~

3 Sec. 58.302. SWITCHED ACCESS RATE CAP. [~~(a) An~~] After
4 January 1, 2007, an electing company may not increase the per minute
5 rates for switched access services on a combined originating and
6 terminating basis above the [~~lesser of:~~] interstate rate for
7 switched access.

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

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

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

19 ~~[Sec. 58.303. SWITCHED ACCESS CHARGE STUDY. (a) Not later~~
20 ~~than November 1, 1999, the commission shall begin a review and~~
21 ~~evaluation of the rates for intrastate switched access service.~~
22 ~~The review shall include an evaluation of at least the following~~
23 ~~issues:~~

24 ~~[(1) whether alternative rate structures for recovery~~
25 ~~of switched access revenues are in the public interest and~~
26 ~~competitively neutral; and~~

27 ~~[(2) whether disparities in rates for switched access~~

1 ~~service between local exchange companies are in the public~~
2 ~~interest.~~

3 ~~[(b) The commission shall file a report with the legislature~~
4 ~~not later than January 1, 2001. The report must include the~~
5 ~~commission's recommendations on the issues reviewed and evaluated.~~

6 ~~[(c) This section expires September 1, 2001.]~~

7 CHAPTER 59. INFRASTRUCTURE PLAN

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 59.001. POLICY. It is the policy of this state that an
10 incumbent local exchange company that does not elect to be
11 regulated under Chapter 58 should have incentives to deploy
12 infrastructure that will benefit the residents of this state while
13 maintaining reasonable local rates and universal service.

14 Sec. 59.002. DEFINITIONS. In this chapter:

15 (1) "Electing company" means an incumbent local
16 exchange company that elects for an infrastructure commitment and
17 corresponding regulation under this chapter.

18 (2) "Election date" means the date on which the
19 commission receives notice of election under Subchapter B.

20 SUBCHAPTER B. INFRASTRUCTURE INCENTIVES

21 Sec. 59.021. ELECTION. (a) An incumbent local exchange
22 company may elect to make an infrastructure commitment and to be
23 subject to corresponding regulation under this chapter if the
24 company:

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

27 (2) has not elected incentive regulation under Chapter

1 58.

2 (b) A company makes the election by notifying the commission
3 in writing of the company's election.

4 (c) A company electing under this chapter may renew the
5 election for successive two-year periods. An election that is
6 renewed under this subsection remains in effect until the earlier
7 of the date that:

8 (1) the election expires because it was not renewed;

9 (2) the commission allows the company to withdraw its
10 election under Section 59.022; or

11 (3) the legislature eliminates the incentive
12 regulation authorized by this chapter and Chapter 58.

13 Sec. 59.022. WITHDRAWAL OF ELECTION. (a) The commission
14 may allow an electing company to withdraw the company's election
15 under this chapter:

16 (1) on application by the company; and

17 (2) only for good cause.

18 (b) In this section, "good cause" includes only matters
19 beyond the control of the company.

20 Sec. 59.023. ELECTION UNDER CHAPTER 58. (a) This chapter
21 does not prohibit a company electing under this chapter from
22 electing incentive regulation under Chapter 58.

23 (b) If a company makes an election under Chapter 58, the
24 infrastructure commitment made under this chapter offsets the
25 infrastructure commitment required in connection with the Chapter
26 58 election.

27 Sec. 59.024. RATE CHANGES. (a) Except for the charges

1 permitted under Subchapter C, Chapter 55, Subchapter B, and Chapter
2 56, [~~and Section 55.024,~~] and an electing company may not, before the
3 end of the company's elections period under this chapter, increase
4 a rate previously established for that company under this title
5 unless the commission approves the proposed change as authorized
6 under Subsection (c) or (d).

7 (b) For purposes of Subsection (a), the company's
8 previously established rates are the rates charged by the company
9 on its election date without regard to a proceeding pending under:

- 10 (1) Section 15.001;
- 11 (2) Subchapter D, Chapter 53; or
- 12 (3) Subchapter G, Chapter 2001, Government Code.

13 (c) The commission, on motion of the electing company or on
14 its own motion, shall adjust prices for services to reflect changes
15 in Federal Communications Commission separations that affect
16 intrastate net income by at least 10 percent.

17 (d) Notwithstanding Subsection (a), the commission, on
18 request of the electing company, shall allow a rate group
19 reclassification that results from access line growth.

20 [~~(e) Section 58.059 applies to a rate change under this~~
21 ~~section.~~]

22 Sec. 59.025. SWITCHED ACCESS RATES. Notwithstanding any
23 other provision of this title, the commission may not, on the
24 commission's own motion, reduce an electing company's rates for
25 switched access services before the expiration of the election
26 period prescribed by Section 59.024 but may approve a reduction
27 proposed by the electing company.

1 Sec. 59.026. COMPLAINT OR HEARING. (a) On or before the
2 end of the company's election period, an electing company is not,
3 under any circumstances, subject to:

4 (1) a complaint or hearing regarding the
5 reasonableness of the company's:

6 (A) rates;

7 (B) overall revenues;

8 (C) return on invested capital; or

9 (D) net income; or

10 (2) a complaint that a rate is excessive.

11 (b) Subsection (a) applies only to a company that is in
12 compliance with the company's infrastructure commitment under this
13 chapter.

14 (c) This section does not prohibit a complaint, hearing, or
15 determination on an electing company's implementation of a
16 competitive safeguard required by Chapter 60.

17 Sec. 59.027. CONSUMER COMPLAINTS REGARDING TARIFFS. (a)
18 This chapter does not restrict:

19 (1) a consumer's right to complain to the commission
20 about the application of an ambiguous tariff; or

21 (2) the commission's right to determine:

22 (A) the proper application of that tariff; or

23 (B) the proper tariff rate if that tariff does
24 not apply.

25 (b) This section does not permit the commission to:

26 (1) lower a tariff rate except as specifically
27 provided by this title;

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

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

5 Sec. 59.028. CONSUMER COMPLAINTS REGARDING SERVICES;
6 ENFORCEMENT OF STANDARDS. This chapter does not restrict:

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

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

11 Sec. 59.029. INVESTMENT LIMITATION ON SERVICE STANDARDS.

12 (a) The commission may not raise a service standard applicable to
13 the provision of local exchange telephone service by an electing
14 company if the increased investment required to comply with the
15 raised standard in any year exceeds 10 percent of the company's
16 average annual intrastate additions in capital investment for the
17 most recent five-year period.

18 (b) In computing the average under Subsection (a), the
19 electing company shall exclude~~[(1)]~~ extraordinary investments
20 made during the five-year period~~[, and]~~.

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

22 Sec. 59.030. NEW SERVICES. (a) An electing company may
23 introduce a new service 10 days after providing an informational
24 notice to the commission, to the office, and to any person who holds
25 a certificate of operating authority in the electing company's
26 certificated area or areas or who has an effective interconnection
27 agreement with the electing company.

1 (b) An electing company shall price each new service at or
2 above the service's long run incremental cost. The commission
3 shall allow a company serving fewer than one million access lines to
4 establish a service's long run incremental cost by adopting, at
5 that company's option, the cost studies of a larger company for that
6 service that has been accepted by the commission.

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 electing company of a new service is in compliance with Subsection
11 (b).

12 (d) If a complaint is filed under Subsection (c), the
13 electing company has the burden of proving that the company set the
14 price for the new service in accordance with the applicable
15 provisions of this subchapter. If the complaint is finally
16 resolved in favor of the complainant, the electing company:

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

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

22 Sec. 59.031. PRICING AND PACKAGING FLEXIBILITY. (a)
23 ~~[Notwithstanding Section 59.027(b) or Subchapter F, Chapter 60, an]~~
24 An electing company may exercise pricing flexibility in accordance
25 with this section, including the packaging of any regulated service
26 such as basic local telecommunications service with any other
27 regulated or unregulated service or any service of an affiliate.

1 The electing company may exercise pricing flexibility 10 days after
2 providing an informational notice to the commission, to the office,
3 and to any person who holds a certificate of operating authority in
4 the electing company's certificated area or areas or who has an
5 effective interconnection agreement with the electing company.
6 ~~[Pricing flexibility includes all pricing arrangements included in~~
7 ~~the definition of "pricing flexibility" prescribed by Section~~
8 ~~51.002(7) and includes packaging of regulated services with~~
9 ~~unregulated services or any service of an affiliate.]~~

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

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

24 Sec. 59.032. CUSTOMER PROMOTIONAL OFFERINGS. (a) An
25 electing company may offer a promotion for a regulated service for
26 not more than 90 days in any 12-month period.

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

1 promotional offering that consists of:

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

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

7 (c) An electing company is not required to obtain commission
8 approval to make a promotional offering described by Subsection
9 (b).

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

14 SUBCHAPTER C. INFRASTRUCTURE COMMITMENT AND GOALS

15 ~~[Sec. 59.051. INFRASTRUCTURE COMMITMENT. (a) An electing~~
16 ~~company shall commit to make in this state, during the six years~~
17 ~~after the election date, the telecommunications infrastructure~~
18 ~~investment prescribed by this chapter.~~

19 ~~[(b) The company shall make the commitment to the governor~~
20 ~~and the commission in writing.~~

21 ~~[Sec. 59.052. INFRASTRUCTURE GOALS. (a) The commission~~
22 ~~shall ensure that each electing company achieves the infrastructure~~
23 ~~goals described by this section.~~

24 ~~[(b) Each new central office switch installed for an~~
25 ~~electing company in this state after September 1, 1995, must be~~
26 ~~digital.~~

27 ~~[(c) An electing company shall make available to each~~

1 ~~customer in the company's territory access to end-to-end digital~~
2 ~~connectivity. In this subsection, "make available" has the meaning~~
3 ~~assigned by 16 T.A.C. Section 23.69.~~

4 ~~[(d) In each electing company's territory, 50 percent of the~~
5 ~~local exchange access lines must be served by a digital central~~
6 ~~office switch.~~

7 ~~[(e) An electing company's public switched network backbone~~
8 ~~interoffice facilities must employ broadband facilities that serve~~
9 ~~at least 50 percent of the local exchange access lines and are~~
10 ~~capable of 45 or more megabits a second. The company may employ~~
11 ~~facilities at a lower bandwidth if technology permits the delivery~~
12 ~~of video signal at the lower bandwidth at a quality level comparable~~
13 ~~to a television broadcast signal. The requirements of this~~
14 ~~subsection do not apply to local loop facilities.~~

15 ~~[(f) An electing company shall install Common Channel~~
16 ~~Signaling 7 capability in each access tandem office.~~

17 ~~[(g) The infrastructure goals specified by Subsections~~
18 ~~(c)-(f) must be achieved not later than January 1, 2000.~~

19 ~~[Sec. 59.053. WAIVER OF INFRASTRUCTURE REQUIREMENTS. (a)~~
20 ~~For an electing company that serves fewer than one million lines,~~
21 ~~the commission may waive a requirement prescribed by Section 59.052~~
22 ~~if the company demonstrates that the investment is not viable~~
23 ~~economically.~~

24 ~~[(b) Before granting a waiver under Subsection (a), the~~
25 ~~commission must consider the public benefits that would result from~~
26 ~~compliance with the requirement.~~

27 ~~[Sec. 59.054. PROGRESS REPORT. (a) On each anniversary of~~

1 ~~the company's election date, an electing company shall file with~~
2 ~~the commission a report on the company's progress on its~~
3 ~~infrastructure commitment.~~

4 ~~[(b) The report must include a statement of:~~

5 ~~(1) the institutions requesting service under~~
6 ~~Subchapter D;~~

7 ~~(2) the institutions served under Subchapter D;~~

8 ~~(3) the investments and expenses for the previous~~
9 ~~period and the total investments and expenses for all periods; and~~

10 ~~(4) other information the commission considers~~
11 ~~necessary.]~~

12 Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND
13 UNIVERSAL SERVICE FUNDS. The commission may not consider the cost
14 of implementing the costs associated with achievement of the
15 infrastructure goals contained in ch. 231, § 49 of Acts 1997, 75th
16 Leg., as continued by ch. 166, § 1, Acts 1997, 75th Leg. (former
17 Section 59.052) in determining whether an electing company is
18 entitled to:

19 (1) a rate increase under this chapter; or

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

22 SUBCHAPTER D. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES

23 Sec. 59.071. DEFINITIONS. In this subchapter:

24 (1) "Educational institution" ~~[has the meaning~~
25 ~~assigned by Section 57.021.]~~ includes:

26 (A) an accredited primary or secondary school;

27 (B) an institution of higher education as defined

1 by Section 61.003, Education Code;

2 (C) a private institution of higher education
3 accredited by a recognized accrediting agency as defined by Section
4 61.003, Education Code;

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

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

10 (F) the Texas Higher Education Coordinating
11 Board and its successors and assigns.

12 (2) "Library" [~~has the meaning assigned by Section~~
13 ~~57.042.~~] means:

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

16 (B) a library operated by an institution of
17 higher education or a school district.

18 (3) "Private network services" means
19 telecommunications services provided to an entity described by
20 Section 59.072(a), including broadband services, customized
21 services, and packaged network services.

22 (4) "Telemedicine center" means a facility that is
23 equipped to transmit, by video or data service, medical information
24 for the diagnosis or treatment of illness or disease and that is:

25 (A) owned or operated by a public or
26 not-for-profit hospital; or

27 (B) owned by a state-licensed health care

1 practitioner and operated on a nonprofit basis.

2 Sec. 59.072. PRIVATE NETWORK SERVICES FOR CERTAIN ENTITIES.

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

5 (1) an educational institution;

6 (2) a library;

7 (3) a telemedicine center; or

8 (4) a legally constituted consortium or group of
9 entities listed in this subsection.

10 (b) Except as provided by Section 59.081, the electing
11 company shall provide the private network services for the private
12 and sole use of the receiving entity. However, the company may
13 provide the services with a facility that is used to provide another
14 service to another customer.

15 (c) The customers listed in Subsection (a) are a special
16 class of customers for purposes of the private network for distance
17 learning, telemedicine, and information-sharing purposes.

18 Sec. 59.073. INVESTMENT PRIORITIES. An electing company
19 shall give investment priority to serving:

20 (1) rural areas;

21 (2) areas designated as critically underserved
22 medically or educationally; and

23 (3) educational institutions with high percentages of
24 economically disadvantaged students.

25 Sec. 59.074. CONTRACTS FOR PRIVATE NETWORK SERVICES. (a)

26 An electing company shall provide a private network service under a
27 customer-specific contract.

1 (b) An electing company shall offer private network service
2 contracts under this subchapter at 110 percent of the long run
3 incremental cost of providing the private network service,
4 including installation costs.

5 (c) Each contract shall be filed with the commission.
6 Commission approval of a contract is not required.

7 Sec. 59.075. PREFERRED RATE TREATMENT WARRANTED. The
8 classes of customers described by Section 59.072(a) warrant
9 preferred rate treatment. However, a rate charged for a service
10 must cover the service's long run incremental cost.

11 Sec. 59.076. ELECTION OF RATE TREATMENT. An educational
12 institution or a library may elect the rate treatment provided by
13 this subchapter or the discount provided by Subchapter B, Chapter
14 57.

15 Sec. 59.077. PRIVATE NETWORK SERVICES RATES AND TARIFFS.
16 (a) Notwithstanding the pricing flexibility authorized by this
17 subtitle, an electing company's rates for private network services
18 may not be increased on or before the sixth anniversary of the
19 company's election date.

20 (b) An electing company may not assess an entity described
21 by Section 59.072(a) a tariffed special construction or
22 installation charge unless the company and the entity agree on the
23 assessment.

24 Sec. 59.078. PRIVATE LINE OR SPECIAL ACCESS RATES. (a) On
25 request by an educational institution or a library, an electing
26 company shall provide 1.544 megabits a second private line or
27 special access service at 110 percent of the service's long run

1 incremental cost, including installation costs.

2 (b) The rate provided by Subsection (a) is in lieu of the
3 discount provided by Subchapter B, Chapter 57.

4 Sec. 59.079. COMPLAINTS LIMITED. Notwithstanding any other
5 provision of this title, an electing company is subject to a
6 complaint under Subchapter C or this subchapter only by an entity
7 described by Section 59.072(a).

8 Sec. 59.080. INTERCONNECTION OF NETWORK SERVICES. The
9 private network services provided under this subchapter may be
10 interconnected with other similar networks for distance learning,
11 telemedicine, and information-sharing purposes.

12 Sec. 59.081. SHARING OR RESALE OF NETWORK SERVICES. (a) A
13 private network service may be used and shared among the entities
14 described by Section 59.072(a) but may not be otherwise shared or
15 resold to other customers.

16 (b) A service provided under this subchapter may not be
17 required to be resold to other customers at a rate provided by this
18 subchapter.

19 (c) This section does not prohibit an otherwise permitted
20 resale of another service that an electing company may offer
21 through the use of the same facilities used to provide a private
22 network service offered under this subchapter.

23 Sec. 59.082. IMPLEMENTATION COSTS; INCREASE IN RATES AND
24 UNIVERSAL SERVICE FUNDS. The commission may not consider the cost
25 of implementing this subchapter in determining whether an electing
26 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 CHAPTER 60. FAIR COMPETITION AND COMPETITIVE SAFEGUARDS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 60.001. FAIR COMPETITION. [~~To the extent necessary to~~
6 ~~ensure that competition in telecommunications is fair to each~~
7 ~~participant and to accelerate the improvement of~~
8 ~~telecommunications in this state, the commission shall ensure that~~
9 ~~the rates and rules of an incumbent local exchange company:] (a) A
10 rate, term, condition or a practice shall not be:~~

11 (1) unreasonably preferential, prejudicial, or
12 discriminatory;

13 (2) improperly subsidized either directly or
14 indirectly; or

15 (3) predatory or anticompetitive.

16 (b) [(1) are not] Notwithstanding other definitions and
17 standards that may be applicable under state or federal law, for
18 purposes of this Chapter: (i) a rate may be predatory,
19 anticompetitive, or improperly subsidized if each component
20 service for purposes of reporting to taxing authorities is not set
21 at or above its long run incremental cost, (ii) a rate, term,
22 condition or practice may be unreasonably preferential,
23 prejudicial, or discriminatory[, and] if it is not offered or
24 applicable to all comparably situated customers within a
25 metropolitan statistical area, (iii) a rate, term, condition or
26 practice may be anticompetitive regardless of whether it also
27 constitutes a breach of a duty of interconnection or

1 nondiscriminatory access. End users are considered comparably
2 situated for purposes of this section if they are within the same
3 customer class (e.g. residential versus business). No restriction
4 on the availability of a retail service for resale shall be
5 permitted except as specifically allowed under federal law.

6 (c) [~~(2)~~ are applied equitably and consistently.

7 [Sec. 60.002. EXCLUSIVE JURISDICTION; ENFORCEMENT. (a)
8 The commission has exclusive jurisdiction to implement competitive
9 safeguards.

10 [~~(b)~~ Section 58.025 does not prevent the commission from
11 enforcing] It shall not be a defense to a claim brought under this
12 [~~chapter~~] Chapter or under state or federal antitrust laws that the
13 rates charged, terms and conditions applied, or the practice
14 engaged in is protected state action.

15 (d) In addition to (a) through (c) of this section, all
16 providers shall be bound by a Code of Conduct adopted and enforced
17 by the commission which will ensure integrity of business practices
18 in carrier-to-carrier, marketing and advertising practices.

19 (e) A complaint under this Chapter shall be arbitrated at
20 the election of any party to the dispute. If arbitration is
21 elected, the dispute shall be expeditiously adjudicated by binding
22 arbitration before a panel of three independent arbitrators. Each
23 party shall select one member and the members thus chosen shall
24 select the third. In the event the arbitrators chosen by the
25 parties are unable to agree on the third member of the panel, they
26 shall request a list of candidates from an independent alternative
27 dispute resolution organization, and the third member shall be

1 elected in accordance with the published procedures of the
2 alternative dispute resolution organization. The arbitration
3 shall be conducted in accordance with the rules of such
4 organization unless mutually agreed by the parties. The panel
5 shall be specifically authorized and empowered to award damages,
6 including punitive damages. Further, the panel may issue
7 preliminary and permanent injunctive relief. The panel shall issue
8 its final decision within 180 days from the date arbitration is
9 requested. The decision of the arbitration panel shall be final and
10 the award shall be entitled to confirmation unless overturned or
11 modified pursuant to narrowly defined grounds for judicial review
12 set forth in Tex. Civ. Prac. & Rem. Code section 171.088 (a) (1),
13 (2), or (3). The fees and expenses the parties and of the
14 arbitration panel shall be allocated between the parties by the
15 panel in a manner consistent with the relief granted.

16 Sec. 60.003. COMMISSION AUTHORITY. (a) ~~[(a)]~~ The
17 commission ~~[may: (1)]~~ has all necessary authority to establish
18 procedures ~~[with respect to a policy stated in this subchapter or~~
19 ~~Subchapters B-H,~~ and resolve disputes arising under this Chapter,
20 and to provide and enforce remedies including, but not limited to,
21 injunctive relief.

22 (b) Notwithstanding the provisions of section 15.023(b),
23 for ~~[(2) resolve]~~ a ~~[dispute that arises]~~ violation of this
24 subchapter the commission may impose administrative penalties up to
25 \$100,000 per day for each violation, which penalty shall apply day
26 for day for the duration of the violation. The imposition of such
27 administrative penalty shall not constitute an exclusive remedy

1 under ~~[a policy described by Subdivision (1)]~~ the law.

2 (c) The commission must resolve a complaint filed with it
3 under this chapter not later than 270 days after the complaint is
4 filed.

5 (d) Any appeal from a commission order issued under this
6 Chapter, except orders issued in connection with interconnection
7 under Subchapter G, shall be subject to judicial review by appeal
8 directly to the Court of Appeals in Travis County.

9 ~~[(b) The commission shall adopt procedures for a proceeding~~
10 ~~under Subchapters B and C. A procedure may:~~

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

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

15 ~~[(c) In adopting a procedure under this section and in~~
16 ~~resolving a dispute, the commission shall consider the action's~~
17 ~~effect on:~~

18 ~~[(1) consumers;~~

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

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

21 ~~[(d) The commission, by order or rule, may not implement a~~
22 ~~requirement that is contrary to a federal law or rule.~~

23 ~~[Sec. 60.004. APPLICABILITY TO CERTAIN SMALLER INCUMBENT~~
24 ~~LOCAL EXCHANGE COMPANIES; RULES. (a) Subchapters B, C, and H may~~
25 ~~be applied to an incumbent local exchange company that serves fewer~~
26 ~~than 31,000 access lines only on a bona fide request from a~~
27 ~~certificated telecommunications utility.~~

1 ~~[(b) In applying the rules adopted under Subchapters B, C,~~
2 ~~and H to a company described by Subsection (a), the commission may~~
3 ~~modify the rules in the public interest.~~

4 ~~[(c) This section takes effect September 1, 1998.~~

5 ~~[Sec. 60.0041. APPLICABILITY TO CERTAIN SMALLER INCUMBENT~~
6 ~~LOCAL EXCHANGE COMPANIES. (a) Subchapters B, C, E, G, and H do not~~
7 ~~apply to an incumbent local exchange company that serves fewer than~~
8 ~~31,000 access lines.~~

9 ~~[(b) This section expires September 1, 1998.~~

10 ~~[Sec. 60.005. APPLICABILITY TO CERTAIN LARGER INCUMBENT~~
11 ~~LOCAL EXCHANGE COMPANIES; RULES. (a) Subchapters B, D, and F may~~
12 ~~be applied to an incumbent local exchange company that, as of~~
13 ~~September 1, 1995, has 31,000 or more access lines in this state but~~
14 ~~fewer than one million access lines in this state only on a bona~~
15 ~~fide request from a holder of a certificate of operating authority~~
16 ~~or a service provider certificate of operating authority.~~

17 ~~[(b) In applying the rules adopted under Subchapters B, D,~~
18 ~~and F to a company described by Subsection (a), the commission may~~
19 ~~modify the rules in the public interest.~~

20 ~~[Sec. 60.006. BULLETIN BOARD SYSTEMS UNAFFECTED. This~~
21 ~~subtitle does not:~~

22 ~~[(1) require the commission to change the rate~~
23 ~~treatment established by the commission in Docket No. 8387 for a~~
24 ~~bulletin board system in a residence;~~

25 ~~[(2) regulate or tax a bulletin board system or~~
26 ~~Internet service provider that provides only enhanced or~~
27 ~~information services and that does not provide a telecommunications~~

1 ~~service; or~~

2 ~~[(3) require a change in a rate charged to an entity~~
3 ~~described by Subdivision (2) under a tariff in effect on September~~
4 ~~1, 1995.~~

5 ~~[SUBCHAPTER B. UNBUNDLING~~

6 ~~[Sec. 60.021. MINIMUM UNBUNDLING REQUIREMENT. At a~~
7 ~~minimum, an incumbent local exchange company shall unbundle its~~
8 ~~network to the extent the Federal Communications Commission orders.~~

9 ~~[Sec. 60.022. COMMISSION UNBUNDLING ORDERS. (a) The~~
10 ~~commission may adopt an order relating to the issue of unbundling of~~
11 ~~local exchange company services in addition to the unbundling~~
12 ~~required by Section 60.021.~~

13 ~~[(b) Before ordering further unbundling, the commission~~
14 ~~must consider the public interest and competitive merits of further~~
15 ~~unbundling.~~

16 ~~[(c) On the request of a party, the commission shall proceed~~
17 ~~by evidentiary hearing. If a request for a hearing is not made, the~~
18 ~~commission may proceed by rulemaking.~~

19 ~~[Sec. 60.023. ASSIGNMENT OF UNBUNDLED COMPONENT TO CATEGORY~~
20 ~~OF SERVICE. The commission may assign an unbundled component to the~~
21 ~~appropriate category of services under Chapter 58 according to the~~
22 ~~purposes and intents of the categories.~~

23 ~~[SUBCHAPTER C. RESALE~~

24 ~~[Sec. 60.041. LOOP RESALE TARIFF. (a) An incumbent local~~
25 ~~exchange company that on September 1, 1995, serves one million or~~
26 ~~more access lines or that on or before September 1, 1995, elects~~
27 ~~regulation under Chapter 58 shall file a usage sensitive loop~~

1 ~~resale tariff.~~

2 ~~[(b) An incumbent local exchange company shall file a usage~~
3 ~~sensitive loop resale tariff not later than the 60th day after the~~
4 ~~date a certificate of operating authority or a service provider~~
5 ~~certificate of operating authority is granted under Chapter 54 if~~
6 ~~the company.~~

7 ~~[(1) serves fewer than one million access lines, and~~

8 ~~[(2) is not an electing company under Chapter 58.~~

9 ~~[(c) The commission shall conduct an appropriate proceeding~~
10 ~~to determine the rates and terms of the resale tariff not later than~~
11 ~~the 180th day after the date the tariff is filed.~~

12 ~~[(d) The commission may not approve a usage sensitive rate~~
13 ~~unless the rate recovers:~~

14 ~~[(1) the total long run incremental cost of the loop on~~
15 ~~an unseparated basis, and~~

16 ~~[(2) an appropriate contribution to joint and common~~
17 ~~costs.~~

18 ~~[(e) Except as provided by Section 60.044, a person may not~~
19 ~~purchase from the resale tariff unless the person is the holder of:~~

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

21 ~~[(2) a certificate of operating authority, or~~

22 ~~[(3) a service provider certificate of operating~~
23 ~~authority.~~

24 ~~[(f) In this section, "loop resale" means the purchase of~~
25 ~~the local distribution channel or loop facility from the incumbent~~
26 ~~local exchange company to resell to end user customers.~~

27 ~~[Sec. 60.042. PROHIBITED RESALE OR SHARING. (a) A provider~~

1 ~~of telecommunications service may not impose a restriction on the~~
2 ~~resale or sharing of a service:~~

3 ~~[(1) for which the provider is not a dominant~~
4 ~~provider; or~~

5 ~~[(2) entitled to regulatory treatment as a nonbasic~~
6 ~~service under Subchapter E, Chapter 58, if the provider is a company~~
7 ~~electing regulation under Chapter 58.~~

8 ~~[(b) An incumbent local exchange company must comply with~~
9 ~~the resale provisions of 47 U.S.C. Section 251(c)(4), as amended,~~
10 ~~unless exempted under 47 U.S.C. Section 251(f), as amended.~~

11 ~~[(c) If a company electing under Chapter 58 offers basic or~~
12 ~~nonbasic services regulated by the commission to its retail~~
13 ~~customers as a promotional offering, the electing company shall~~
14 ~~make those services available for resale by a certificated~~
15 ~~telecommunications utility on terms that are no less favorable than~~
16 ~~the terms on which the services are made available to retail~~
17 ~~customers in accordance with this section. For a promotion with a~~
18 ~~duration of 90 days or less, the electing company's basic or~~
19 ~~nonbasic services shall be made available to the certificated~~
20 ~~telecommunications utility at the electing company's promotional~~
21 ~~rate, without an avoided-cost discount. For a promotion with a~~
22 ~~duration of more than 90 days, the electing company's basic or~~
23 ~~nonbasic services shall be made available to the certificated~~
24 ~~telecommunications utility at a rate reflecting the avoided-cost~~
25 ~~discount, if any, from the promotional rate.~~

26 ~~[Sec. 60.043. RESALE OBLIGATION. A holder of a certificate~~
27 ~~of operating authority or a service provider certificate of~~

1 ~~operating authority shall permit a local exchange company to resell~~
2 ~~the holder's loop facilities at the holder's regularly published~~
3 ~~rates if the local exchange company:~~

4 ~~[(1) does not have loop facilities, and~~

5 ~~[(2) has a request for service.~~

6 ~~[Sec. 60.044. ELIMINATION OF RESALE PROHIBITIONS. (a)~~
7 ~~Except as provided by Subsections (c) and (d), the commission shall~~
8 ~~eliminate all resale prohibitions in the tariffs of an electing~~
9 ~~company on the:~~

10 ~~[(1) completion of the commission's costing and~~
11 ~~pricing rulemaking,~~

12 ~~[(2) completion of rate rebalancing of the incumbent~~
13 ~~local exchange company rates under Subchapter F, and~~

14 ~~[(3) removal of all prohibitions on an incumbent local~~
15 ~~exchange company's provision of interLATA services.~~

16 ~~[(b) Except as provided by Subsections (c) and (d), the~~
17 ~~commission shall eliminate all resale prohibitions in the tariffs~~
18 ~~of an electing company that has one million access lines or more on~~
19 ~~removal of all prohibitions on the company's provision of interLATA~~
20 ~~service.~~

21 ~~[(c) After the resale prohibitions are eliminated under~~
22 ~~this section:~~

23 ~~[(1) the commission shall continue to prohibit the~~
24 ~~resale of local exchange or directory assistance flat rate services~~
25 ~~as a substitute for usage sensitive services, and~~

26 ~~[(2) residence service may not be resold to a business~~
27 ~~customer.~~

1 ~~[(d) A service or function may be offered for resale only to~~
2 ~~the same class of customer to which the incumbent local exchange~~
3 ~~company sells the service if the commission finds that:~~

4 ~~[(1) as a result of the costing and pricing proceeding~~
5 ~~the rate for the service or function will be less than the cost of~~
6 ~~providing the service or function; and~~

7 ~~[(2) the difference in rate and cost will not be~~
8 ~~recovered from the universal service fund.~~

9 ~~[Sec. 60.045. RESALE OR SHARING ARRANGEMENTS UNAFFECTED.~~
10 ~~This subchapter does not change a resale or sharing arrangement~~
11 ~~permitted in an incumbent local exchange company tariff that:~~

12 ~~[(1) existed on September 1, 1995; or~~

13 ~~[(2) was filed on or before May 1, 1995, by an~~
14 ~~incumbent local exchange company that serves more than five million~~
15 ~~access lines in this state.~~

16 ~~[SUBCHAPTER D. IMPUTATION~~

17 ~~[Sec. 60.061. RULES. (a) The commission shall adopt rules~~
18 ~~governing imputation of the price of a service.~~

19 ~~[(b) Imputation is a regulatory policy the commission shall~~
20 ~~apply to prevent an incumbent local exchange company from selling a~~
21 ~~service or function to another telecommunications utility at a~~
22 ~~price that is higher than the rate the incumbent local exchange~~
23 ~~company implicitly includes in services it provides to the~~
24 ~~company's retail customers.~~

25 ~~[(c) The commission may require imputation only of the price~~
26 ~~of a service that is:~~

27 ~~[(1) not generally available from a source other than~~

1 ~~the incumbent local exchange company; and~~

2 ~~[(2) necessary for the competitor to provide a~~
3 ~~competing service.]~~

4 ~~[(d) The commission may require imputation only on a~~
5 ~~service-by-service basis and may not require imputation on a~~
6 ~~rate-element-by-element basis.]~~

7 ~~[(e) For a service for which the commission may require~~
8 ~~imputation under Subsection (c) and that is provided under a~~
9 ~~customer specific contract, the commission:~~

10 ~~[(1) may require imputation only on a~~
11 ~~service-by-service basis within the contract; and~~

12 ~~[(2) may not require imputation on a~~
13 ~~rate-element-by-element basis.]~~

14 ~~[Sec. 60.062. EXCEPTION FOR CAPPED PRICE. The commission~~
15 ~~may not require imputation of the price to a local exchange~~
16 ~~telephone service while the price is capped under Chapter 58 or 59.]~~

17 ~~[Sec. 60.063. IMPUTATION FOR SWITCHED ACCESS. The~~
18 ~~commission shall impute the price of switched access service to the~~
19 ~~price of each service for which switched access service is a~~
20 ~~component until switched access service is competitively~~
21 ~~available.]~~

22 ~~[Sec. 60.064. RECOVERY OF COST OF PROVIDING SERVICE. (a)~~
23 ~~An incumbent local exchange company shall demonstrate that the~~
24 ~~price it charges for retail service recovers the cost of providing~~
25 ~~the service.]~~

26 ~~[(b) For purposes of this section, the cost of providing the~~
27 ~~service is the sum of:~~

1 ~~[(1) each specifically tariffed premium rate for each~~
2 ~~noncompetitive service or service function, or each element of a~~
3 ~~noncompetitive service or service function, or the functional~~
4 ~~equivalent, that is used to provide the service;~~

5 ~~[(2) the total service long run incremental cost of~~
6 ~~the competitive services or service functions that are used;~~

7 ~~[(3) each cost, not reflected in Subdivision (1) or~~
8 ~~(2), that is specifically associated with providing the service or~~
9 ~~group of services; and~~

10 ~~[(4) each cost or surcharge associated with an~~
11 ~~explicit subsidy applied to all providers of the service to promote~~
12 ~~universal service.~~

13 ~~[Sec. 60.065. WAIVERS. If the commission determines that a~~
14 ~~waiver is in the public interest, the commission may waive an~~
15 ~~imputation requirement for a public interest service such as:~~

16 ~~[(1) 9-1-1 service; or~~

17 ~~[(2) dual party relay service.]~~

18 SUBCHAPTER E. TELECOMMUNICATIONS NUMBER PORTABILITY

19 Sec. 60.081. DEFINITION. In this subchapter,
20 "telecommunications number portability" means the ability of a
21 telecommunications services user who is changing from one
22 telecommunications service provider to another provider to retain a
23 telephone number, to the extent technically feasible, without
24 impairing the quality, reliability, or convenience of service.

25 Sec. 60.082. PORTABILITY GUIDELINES. (a) Because a
26 uniform national number plan is valuable and necessary to this
27 state, the commission by rule shall adopt guidelines governing

1 telecommunications number portability and the assignment of
2 telephone numbers in a competitively neutral manner.

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

8 ~~[Sec. 60.083. INTERIM RETENTION OF CONSUMER NUMBERS. As an~~
9 ~~interim measure, the commission shall adopt reasonable mechanisms,~~
10 ~~including, at minimum, the use of call forwarding and direct inward~~
11 ~~dialing, to allow consumers to retain their telephone numbers.~~

12 ~~[Sec. 60.084. RATES FOR INTERIM PORTABILITY MEASURES. (a)~~
13 ~~An incumbent local exchange company with one million or more access~~
14 ~~lines shall file tariffs, and the commission shall determine~~
15 ~~reasonable rates to be charged by the company for:~~

- 16 ~~[(1) call forwarding,~~
17 ~~[(2) direct inward dialing, and~~
18 ~~[(3) any other mechanism the commission determines~~
19 ~~should be used as an interim telecommunications number portability~~
20 ~~measure by a new entrant.~~

21 ~~[(b) An incumbent local exchange company with fewer than one~~
22 ~~million access lines that serves an area in which a certificate of~~
23 ~~operating authority or a service provider certificate of operating~~
24 ~~authority has been granted shall, not later than the 60th day after~~
25 ~~the date of a bona fide request, file tariffs in accordance with~~
26 ~~Subsection (a).~~

27 ~~[(c) Not later than the 60th day after the date a company~~

1 ~~files tariffs under Subsection (b), the commission shall determine~~
2 ~~reasonable rates in accordance with Subsection (a).~~

3 ~~[SUBCHAPTER F. PRICING~~

4 ~~[Sec. 60.101. PRICING RULE. (a) The commission shall adopt~~
5 ~~a pricing rule.~~

6 ~~[(b) In adopting the pricing rule, the commission shall:~~

7 ~~[(1) ensure that each price for a monopoly service~~
8 ~~remains affordable;~~

9 ~~[(2) ensure that each price for competitive service is~~
10 ~~not:~~

11 ~~[(A) unreasonably preferential, prejudicial, or~~
12 ~~discriminatory;~~

13 ~~[(B) directly or indirectly subsidized by a~~
14 ~~noncompetitive service; or~~

15 ~~[(C) predatory or anticompetitive; and~~

16 ~~[(3) require that each service recover the appropriate~~
17 ~~costs, including joint and common costs, of each facility and~~
18 ~~function used to provide the service.~~

19 ~~[Sec. 60.102. ADOPTION OF COST STUDIES BY CERTAIN~~
20 ~~COMPANIES. The commission shall allow an incumbent local exchange~~
21 ~~company that is not a Tier 1 local exchange company on September 1,~~
22 ~~1995, to adopt, at that company's option, the cost studies approved~~
23 ~~by the commission for a Tier 1 local exchange company.]~~

24 SUBCHAPTER G. INTERCONNECTION

25 Sec. 60.121. DEFINITION. In this subchapter,
26 "interconnection" means [~~for calls that originate~~] transmission,
27 routing and [~~terminate in this state, the~~] termination [~~of local~~

1 ~~intraexchange]~~ traffic of another [~~local exchange company or holder~~
 2 ~~of a service provider certificate of operating authority]~~ Network
 3 Provider or Service Provider within [~~the local calling]~~ a area
 4 served by the interconnecting providers. The term
 5 "interoperability" means the standards necessary to ensure that
 6 Network and Service Providers conduct their business in a way that
 7 enables consumers to efficiently communicate with each other and to
 8 exercise their choice of [~~the terminating local exchange company or~~
 9 ~~certificate holder]~~ provider and service without unreasonable
 10 disruption and delay.

11 Sec. 60.122. EXCLUSIVE JURISDICTION. The commission has
 12 exclusive jurisdiction to determine interconnection rates [~~and]~~,
 13 terms [~~for interconnection for a holder of a certificate of~~
 14 ~~convenience]~~ and [~~necessity, a certificate]~~ conditions for
 15 interconnection in accordance with the terms of [~~operating]~~ this
 16 Act. The commission has all necessary authority [~~, or a service~~
 17 ~~provider certificate]~~ to promulgate rules and conduct proceedings
 18 to implement this subchapter. The commission has all necessary but
 19 not exclusive jurisdiction to resolve disputes regarding breach of
 20 [~~operating]~~ interconnection [~~authority]~~ obligations.

21 Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. This
 22 subchapter does not apply to a rate for the existing termination of
 23 [~~cellular]~~ commercial mobile radio service (CMRS) or interexchange
 24 telecommunications service traffic. No requirement of this
 25 subchapter shall impose an obligation on a provider that is exempt
 26 from such requirement under federal law.

27 Sec. 60.124. INTEROPERABLE NETWORKS REQUIRED. (a) The

1 commission shall require each [~~telecommunications provider~~]
2 Network and Service Provider to maintain interoperable networks.

3 (b) A Network or service Provider shall be entitled to
4 interconnect at least at a single point of interconnection within a
5 LATA. Such point shall be technically feasible, efficient from a
6 network and economic standpoint and transparent to the consumer.

7 (c) [~~(b)~~] The commission may:

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

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

13 Sec. 60.125. DETERMINATION OF INTERCONNECTION RATES. (a)
14 Except where mutually agreed by the parties, and as approved under
15 subsection (c) of this section, the rates for traffic exchanged
16 pursuant to interconnection agreements shall be as follows: (i)
17 intraLATA toll traffic shall be at parity with interstate switched
18 access rates, (ii) transit traffic rate approved by the commission
19 in Docket No. 28821, and (iii) all other traffic at 0.00075 per
20 minute. Other interconnection rates, including rates for
21 facilities necessary for interconnecting, shall be based on TELRIC.

22 (b) [~~(a)~~] Telecommunications providers shall negotiate
23 network interconnectivity, [~~charges, and~~] terms and conditions.

24 (c) [~~(b)~~] If interconnectivity [~~, charges, and~~] terms and
25 conditions are successfully negotiated, the commission shall
26 approve the interconnection [~~rates~~] agreement if it finds the
27 agreement to be in the public interest and nondiscriminatory.

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

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

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

13 ~~[(f) On or after the third anniversary of the date the first~~
14 ~~call is terminated between the providers, the commission, on~~
15 ~~receipt of a complaint, may require cost studies by a new entrant to~~
16 ~~establish interconnection rates.]~~ (d) The commission shall have
17 all necessary authority to promulgate rules and conduct proceedings
18 as necessary to implement and enforce this section.

19 Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE
20 RESOLUTION. A party to interconnection negotiations may file for
21 resolution of disputed issues between 135 and 180 days of receipt of
22 a request for negotiation. The commission [~~may~~] shall resolve a
23 dispute filed by a party to a negotiation under Section 60.125(a)
24 within 270 days of the date the request for negotiation was
25 received.

26 Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES.
27 [~~(a) An incumbent local exchange company~~] A Network or Service

1 Provider may adopt [~~the~~] any interconnection [~~rates~~] agreement
2 approved by the commission [~~approves for a larger incumbent local~~
3 ~~exchange company without additional cost justification~~].

4 [~~(b) If an incumbent local exchange company does not adopt~~
5 ~~the interconnection rates of a larger company or negotiates under~~
6 ~~Section 60.125(a), the company is governed by Sections~~
7 ~~60.125(c)-(f).~~

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

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

15 Sec. 60.128. [~~USE OF RATES RESTRICTED~~] CONSUMER ORIENTED
16 STANDARDS. The commission [~~may not use interconnection rates under~~
17 ~~this subchapter as a basis to alter interconnection rates for other~~
18 ~~services.~~

19 [~~SUBCHAPTER H. EXPANDED INTERCONNECTION~~

20 [~~Sec. 60.141. EXPANDED INTERCONNECTION RULES. The~~
21 ~~commission shall adopt rules for expanded interconnection that:~~

22 [~~(1) are consistent with the rules and regulations of~~
23 ~~the Federal Communications Commission relating to expanded~~
24 ~~interconnection,~~

25 [~~(2) treat intrastate private line services as special~~
26 ~~access service, and~~

27 [~~(3) provide that if an incumbent local exchange~~

1 ~~company is required to provide expanded interconnection to another~~
2 ~~local exchange company]~~ shall adopt rules applicable to all
3 interconnecting entities which ensure that E-911 systems, [~~the~~
4 ~~second local exchange company shall in a similar manner provide~~
5 ~~expanded interconnection to the first company]~~ number portability
6 and other customer migration processes, operator services; white
7 pages, telephone directory listings, publication and distribution;
8 directory assistance and such other consumer friendly services are
9 efficient and secure for consumers.

10 Sec. 60.130 VoIP PROVIDERS. To the extent that federal law
11 has not been held to preclude the exercise of interconnection
12 rights as specified in Title 47 U.S.C. sections 251 and 252 by
13 facilities-based VoIP providers, such entities shall also be
14 presumed to have such rights and obligations under Texas law and
15 shall be entitled to use the commission as a forum for mediating or
16 arbitrating interconnection agreements with network providers and
17 service providers within Texas. Any facilities-based VoIP provider
18 seeking to invoke such rights at the Texas commission shall be
19 required to certify that it will comply with the requirements of
20 Title 47 U.S.C. section 251(a) with respect to telecommunications
21 carriers and other broadband service providers. Nothing herein
22 shall be construed to grant to the commission or any state or local
23 government authority to regulate VoIP services beyond that
24 authority granted or permitted by federal law.

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

27 Sec. 60.161. [~~INCUMBENT LOCAL EXCHANGE COMPANY~~] NETWORK

1 PROVIDER AND SERVICE PROVIDER REQUIREMENTS. [~~An incumbent local~~
2 ~~exchange company~~] Network providers and service providers may not
3 [~~unreasonably~~]:

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

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

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

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

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

19 (6) refuse or delay access by a person to another
20 provider [~~or~~]; or

21 (7) fail to fully disclose information necessary to
22 determine compliance with these requirements.

23 [~~Sec. 60.162. EXPANDED INTERCONNECTION. This subchapter~~
24 ~~does not require an incumbent local exchange company to provide~~
25 ~~expanded interconnection as that term is defined by the Federal~~
26 ~~Communications Commission.~~

27 [~~Sec. 60.163. INFRASTRUCTURE SHARING. (a) The commission~~

1 ~~shall adopt rules that require a local exchange company to share~~
2 ~~public switched network infrastructure and technology with a~~
3 ~~requesting local exchange company that lacks economies of scale or~~
4 ~~scope, to enable the requesting company to provide~~
5 ~~telecommunications services in each geographic area for which the~~
6 ~~requesting company is designated as the sole carrier of last~~
7 ~~resort.~~

8 ~~[(b) The rules governing the sharing:~~

9 ~~[(1) may not require a local exchange company to make a~~
10 ~~decision that is uneconomic or adverse to the public;~~

11 ~~[(2) shall permit, but may not require, joint~~
12 ~~ownership and operation of public switched network infrastructure~~
13 ~~and services by or among the local exchange companies that share~~
14 ~~infrastructure; and~~

15 ~~[(3) shall establish conditions that promote~~
16 ~~cooperation between local exchange companies.~~

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

24 ~~[Sec. 60.165. AFFILIATE RULE. Except as prescribed in~~
25 ~~Chapters 61, 62, and 63, the commission may not adopt any rule or~~
26 ~~order that would prescribe for any local exchange company any~~
27 ~~affiliate rule, including any accounting rule, any cost allocation~~

1 ~~rule, or any structural separation rule, that is more burdensome~~
2 ~~than federal law or applicable rules or orders of the Federal~~
3 ~~Communications Commission. Notwithstanding any other provision in~~
4 ~~this title, the commission may not attribute or impute to a local~~
5 ~~exchange company a price discount offered by an affiliate of the~~
6 ~~local exchange company to the affiliate's customers. This section~~
7 ~~does not limit the authority of the commission to consider a~~
8 ~~complaint brought under Subchapter A, Chapter 52, Section 53.003,~~
9 ~~or this chapter.~~

10 ~~[CHAPTER 61. INFORMATION TECHNOLOGY SERVICES~~

11 ~~[SUBCHAPTER A. GENERAL PROVISIONS~~

12 ~~[Sec. 61.001. DEFINITIONS. In this chapter:~~

13 ~~[(1) "Management consulting" means the development,~~
14 ~~refinement, and coordination of a strategy to support a client's~~
15 ~~business direction, positively affect business performance, and~~
16 ~~improve an operating result, in a field such as business planning,~~
17 ~~operations, information technology, marketing, finance, and human~~
18 ~~resources.~~

19 ~~[(2) "Process management" means the ongoing~~
20 ~~responsibility for direction and operation of a business process in~~
21 ~~an enterprise in a field such as administration, finance, human~~
22 ~~resources, operations, sales, or marketing.~~

23 ~~[(3) "Systems development" means the creation,~~
24 ~~migration, or improvement of a computer system, including hardware~~
25 ~~and software, to:~~

26 ~~[(A) meet a specific business need, or~~

27 ~~[(B) take advantage of a change in information~~

1 technology.

2 ~~[(4) "Systems integration" means the acquisition,~~
3 ~~installation, and integration of hardware, software,~~
4 ~~communications, and related support components or services.~~

5 ~~[(5) "Systems management" means the ongoing~~
6 ~~management and operation of information technology components,~~
7 ~~ranging from specialized system applications to an enterprise's~~
8 ~~entire information technology function, including related~~
9 ~~facilities and personnel.~~

10 ~~[SUBCHAPTER B. PROVISION OF INFORMATION TECHNOLOGY SERVICES~~

11 ~~[Sec. 61.021. PROVISION OF CERTAIN SERVICES OR PRODUCTS~~
12 ~~PROHIBITED. (a) A local exchange company that serves more than~~
13 ~~five million access lines in this state may not provide the~~
14 ~~following customized business services or products to a customer~~
15 ~~who has 50 or more access lines in this state:~~

16 ~~[(1) management consulting, except for consulting~~
17 ~~related exclusively to telecommunications,~~

18 ~~[(2) information technology process or systems~~
19 ~~development,~~

20 ~~[(3) information technology process or systems~~
21 ~~integration, or~~

22 ~~[(4) information technology process or systems~~
23 ~~management.~~

24 ~~[(b) This section does not apply to a service or product~~
25 ~~provided on September 1, 1995.~~

26 ~~[Sec. 61.022. PERMISSIBLE SERVICES AND PRODUCTS. Section~~
27 ~~61.021 does not prohibit:~~

1 ~~[(1) an affiliate of the local exchange company from~~
2 ~~providing a service or product described by that section in~~
3 ~~accordance with this subchapter and Subchapter C; or~~

4 ~~[(2) a local exchange company from:~~

5 ~~[(A) providing a service or product described by~~
6 ~~Section 61.021 to an affiliate if:~~

7 ~~[(i) the company is not providing a service~~
8 ~~or product described by that section to a nonaffiliated third~~
9 ~~party; and~~

10 ~~[(ii) there is not an affiliate of the~~
11 ~~company engaged in providing a service or product described by that~~
12 ~~section to a nonaffiliated third party;~~

13 ~~[(B) providing mass market and consumer market~~
14 ~~products and services directly to a customer that:~~

15 ~~[(i) has fewer than 50 access lines in this~~
16 ~~state; and~~

17 ~~[(ii) uses or relies on the use of~~
18 ~~information services, information systems, or information~~
19 ~~technology or processes;~~

20 ~~[(C) selling or leasing billing and collection~~
21 ~~services, local area networks, wide area networks, or other~~
22 ~~telecommunications services; or~~

23 ~~[(D) providing to itself a service or product~~
24 ~~described by Section 61.021.~~

25 ~~[Sec. 61.023. SEPARATE AFFILIATE REQUIREMENTS. (a) A~~
26 ~~local exchange company's affiliate that provides a service or~~
27 ~~product described by Section 61.021:~~

1 ~~[(1) shall:~~

2 ~~[(A) operate independently from the local~~
3 ~~exchange company in providing the service or product, and~~

4 ~~[(B) maintain the affiliate's own books of~~
5 ~~accounts, and~~

6 ~~[(2) may not have an officer, director, or employee in~~
7 ~~common with the local exchange company.~~

8 ~~[(b) Notwithstanding Subsection (a)(2), an officer of a~~
9 ~~corporate parent or holding company may serve as a director of the~~
10 ~~local exchange company and as a director of another subsidiary of~~
11 ~~the parent if the subsidiary existed on September 1, 1995.~~

12 ~~[Sec. 61.024. ARM'S-LENGTH TRANSACTIONS. A local exchange~~
13 ~~company and an affiliate shall conduct at arm's length each~~
14 ~~transaction regarding the acquisition from the affiliate of a~~
15 ~~service or product described by Section 61.021.~~

16 ~~[Sec. 61.025. CONTRACTS AND RECORDS. (a) A local exchange~~
17 ~~company shall maintain and keep available for inspection by the~~
18 ~~commission copies of each contract or arrangement between the~~
19 ~~company and an affiliate that relates to the company's acquisition~~
20 ~~from the affiliate of a service or product described by Section~~
21 ~~61.021.~~

22 ~~[(b) The local exchange company's records must show each~~
23 ~~cash or noncash transaction with the affiliate for the service or~~
24 ~~product, including each payment for a good, service, or property~~
25 ~~right.~~

26 ~~[Sec. 61.026. JOINT OWNERSHIP OR USE PROHIBITED. A local~~
27 ~~exchange company and an affiliate engaged in providing a service or~~

1 ~~product described by Section 61.021 may not:~~

2 ~~(1) own property jointly; or~~

3 ~~(2) share in the use of property.~~

4 ~~[SUBCHAPTER C. ADDITIONAL COMPETITIVE SAFEGUARDS~~

5 ~~[Sec. 61.041. PROHIBITED DISCRIMINATION. A local exchange~~
6 ~~company may not discriminate between an affiliate that provides a~~
7 ~~service or product described by Section 61.021 and another person~~
8 ~~in:~~

9 ~~(1) providing or procuring a good, a service, a~~
10 ~~facility, or information; or~~

11 ~~(2) establishing a standard.~~

12 ~~[Sec. 61.042. SUBSIDIZATION OF SERVICES PROHIBITED. A~~
13 ~~local exchange company or the company's affiliate may not subsidize~~
14 ~~the provision of a service or product described by Section 61.021~~
15 ~~with revenue from:~~

16 ~~(1) a local exchange telephone service; or~~

17 ~~(2) an access service provided by the local exchange~~
18 ~~company.~~

19 ~~[Sec. 61.043. PERMISSIBLE INVESTMENT. This subchapter~~
20 ~~does not prohibit a local exchange company's affiliate from~~
21 ~~investing a dividend or profit derived from a local exchange~~
22 ~~company or developing a service or product described by~~
23 ~~Section 61.021 for the local exchange company if the investment or~~
24 ~~development complies with Subchapter B.~~

25 ~~[CHAPTER 62. BROADCASTER SAFEGUARDS~~

26 ~~[SUBCHAPTER A. GENERAL PROVISIONS~~

27 ~~[Sec. 62.001. APPLICABILITY OF CHAPTER. This chapter does~~

1 ~~not apply to a cable company.~~

2 ~~[Sec. 62.002. DEFINITIONS. In this chapter:~~

3 ~~(1) "Audio programming":~~

4 ~~(A) means programming:~~

5 ~~(i) provided by an amplitude modulation or~~
6 ~~frequency modulation broadcast radio station; or~~

7 ~~(ii) generally considered comparable to~~
8 ~~programming described by Subparagraph (i); and~~

9 ~~(B) does not include an audio-related service~~
10 ~~offered by an incumbent local exchange company on September 1,~~
11 ~~1995.~~

12 ~~(2) "Video programming" means programming provided~~
13 ~~by or generally considered comparable to programming provided by a~~
14 ~~television broadcast station as defined by Section 602,~~
15 ~~Communications Act of 1934 (47 U.S.C. Section 522).~~

16 ~~[SUBCHAPTER B. CUSTOMER PROPRIETARY NETWORK INFORMATION~~

17 ~~[Sec. 62.021. DEFINITIONS. In this subchapter:~~

18 ~~(1) "Specific customer proprietary network~~
19 ~~information" means information, other than subscriber list~~
20 ~~information:~~

21 ~~(A) that concerns the customer and is available~~
22 ~~to the telecommunications utility because of the customer's use of~~
23 ~~the telecommunications utility service;~~

24 ~~(B) that is contained in the bills relating to~~
25 ~~telecommunications services received by a customer of a~~
26 ~~telecommunications utility; or~~

27 ~~(C) that:~~

1 ~~[(i) is made available to a~~
2 ~~telecommunications utility by a customer of the utility, other than~~
3 ~~a wireless telecommunications provider, solely because of the~~
4 ~~utility-customer relationship; and~~

5 ~~[(ii) relates to the quantity, technical~~
6 ~~configuration, type, destination, or amount of use of voice or data~~
7 ~~telecommunications services to which the customer subscribes.~~

8 ~~[(2) "Subscriber list information" means information:~~

9 ~~[(A) that identifies the listed name of a~~
10 ~~telecommunications utility subscriber or the subscriber's~~
11 ~~telephone number, address, or primary advertising classification;~~
12 ~~and~~

13 ~~[(B) that the telecommunications utility or an~~
14 ~~affiliate has published or accepted for publication.~~

15 ~~[Sec. 62.022. USE OF SPECIFIC CUSTOMER PROPRIETARY NETWORK~~
16 ~~INFORMATION. (a) A telecommunications utility may not use~~
17 ~~specific customer proprietary network information for a commercial~~
18 ~~purpose other than the sale or provision of, or billing or~~
19 ~~collection for, telecommunications or enhanced services.~~

20 ~~[(b) This section does not prohibit:~~

21 ~~[(1) the use of specific customer proprietary network~~
22 ~~information with the customer's consent; or~~

23 ~~[(2) the provision of specific customer proprietary~~
24 ~~network information to an affiliate telecommunications provider.~~

25 ~~[(c) Subsection (a) has no effect to the extent it is~~
26 ~~preempted by an action of the Federal Communications Commission.~~

27 ~~[Sec. 62.023. RULES. (a) The commission shall adopt rules~~

1 ~~that are consistent with rules on the use of specific customer~~
2 ~~proprietary network information adopted by the Federal~~
3 ~~Communications Commission.~~

4 ~~[(b) Rules adopted under Subsection (a) shall:~~

5 ~~[(1) require each telecommunications utility annually~~
6 ~~to notify, by means approved by the commission, each subscriber of~~
7 ~~the subscriber's right to reject the utility's use of specific~~
8 ~~customer proprietary network information for marketing other~~
9 ~~services; and~~

10 ~~[(2) require a telecommunications utility that makes~~
11 ~~nonproprietary aggregate customer proprietary network information~~
12 ~~available to its affiliates to make the information available to~~
13 ~~nonaffiliated entities on the same terms.~~

14 ~~[(c) If the Federal Communications Commission adopts rules~~
15 ~~regarding customer proprietary network information that no longer~~
16 ~~preempt this state's authority to adopt inconsistent rules, the~~
17 ~~commission shall conduct a proceeding to determine the appropriate~~
18 ~~use of customer proprietary network information by a~~
19 ~~telecommunications utility. A rule, policy, or order adopted by~~
20 ~~the commission on customer proprietary network information may not~~
21 ~~be discriminatory in its application to telecommunications~~
22 ~~utilities.~~

23 ~~[(d) A commission rule governing customer proprietary~~
24 ~~network information may not apply to an incumbent local exchange~~
25 ~~company that has 100,000 or fewer access lines in service in this~~
26 ~~state if the rule is more burdensome to the company than the~~
27 ~~customer proprietary network information rules of the Federal~~

1 ~~Communications Commission. This prohibition does not apply to a~~
2 ~~rule regarding a use of customer proprietary network information~~
3 ~~that is not related to a telecommunications service or product.~~

4 [SUBCHAPTER C. ~~ADVERTISING~~

5 [Sec. ~~62.041. DEFINITION. In this subchapter, "advertising~~
6 ~~agency services" includes:~~

- 7 [~~(1) advertising development,~~
8 [~~(2) advertising purchase,~~
9 [~~(3) advertising consultation,~~
10 [~~(4) advertising copy writing,~~
11 [~~(5) advertising research, and~~
12 [~~(6) other functions generally performed by a general~~
13 ~~advertising agency.~~

14 [Sec. ~~62.042. APPLICABILITY OF SUBCHAPTER. This subchapter~~
15 ~~does not apply to an incumbent local exchange company that has~~
16 ~~100,000 or fewer access lines in service in this state.~~

17 [Sec. ~~62.043. ADVERTISING AGENCY SERVICES PROHIBITED. (a)~~
18 ~~An incumbent local exchange company may not sell an advertising~~
19 ~~agency service to a nonaffiliate in this state.~~

20 [(b) ~~Subsection (a) does not prohibit a local exchange~~
21 ~~company from:~~

22 [~~(1) promoting or selling a telecommunications~~
23 ~~service or telecommunications equipment, including:~~

- 24 [~~(A) voice service or equipment,~~
25 [~~(B) data service or equipment,~~
26 [~~(C) video dial tone service or equipment,~~
27 [~~(D) video or audio programming service or~~

1 ~~equipment,~~

2 ~~[(E) cellular service or equipment,~~

3 ~~[(F) interactive media service or equipment,~~

4 ~~[(G) software service or equipment, or~~

5 ~~[(H) another related service or piece of~~
6 ~~equipment, or~~

7 ~~[(2) enhancing or promoting the use of the~~
8 ~~telecommunications network.~~

9 ~~[Sec. 62.044. ADVERTISING ACTIVITIES OF AFFILIATE. (a) A~~
10 ~~separate corporate affiliate of an incumbent local exchange company~~
11 ~~may engage in advertising agency activities. In conducting an~~
12 ~~advertising agency activity, the affiliate shall comply with this~~
13 ~~section.~~

14 ~~[(b) The affiliate shall prepare financial statements that~~
15 ~~are not consolidated with the financial statements of the incumbent~~
16 ~~local exchange company. Financial statements and consolidated tax~~
17 ~~returns that consolidate the operation of the separate corporate~~
18 ~~affiliate with a parent company and the parent company's other~~
19 ~~subsidiaries may be prepared.~~

20 ~~[(c) The affiliate shall:~~

21 ~~[(1) maintain, in accordance with generally accepted~~
22 ~~accounting principles, books, records, and accounts that are~~
23 ~~separate from the books, records, and accounts of the incumbent~~
24 ~~local exchange company, and~~

25 ~~[(2) maintain a corporate identity separate from the~~
26 ~~incumbent local exchange company.~~

27 ~~[(d) The affiliate may not:~~

1 ~~[(1) incur debt in a manner that, on the affiliate's~~
2 ~~default, would permit a creditor to have recourse against an asset~~
3 ~~of the incumbent local exchange company;~~

4 ~~[(2) use a name, trademark, or service mark of the~~
5 ~~incumbent local exchange company, unless the name, trademark, or~~
6 ~~service mark is used in common with the parent, affiliate, or owner~~
7 ~~of the incumbent local exchange company; or~~

8 ~~[(3) have a director, officer, or employee in common~~
9 ~~with the incumbent local exchange company.~~

10 ~~[Sec. 62.045. JOINT MARKETING PROHIBITED. (a) Except as~~
11 ~~permitted by Section 62.043, an incumbent local exchange company~~
12 ~~that has an affiliate that provides advertising agency services on~~
13 ~~behalf of a nonaffiliate in this state may not jointly market the~~
14 ~~affiliate's advertising agency services in connection with a~~
15 ~~telecommunications service or telecommunications equipment the~~
16 ~~incumbent local exchange company provides.~~

17 ~~[(b) This section does not apply to advertising in a~~
18 ~~telephone directory disseminated in any form.~~

19 ~~[Sec. 62.046. CHARITABLE TELEPHONE SOLICITATION. This~~
20 ~~subchapter does not prohibit an incumbent local exchange company~~
21 ~~from providing a telephone solicitation service for a charitable~~
22 ~~organization.~~

23 ~~[Sec. 62.047. WAIVER. (a) A company may petition the~~
24 ~~commission for a waiver from a requirement this subchapter imposes~~
25 ~~on the company.~~

26 ~~[(b) The commission shall grant the waiver if the waiver is~~
27 ~~in the public interest, after considering whether there is a need~~

1 ~~for the requirement in the affected market.~~

2 ~~[(c) The commission may revoke a waiver granted under this~~
3 ~~section if:~~

4 ~~[(1) conditions under which the waiver was granted~~
5 ~~have materially changed; and~~

6 ~~[(2) the revocation is in the public interest.~~

7 ~~[SUBCHAPTER D. AUDIO AND VIDEO PROGRAMMING~~

8 ~~[Sec. 62.071. APPLICABILITY OF SUBCHAPTER. This subchapter~~
9 ~~does not apply to an incumbent local exchange company that has~~
10 ~~100,000 or fewer access lines in service in this state.~~

11 ~~[Sec. 62.072. AUDIO OR VIDEO PROGRAMMING PROHIBITED. (a)~~
12 ~~An incumbent local exchange company may not provide audio or video~~
13 ~~programming in this state.~~

14 ~~[(b) This section does not prohibit a separate corporate~~
15 ~~affiliate of an incumbent local exchange company from providing~~
16 ~~audio or video programming.~~

17 ~~[Sec. 62.073. RELATIONSHIP BETWEEN EXCHANGE COMPANY AND~~
18 ~~AFFILIATE THAT PROVIDES AUDIO OR VIDEO PROGRAMMING. (a) This~~
19 ~~section applies only to an incumbent local exchange company's~~
20 ~~separate corporate affiliate that provides audio or video~~
21 ~~programming.~~

22 ~~[(b) For a telecommunications service the affiliate obtains~~
23 ~~from the incumbent local exchange company, the affiliate shall pay:~~

24 ~~[(1) a tariffed rate,~~

25 ~~[(2) the fair market value of the service, if the~~
26 ~~service is not provided under a tariff; or~~

27 ~~[(3) the service's long run incremental cost, if:~~

1 ~~[(A) the service is not provided under a tariff,~~
2 and

3 ~~[(B) the service:~~

4 ~~[(i) does not have a fair market value, or~~

5 ~~[(ii) has a fair market value that is less~~
6 ~~than the service's long run incremental cost.~~

7 ~~[(c) In making a transaction with the incumbent local~~
8 ~~exchange company to purchase, use, rent, or access information,~~
9 ~~services, space, or devices that are not telecommunications~~
10 ~~services, the affiliate shall act in a manner consistent with the~~
11 ~~affiliate transaction rules of the Federal Communications~~
12 ~~Commission. The subject of a transaction described by this~~
13 ~~subsection may not be valued at less than the greater of the~~
14 ~~subject's net book value or fair market value, whichever is~~
15 ~~applicable.~~

16 ~~[(d) The affiliate shall prepare financial statements that~~
17 ~~are not consolidated with those of the incumbent local exchange~~
18 ~~company. Financial statements and consolidated tax returns that~~
19 ~~consolidate the operation of the separate corporate affiliate with~~
20 ~~a parent company and the parent company's other subsidiaries may be~~
21 ~~prepared.~~

22 ~~[(e) The affiliate shall:~~

23 ~~[(1) maintain, in accordance with generally accepted~~
24 ~~accounting principles, books, records, and accounts that are~~
25 ~~separate from the books, records, and accounts of the incumbent~~
26 ~~local exchange company,~~

27 ~~[(2) perform its marketing and sales functions and~~

1 ~~operation in compliance with open network architecture and the~~
2 ~~affiliate transaction rules of the Federal Communications~~
3 ~~Commission; and~~

4 ~~[(3) maintain a corporate identity separate from the~~
5 ~~incumbent local exchange company.~~

6 ~~[(f) The affiliate may not:~~

7 ~~[(1) incur debt in a manner that, on the affiliate's~~
8 ~~default, would permit a creditor to have recourse against an asset~~
9 ~~of the incumbent local exchange company;~~

10 ~~[(2) use a name, trademark, or service mark of the~~
11 ~~incumbent local exchange company, unless the name, trademark, or~~
12 ~~service mark is used in common with the parent, affiliate, or owner~~
13 ~~of the incumbent local exchange company; or~~

14 ~~[(3) have a director, officer, or employee in common~~
15 ~~with the incumbent local exchange company.~~

16 ~~[Sec. 62.074. REGULATION OF EXCHANGE COMPANY DEALINGS WITH~~
17 ~~SEPARATE AFFILIATE. (a) This section applies only to an incumbent~~
18 ~~local exchange company's separate corporate affiliate that~~
19 ~~provides audio or video programming.~~

20 ~~[(b) An incumbent local exchange company may not:~~

21 ~~[(1) develop a rate for a telecommunications service~~
22 ~~or provide a telecommunications service to benefit primarily the~~
23 ~~company's separate affiliate for the affiliate's video or audio~~
24 ~~programming unless the rate or service is available to any~~
25 ~~purchaser without discrimination;~~

26 ~~[(2) provide a telecommunications service for the~~
27 ~~separate affiliate's audio or video programming in an unreasonably~~

1 ~~preferential manner,~~

2 ~~[(3) transfer an asset to the separate affiliate for~~
3 ~~less than the amount for which the asset is available to a third~~
4 ~~party in an arm's-length transaction,~~

5 ~~[(4) have a director, officer, or employee in common~~
6 ~~with the separate affiliate,~~

7 ~~[(5) own property in common with the separate~~
8 ~~affiliate, or~~

9 ~~[(6) enter into a customer-specific contract with the~~
10 ~~separate affiliate to provide tariffed telecommunications services~~
11 ~~unless substantially the same contract terms are generally~~
12 ~~available to nonaffiliated interests.~~

13 ~~[(c) An incumbent local exchange company shall:~~

14 ~~[(1) maintain and file with the commission copies of~~
15 ~~each contract or arrangement between the company and the separate~~
16 ~~affiliate and report the contract amount for each cash or noncash~~
17 ~~transaction with the separate affiliate, including payments for:~~

18 ~~[(A) the cost of a good, service, property right,~~
19 ~~or other item, or~~

20 ~~[(B) interest expense,~~

21 ~~[(2) value an asset the company transfers to the~~
22 ~~separate affiliate at the greater of the asset's net book value or~~
23 ~~fair market value,~~

24 ~~[(3) value an asset the separate affiliate transfers~~
25 ~~to the company at the lesser of the asset's net book value or fair~~
26 ~~market value except in an instance in which Federal Communications~~
27 ~~Commission regulations or commission rules permit.~~

1 ~~[(A) in-arrears payment for a tariffed~~
2 ~~telecommunications service; or~~

3 ~~[(B) an affiliate to invest a dividend or profit~~
4 ~~derived from an incumbent local exchange company;~~

5 ~~[(4) comply with applicable Federal Communications~~
6 ~~Commission cost and other accounting rules; and~~

7 ~~[(5) if the company offers telecommunications~~
8 ~~equipment or services to an audio or video programmer, provide the~~
9 ~~equipment or services.~~

10 ~~[(A) at just and reasonable rates that, if~~
11 ~~commission rules require the provision to be under a tariff, are~~
12 ~~tariffed on nondiscriminatory terms; and~~

13 ~~[(B) on similar terms to all video or audio~~
14 ~~programmers, if the equipment or services are not subject to~~
15 ~~regulation.~~

16 ~~[Sec. 62.075. BILLING OR COLLECTION SERVICES FOR~~
17 ~~NONAFFILIATED PROGRAMMER. (a) An incumbent local exchange company~~
18 ~~that offers billing or collection service to a nonaffiliated audio~~
19 ~~or video programmer shall provide the service on nondiscriminatory~~
20 ~~terms.~~

21 ~~[(b) This section does not require an incumbent local~~
22 ~~exchange company to offer billing or collection service to a~~
23 ~~nonaffiliated programmer.~~

24 ~~[(c) An incumbent local exchange company may exclude a class~~
25 ~~of programmers from the company's billing or collection service.~~

26 ~~[Sec. 62.076. COMPLIANCE AUDIT. (a) An incumbent local~~
27 ~~exchange company shall have a compliance audit performed every~~

1 ~~three years to determine whether the incumbent local exchange~~
2 ~~company, during the preceding three years, complied with the~~
3 ~~requirements this subchapter imposes on the company.~~

4 ~~[(b) An independent accounting firm:~~

5 ~~[(1) must conduct the audit; and~~

6 ~~[(2) shall file the audit report with the commission.~~

7 ~~[(c) If the audit report concludes that the incumbent local~~
8 ~~exchange company is not in compliance with this subchapter, the~~
9 ~~commission shall take appropriate action against the company.~~

10 ~~[(d) The audit report is confidential commercial or~~
11 ~~financial information for the purposes of Chapter 552, Government~~
12 ~~Code.~~

13 ~~[Sec. 62.077. WAIVER. (a) A company may petition the~~
14 ~~commission for a waiver from a requirement this subchapter imposes~~
15 ~~on the company.~~

16 ~~[(b) The commission shall grant the waiver if the waiver is~~
17 ~~in the public interest, after considering whether there is a need~~
18 ~~for the requirement in the affected market.~~

19 ~~[(c) The commission may revoke a waiver granted under this~~
20 ~~section if:~~

21 ~~[(1) conditions under which the waiver was granted~~
22 ~~have materially changed; and~~

23 ~~[(2) the revocation is in the public interest.~~

24 ~~[Sec. 62.078. LIMITATION OF JURISDICTION. Except as~~
25 ~~otherwise specifically provided by this title, the commission's~~
26 ~~jurisdiction over an incumbent local exchange company's affiliate~~
27 ~~that is an audio or video programmer is limited to the specific~~

1 ~~requirements of this subchapter.~~

2 [SUBCHAPTER E. VIDEO CARRIAGE

3 [~~Sec. 62.101. APPLICABILITY OF SUBCHAPTER. This subchapter~~
4 ~~does not apply to:~~

5 [~~(1) an incumbent local exchange company that has~~
6 ~~100,000 or fewer access lines in service in this state; or~~

7 [~~(2) a programmer on the video dial tone platform of an~~
8 ~~incumbent local exchange company described by Subdivision (1).~~

9 [~~Sec. 62.102. RATE FOR BROADCAST STATION ACCESS TO~~
10 ~~TELECOMMUNICATIONS SERVICES. Unless the company is a programmer~~
11 ~~subject to Section 62.104, an incumbent local exchange company that~~
12 ~~provides a telecommunications service used to transmit video~~
13 ~~programming directly to a subscriber or used to enable a customer to~~
14 ~~access video programming shall give a local full-power broadcast~~
15 ~~station licensed by the Federal Communications Commission access to~~
16 ~~the telecommunications service at a tariffed rate, to the extent~~
17 ~~capacity permits. If the service is not provided under a tariff,~~
18 ~~the company shall provide the service on terms similar to those on~~
19 ~~which the service is provided to other video programmers that~~
20 ~~provide similar programming.~~

21 [~~Sec. 62.103. DUTIES OF LOCAL EXCHANGE COMPANY. (a) An~~
22 ~~incumbent local exchange company shall transmit without material~~
23 ~~degradation the signals a local broadcast station delivers. The~~
24 ~~transmission quality offered the station may not be less than the~~
25 ~~quality made available to another video programmer.~~

26 [~~(b) An incumbent local exchange company that provides a~~
27 ~~telecommunications service used to transmit video programming~~

1 ~~directly to a subscriber or used to enable a customer to access~~
2 ~~video programming may not:~~

3 ~~[(1) discriminate unreasonably among programming~~
4 ~~providers regarding transmission of their signals; or~~

5 ~~[(2) delete, change, or alter a copyright~~
6 ~~identification transmitted as part of the programming signal.~~

7 ~~[(c) An incumbent local exchange company described by~~
8 ~~Subsection (b) that provides a video dial tone service with a level~~
9 ~~one gateway, as that term is defined by the Federal Communications~~
10 ~~Commission, shall make available to programmers a menu or~~
11 ~~programming guide on which a programmer may display a listing of the~~
12 ~~stations the programmer is required to carry under Section 62.104.~~

13 ~~[Sec. 62.104. BROADCAST STATION ACCESS THROUGH~~
14 ~~TELECOMMUNICATIONS SERVICES. (a) As permitted by federal law and~~
15 ~~Federal Communications Commission rules and orders, a programmer~~
16 ~~shall make available to subscribers local full-power television~~
17 ~~stations licensed by the Federal Communications Commission if:~~

18 ~~[(1) the programmer is operating as a common channel~~
19 ~~manager;~~

20 ~~[(2) for a commercial purpose, the programmer~~
21 ~~purchases 50 or more analog channels on a local exchange video dial~~
22 ~~tone level one platform over which video programming is made~~
23 ~~available to subscribers; and~~

24 ~~[(3) the television stations grant retransmission~~
25 ~~consent.~~

26 ~~[(b) The programmer shall make available up to six~~
27 ~~television stations under this section. If the programmer is in a~~

1 ~~market that contains a county with a population of more than one~~
2 ~~million, the programmer shall make available up to nine television~~
3 ~~stations under this section.~~

4 ~~[(c) The programmer shall select the television stations~~
5 ~~the programmer makes available to subscribers under this section.~~

6 ~~[(d) This title does not require a programmer or incumbent~~
7 ~~local exchange company to provide valuable consideration in~~
8 ~~exchange for carriage under this section.~~

9 ~~[Sec. 62.105. RETRANSMISSION CONSENT. A television station~~
10 ~~licensed by the Federal Communications Commission that seeks~~
11 ~~carriage under Section 62.104 shall grant consent for programming~~
12 ~~retransmission to the programmer and the incumbent local exchange~~
13 ~~company.~~

14 ~~[Sec. 62.106. WAIVER. (a) A company may petition the~~
15 ~~commission for a waiver from a requirement this subchapter imposes~~
16 ~~on the company.~~

17 ~~[(b) The commission shall grant the waiver if the waiver is~~
18 ~~in the public interest, after considering whether there is a need~~
19 ~~for the requirement in the affected market.~~

20 ~~[(c) The commission may revoke a waiver granted under this~~
21 ~~section if:~~

22 ~~[(1) conditions under which the waiver was granted~~
23 ~~have materially changed; and~~

24 ~~[(2) the revocation is in the public interest.~~

25 ~~[Sec. 62.107. LIMITATION OF JURISDICTION. Except as~~
26 ~~otherwise specifically provided by this title, the commission's~~
27 ~~jurisdiction over an incumbent local exchange company's affiliate~~

1 ~~that is a video programmer is limited to the specific requirements~~
2 ~~of this subchapter.~~

3 ~~[Sec. 62.108. EXPIRATION. This subchapter expires August~~
4 ~~31, 2005.~~

5 ~~[SUBCHAPTER F. AUDIO CARRIAGE~~

6 ~~[Sec. 62.131. APPLICABILITY OF SUBCHAPTER. This subchapter~~
7 ~~does not apply to:~~

8 ~~[(1) an incumbent local exchange company that has~~
9 ~~100,000 or fewer access lines in service in this state; or~~

10 ~~[(2) a programmer on the video dial tone platform of an~~
11 ~~incumbent local exchange company described by Subdivision (1).~~

12 ~~[Sec. 62.132. BROADCAST STATION ACCESS THROUGH~~
13 ~~TELECOMMUNICATIONS SERVICES. (a) As permitted by federal law and~~
14 ~~Federal Communications Commission rules and orders, and as~~
15 ~~consistent with technical specifications, a programmer shall make~~
16 ~~available to subscribers local radio stations licensed by the~~
17 ~~Federal Communications Commission if:~~

18 ~~[(1) the programmer is operating as a common channel~~
19 ~~manager;~~

20 ~~[(2) for a commercial purpose, the programmer makes 12~~
21 ~~or more channels of audio programming available to subscribers on~~
22 ~~an incumbent local exchange company's level one video dial tone~~
23 ~~platform;~~

24 ~~[(3) the available audio programming is similar to a~~
25 ~~broadcast of a radio station licensed by the Federal Communications~~
26 ~~Commission; and~~

27 ~~[(4) the radio stations grant retransmission consent.~~

1 ~~[(b) The programmer is not required to make available more~~
2 ~~than one-third of the programmer's analog audio channels to radio~~
3 ~~stations.~~

4 ~~[(c) The programmer shall select the radio stations the~~
5 ~~programmer makes available to subscribers under this section.~~

6 ~~[(d) This title does not require a programmer or incumbent~~
7 ~~local exchange company to provide valuable consideration in~~
8 ~~exchange for carriage under this section.~~

9 ~~[Sec. 62.133. RETRANSMISSION CONSENT. A local radio~~
10 ~~station licensed by the Federal Communications Commission that~~
11 ~~seeks carriage under Section 62.132 shall grant consent for~~
12 ~~programming retransmission to the programmer and the incumbent~~
13 ~~local exchange company.~~

14 ~~[Sec. 62.134. WAIVER. (a) A company may petition the~~
15 ~~commission for a waiver from a requirement this subchapter imposes~~
16 ~~on the company.~~

17 ~~[(b) The commission shall grant the waiver if the waiver is~~
18 ~~in the public interest, after considering whether there is a need~~
19 ~~for the requirement in the affected market.~~

20 ~~[(c) The commission may revoke a waiver granted under this~~
21 ~~section if:~~

22 ~~[(1) conditions under which the waiver was granted~~
23 ~~have materially changed; and~~

24 ~~[(2) the revocation is in the public interest.~~

25 ~~[Sec. 62.135. LIMITATION OF JURISDICTION. Except as~~
26 ~~otherwise specifically provided by this title, the commission's~~
27 ~~jurisdiction over an incumbent local exchange company's affiliate~~

1 ~~that is an audio programmer is limited to the specific requirements~~
2 ~~of this subchapter.~~

3 ~~[Sec. 62.136. EXPIRATION. This subchapter expires August~~
4 ~~31, 2005.~~

5 ~~[CHAPTER 63. ELECTRONIC PUBLISHING~~

6 ~~[SUBCHAPTER A. GENERAL PROVISIONS~~

7 ~~[Sec. 63.001. GENERAL DEFINITIONS. In this chapter:~~

8 ~~[(1) "Affiliate" means an entity, other than a~~
9 ~~separated affiliate, that, directly or indirectly, is:~~

10 ~~[(A) under common ownership or control with an~~
11 ~~incumbent local exchange company;~~

12 ~~[(B) owned or controlled by an incumbent local~~
13 ~~exchange company; or~~

14 ~~[(C) the owner or in control of an incumbent~~
15 ~~local exchange company.~~

16 ~~[(2) "Basic telephone service" means a wireline~~
17 ~~telephone exchange facility or service provided by an incumbent~~
18 ~~local exchange company in a telephone exchange area, other than a:~~

19 ~~[(A) competitive wireline telephone exchange~~
20 ~~service provided in a telephone exchange area in which another~~
21 ~~entity provides a wireline telephone exchange service that was~~
22 ~~provided on January 1, 1984; or~~

23 ~~[(B) commercial mobile service provided by an~~
24 ~~affiliate that the Federal Communications Commission requires to be~~
25 ~~a corporate entity separate from the local exchange company.~~

26 ~~[(3) "Basic telephone service information" means:~~

27 ~~[(A) an incumbent local exchange company's~~

1 ~~network or customer information; and~~

2 ~~[(B) information acquired by an incumbent local~~
3 ~~exchange company as a result of its provision of basic telephone~~
4 ~~service.~~

5 ~~[(4) "Control" has the meaning assigned by:~~

6 ~~[(A) 17 C.F.R. Section 240.12b--2 as adopted by~~
7 ~~the Securities and Exchange Commission under the Securities~~
8 ~~Exchange Act of 1934 (15 U.S.C. Section 78a et seq.); or~~

9 ~~[(B) a successor to that section.~~

10 ~~[(5) "Electronic publishing joint venture" means a~~
11 ~~joint venture owned by an incumbent local exchange company or~~
12 ~~affiliate that provides electronic publishing disseminated by the~~
13 ~~basic telephone service of:~~

14 ~~[(A) the incumbent local exchange company; or~~

15 ~~[(B) an affiliate of the incumbent local exchange~~
16 ~~company.~~

17 ~~[(6) "Entity" means an organization and includes a~~
18 ~~corporation, partnership, sole proprietorship, association, or~~
19 ~~joint venture.~~

20 ~~[(7) "Inbound telemarketing" means marketing~~
21 ~~property, goods, or services by telephone to a customer or~~
22 ~~potential customer who initiates the call.~~

23 ~~[(8) "Modification of final judgment" means the order~~
24 ~~entered August 24, 1982, in the antitrust action styled United~~
25 ~~States v. Western Electric, Civil Action No. 82-0192, in the United~~
26 ~~States District Court for the District of Columbia, and includes~~
27 ~~any judgment or order with respect to that action issued on or after~~

1 ~~August 24, 1982.~~

2 ~~[(9) "Own" means to have the:~~

3 ~~[(A) equivalent of a direct or indirect equity~~
4 ~~interest of more than 10 percent of an entity; or~~

5 ~~[(B) right to more than 10 percent of the gross~~
6 ~~revenues of an entity under a revenue sharing or royalty agreement.~~

7 ~~[(10) "Separated affiliate" means a corporation that:~~

8 ~~[(A) does not own or control an incumbent local~~
9 ~~exchange company;~~

10 ~~[(B) is not owned or controlled by an incumbent~~
11 ~~local exchange company; and~~

12 ~~[(C) is under common ownership or control with an~~
13 ~~incumbent local exchange company and provides electronic~~
14 ~~publishing that is disseminated by the basic telephone service of:~~

15 ~~[(i) the incumbent local exchange company;~~

16 ~~or~~

17 ~~[(ii) an affiliate of the incumbent local~~
18 ~~exchange company.~~

19 ~~[Sec. 63.002. ELECTRONIC PUBLISHING DEFINED. (a) In this~~
20 ~~chapter, "electronic publishing" means the use of an incumbent~~
21 ~~local exchange company's basic telephone service to disseminate,~~
22 ~~provide, publish, or sell to a nonaffiliated entity or person:~~

23 ~~[(1) news;~~

24 ~~[(2) entertainment other than an interactive game;~~

25 ~~[(3) business, financial, legal, consumer, or credit~~
26 ~~material;~~

27 ~~[(4) an editorial;~~

- 1 ~~[(5) a column,~~
- 2 ~~[(6) sports reporting,~~
- 3 ~~[(7) a feature,~~
- 4 ~~[(8) advertising,~~
- 5 ~~[(9) a photograph or image,~~
- 6 ~~[(10) archival or research material,~~
- 7 ~~[(11) a legal notice or public record,~~
- 8 ~~[(12) scientific, educational, instructional,~~
- 9 ~~technical, professional, trade, or other literary material, or~~
- 10 ~~[(13) other similar information.~~

11 ~~[(b) In this chapter, "electronic publishing" does not~~
12 ~~include providing the following network services:~~

13 ~~[(1) information access, as that term is defined by~~
14 ~~the modification of final judgment,~~

15 ~~[(2) transmission of information as a common carrier,~~

16 ~~[(3) transmission of information as part of a gateway~~
17 ~~to an information service that does not involve the generation or~~
18 ~~alteration of the content of information, including data~~
19 ~~transmission, address translation, protocol conversion, billing~~
20 ~~management, introductory information content, or navigational~~
21 ~~systems that enable users to access electronic publishing services~~
22 ~~and that do not affect the presentation of those electronic~~
23 ~~publishing services to users,~~

24 ~~[(4) a voice storage and retrieval service, including~~
25 ~~voice messaging and electronic mail service,~~

26 ~~[(5) level two gateway services as those services are~~
27 ~~defined by the Federal Communications Commission's Second Report~~

1 ~~and Order, Recommendation to Congress and Second Further Notice of~~
2 ~~Proposed Rulemaking in CC Docket No. 87-266 dated August 14, 1992 (7~~
3 ~~FCC Record 5781 (1992)),~~

4 ~~[(6) a data processing service that does not involve~~
5 ~~the generation or alteration of the content of information,~~

6 ~~[(7) a transaction processing system that does not~~
7 ~~involve the generation or alteration of the content of information,~~

8 ~~[(8) electronic billing or advertising of a regulated~~
9 ~~telecommunications service of an incumbent local exchange company,~~

10 ~~[(9) language translation,~~

11 ~~[(10) conversion of information from one format to~~
12 ~~another,~~

13 ~~[(11) information necessary for the management,~~
14 ~~control, or operation of a telephone company telecommunications~~
15 ~~system,~~

16 ~~[(12) directory assistance that:~~

17 ~~[(A) provides names, addresses, and telephone~~
18 ~~numbers, and~~

19 ~~[(B) does not include advertising,~~

20 ~~[(13) a caller identification service,~~

21 ~~[(14) repairing and provisioning a database for a~~
22 ~~telephone company operation,~~

23 ~~[(15) credit card and billing validation for a~~
24 ~~telephone company operation,~~

25 ~~[(16) a 911-E or another emergency assistance~~
26 ~~database,~~

27 ~~[(17) another network service of a type that:~~

1 ~~[(A) is similar to the network services listed in~~
2 ~~this subsection; and~~

3 ~~[(B) does not involve the generation or~~
4 ~~alteration of the content of information;~~

5 ~~[(18) an upgrade to a network service listed in this~~
6 ~~subsection that does not involve the generation or alteration of~~
7 ~~the content of information;~~

8 ~~[(19) full motion video entertainment on demand; or~~

9 ~~[(20) video programming, as defined by Section 602,~~
10 ~~Communications Act of 1934 (47 U.S.C. Section 522).~~

11 ~~[Sec. 63.003. INCUMBENT LOCAL EXCHANGE COMPANY DEFINED.~~

12 ~~(a) Except as provided by Subsection (b), in this chapter,~~
13 ~~"incumbent local exchange company" means:~~

14 ~~[(1) a corporation that:~~

15 ~~[(A) serves more than five million access lines~~
16 ~~in this state; and~~

17 ~~[(B) is subject to the modification of final~~
18 ~~judgment;~~

19 ~~[(2) an entity owned or controlled by a corporation~~
20 ~~described by Subdivision (1); or~~

21 ~~[(3) a successor or assign of a corporation described~~
22 ~~by Subdivision (1).~~

23 ~~[(b) In this chapter "incumbent local exchange company"~~
24 ~~does not include an electronic publishing joint venture that is:~~

25 ~~[(1) owned by a corporation or entity described by~~
26 ~~Subsection (a); and~~

27 ~~[(2) permitted by Section 63.039, 63.040, or 63.041.~~

1 ~~[Sec. 63.004. CERTAIN SERVICES NOT PROHIBITED. This~~
2 ~~chapter does not prohibit:~~

3 ~~[(1) a separated affiliate or electronic publishing~~
4 ~~joint venture from providing in any area electronic publishing or~~
5 ~~another service; or~~

6 ~~[(2) an incumbent local exchange company or affiliate~~
7 ~~from providing:~~

8 ~~[(A) a service other than electronic publishing~~
9 ~~in any area; or~~

10 ~~[(B) electronic publishing that is not~~
11 ~~disseminated by the basic telephone service of:~~

12 ~~[(i) the company; or~~

13 ~~[(ii) an affiliate of the company.~~

14 ~~[Sec. 63.005. INVESTMENT OF DIVIDENDS. This chapter does~~
15 ~~not prohibit an affiliate from investing a dividend derived from an~~
16 ~~incumbent local exchange company in its separated affiliate.~~

17 ~~[Sec. 63.006. JOINT VIOLATIONS. An incumbent local~~
18 ~~exchange company, an affiliate, or a separated affiliate may not~~
19 ~~act jointly with another entity to knowingly and wilfully violate~~
20 ~~or evade a requirement of this chapter.~~

21 ~~[Sec. 63.007. PRIVATE COMPLAINT; APPLICATION FOR ORDER.~~
22 ~~(a) A person may file with the commission a complaint that an act or~~
23 ~~practice of an incumbent local exchange company, affiliate, or~~
24 ~~separated affiliate violates this chapter.~~

25 ~~[(b) A person may apply to the commission for the commission~~
26 ~~to order an incumbent local exchange company, affiliate, or~~
27 ~~separated affiliate to cease and desist from an act or practice that~~

1 ~~violates this chapter.~~

2 ~~[Sec. 63.008. PRIVATE SUIT FOR INJUNCTION. A person may~~
3 ~~bring suit in district court for an injunction to compel an~~
4 ~~incumbent local exchange company, affiliate, or separated~~
5 ~~affiliate to discontinue a violation of this chapter or to comply~~
6 ~~with a requirement of this chapter.~~

7 ~~[Sec. 63.009. PRIVATE SUIT FOR DAMAGES. (a) A person may~~
8 ~~bring suit to recover damages that result from a violation of this~~
9 ~~chapter.~~

10 ~~[(b) An incumbent local exchange company, affiliate, or~~
11 ~~separated affiliate is liable for damages if the incumbent local~~
12 ~~exchange company violates this chapter or causes a violation of~~
13 ~~this chapter.~~

14 ~~[(c) The incumbent local exchange company is liable to a~~
15 ~~person injured by a violation of this chapter caused by the company~~
16 ~~for:~~

17 ~~[(1) the amount of the damages that result from the~~
18 ~~violation; and~~

19 ~~[(2) reasonable attorney's fees.~~

20 ~~[(d) The court shall determine and award attorney's fees in~~
21 ~~each case in which damages are awarded. The attorney's fees shall~~
22 ~~be taxed and collected as part of the costs of the suit.~~

23 ~~[(e) The court may not award damages for a violation:~~

24 ~~[(1) discovered by a compliance review under Section~~
25 ~~63.034; and~~

26 ~~[(2) corrected before the 91st day after the date of~~
27 ~~its discovery.~~

1 ~~[Sec. 63.010. APPLICABILITY OF ANTITRUST LAWS. This~~
2 ~~chapter does not modify, impair, or supersede the applicability of~~
3 ~~antitrust laws.~~

4 ~~[Sec. 63.011. APPLICABILITY OF CHAPTER. This chapter does~~
5 ~~not apply to conduct that occurs after June 30, 2001.~~

6 ~~[SUBCHAPTER B. ELECTRONIC PUBLISHING SAFEGUARDS~~

7 ~~[Sec. 63.031. PUBLICATION BY BASIC TELEPHONE SERVICE~~
8 ~~PROHIBITED. An incumbent local exchange company or affiliate may~~
9 ~~not provide electronic publishing disseminated by the basic~~
10 ~~telephone service of:~~

11 ~~[(1) the incumbent local exchange company, or~~

12 ~~[(2) an affiliate of the incumbent local exchange~~
13 ~~company.~~

14 ~~[Sec. 63.032. SEPARATED AFFILIATE OR JOINT VENTURE~~
15 ~~REQUIREMENTS. (a) A separated affiliate or electronic publishing~~
16 ~~joint venture shall maintain books, records, and accounts that:~~

17 ~~[(1) are separate from the books, records, and~~
18 ~~accounts of the incumbent local exchange company and any affiliate,~~
19 ~~and~~

20 ~~[(2) record, in accordance with generally accepted~~
21 ~~accounting principles, all direct and indirect transactions with~~
22 ~~the incumbent local exchange company.~~

23 ~~[(b) A separated affiliate or electronic publishing joint~~
24 ~~venture shall prepare financial statements that are not~~
25 ~~consolidated with the financial statements of the incumbent local~~
26 ~~exchange company or an affiliate. Additional consolidated~~
27 ~~statements may be prepared.~~

1 ~~[(c) A separated affiliate or electronic publishing joint~~
2 ~~venture shall file annual reports with the commission. The reports~~
3 ~~must be in a form substantially equivalent to the Form 10-K required~~
4 ~~by federal Securities and Exchange Commission regulations.~~

5 ~~[(d) A separated affiliate or electronic publishing joint~~
6 ~~venture may not hire:~~

7 ~~[(1) as a corporate officer, a sales or marketing~~
8 ~~manager whose responsibilities at the separated affiliate or~~
9 ~~electronic publishing joint venture include a geographic area in~~
10 ~~which the incumbent local exchange company provides basic telephone~~
11 ~~service;~~

12 ~~[(2) network operations personnel whose~~
13 ~~responsibilities at the separated affiliate or electronic~~
14 ~~publishing joint venture require dealing directly with the~~
15 ~~incumbent local exchange company; or~~

16 ~~[(3) a person who was employed by the incumbent local~~
17 ~~exchange company during the year preceding the date of hire.~~

18 ~~[(e) Subsection (d)(3) does not apply to a person who is~~
19 ~~subject to a collective bargaining agreement under which the person~~
20 ~~has a right to be employed by a separated affiliate or electronic~~
21 ~~publishing joint venture of the local exchange company.~~

22 ~~[(f) A separated affiliate or electronic publishing joint~~
23 ~~venture may not:~~

24 ~~[(1) incur debt in a manner that, on default, would~~
25 ~~permit a creditor to have recourse against an asset of the incumbent~~
26 ~~local exchange company;~~

27 ~~[(2) provide a wireline telephone exchange service in~~

1 ~~a telephone exchange area in which an incumbent local exchange~~
2 ~~company with which it is under common ownership or control provides~~
3 ~~basic telephone exchange service, unless the service is provided by~~
4 ~~resale, or~~

5 ~~[(3) use a name, trademark, or service mark of an~~
6 ~~incumbent local exchange company unless the name, trademark, or~~
7 ~~service mark is used in common with the entity that owns or controls~~
8 ~~the incumbent local exchange company.~~

9 ~~[Sec. 63.033. INCUMBENT LOCAL EXCHANGE COMPANY~~
10 ~~REQUIREMENTS. (a) This section applies only to an incumbent local~~
11 ~~exchange company that is under common ownership or control with a~~
12 ~~separated affiliate or electronic publishing joint venture.~~

13 ~~[(b) An incumbent local exchange company shall:~~

14 ~~[(1) carry out each transaction with a separated~~
15 ~~affiliate in a manner:~~

16 ~~[(A) equivalent to the manner that unrelated~~
17 ~~parties would carry out an independent transaction, and~~

18 ~~[(B) able to be audited in accordance with~~
19 ~~generally accepted auditing standards,~~

20 ~~[(2) carry out a transaction with a separated~~
21 ~~affiliate that involves the transfer of personnel, assets, or~~
22 ~~anything of value, in accordance with a written contract or tariff~~
23 ~~that is filed with the commission and made available to the public,~~

24 ~~[(3) value an asset the company transfers to a~~
25 ~~separated affiliate at the greater of the asset's net book cost or~~
26 ~~fair market value,~~

27 ~~[(4) value an asset the company's separated affiliate~~

1 ~~transfers to the company at the lesser of the asset's net book cost~~
2 ~~or fair market value; and~~

3 ~~[(5) comply fully with applicable accounting rules of~~
4 ~~the Federal Communications Commission and the commission,~~
5 ~~including rules on cost allocation.~~

6 ~~[(c) An incumbent local exchange company may not directly or~~
7 ~~indirectly provide anything of monetary value to a separated~~
8 ~~affiliate unless the item is provided in exchange for consideration~~
9 ~~valued in an amount at least equal to the greater of the item's net~~
10 ~~book cost or fair market value. This subsection does not apply to~~
11 ~~an affiliate's investment of a dividend or profit derived from an~~
12 ~~incumbent local exchange company.~~

13 ~~[(d) An incumbent local exchange company may not:~~

14 ~~[(1) provide a separated affiliate a facility, a~~
15 ~~service, or basic telephone service information unless the company~~
16 ~~makes the facility, service, or information available to~~
17 ~~nonaffiliated entities on request and on the same terms;~~

18 ~~[(2) provide debt or equity financing directly or~~
19 ~~indirectly to a separated affiliate, except in an instance in which~~
20 ~~Federal Communications Commission regulations or commission rules~~
21 ~~permit.~~

22 ~~[(A) in-arrears payment for a tariffed~~
23 ~~telecommunications service; or~~

24 ~~[(B) an affiliate to invest a dividend or profit~~
25 ~~derived from an incumbent local exchange company;~~

26 ~~[(3) discriminate in the presentation or provision of~~
27 ~~a gateway for electronic publishing services or an electronic~~

1 ~~directory of information services that is provided over the~~
2 ~~company's basic telephone service;~~

3 ~~[(4) have a director, officer, or employee in common~~
4 ~~with a separated affiliate;~~

5 ~~[(5) own property in common with a separated~~
6 ~~affiliate;~~

7 ~~[(6) hire or train personnel for a separated~~
8 ~~affiliate;~~

9 ~~[(7) purchase, install, or maintain equipment for a~~
10 ~~separated affiliate, except for telephone service that the company~~
11 ~~provides under tariff or contract subject to this chapter; or~~

12 ~~[(8) perform a research or development activity for a~~
13 ~~separated affiliate.~~

14 ~~[Sec. 63.034. COMPLIANCE REVIEW AND REPORT. (a) A~~
15 ~~separated affiliate or an electronic publishing joint venture~~
16 ~~annually shall have a compliance review performed to determine~~
17 ~~whether the separated affiliate or joint venture, during the~~
18 ~~preceding calendar year, complied with the requirements this~~
19 ~~chapter imposes on the separated affiliate or joint venture.~~

20 ~~[(b) An incumbent local exchange company that is under~~
21 ~~common ownership or control with a separated affiliate or~~
22 ~~electronic publishing joint venture annually shall have a~~
23 ~~compliance review performed to determine whether the company,~~
24 ~~during the preceding calendar year, complied with the requirements~~
25 ~~this chapter imposes on the company.~~

26 ~~[(c) An independent entity that is subject to professional,~~
27 ~~legal, and ethical obligations must conduct the compliance review.~~

1 ~~[(d) The compliance review must be performed each year~~
2 ~~before.~~

3 ~~[(1) March 31, or~~

4 ~~[(2) another date prescribed by the commission.~~

5 ~~[(e) An entity subject to a compliance review under~~
6 ~~Subsection (a) or (b) shall maintain the results of the entity's~~
7 ~~compliance review for five years subject to review by a lawful~~
8 ~~authority.~~

9 ~~[(f) Before the 91st day after the date an entity subject to~~
10 ~~a compliance review under Subsection (a) or (b) receives the~~
11 ~~results of a compliance review under this section, the entity~~
12 ~~shall:~~

13 ~~[(1) file with the commission a report of any~~
14 ~~exceptions or corrective actions; and~~

15 ~~[(2) allow any person to inspect and copy the report.~~

16 ~~[(g) The right of a person to inspect and copy the report is~~
17 ~~subject to reasonable safeguards to protect proprietary~~
18 ~~information in the report from being used for a purpose other than~~
19 ~~to enforce this chapter or to pursue a remedy under this chapter.~~

20 ~~[Sec. 63.035. SERVICES TO ELECTRONIC PUBLISHER. (a) This~~
21 ~~section applies only to an incumbent local exchange company that is~~
22 ~~under common ownership and control with a separated affiliate or an~~
23 ~~electronic publishing joint venture.~~

24 ~~[(b) If the incumbent local exchange company provides a~~
25 ~~facility or service for telecommunication, transmission, billing~~
26 ~~and collection, or expanded interconnection to an electronic~~
27 ~~publisher, including a separated affiliate, for use in connection~~

1 ~~with the provision of electronic publishing disseminated by the~~
2 ~~basic telephone service of the incumbent local exchange company or~~
3 ~~an affiliate of the incumbent local exchange company, the incumbent~~
4 ~~local exchange company shall provide to any electronic publisher on~~
5 ~~request the same type of facility or service. The facility or~~
6 ~~service must be:~~

7 ~~[(1) provided on the same terms as provided to another~~
8 ~~electronic publisher or as required by the Federal Communications~~
9 ~~Commission or the commission; and~~

10 ~~[(2) unbundled and individually tariffed to the~~
11 ~~smallest extent technically feasible and economically reasonable.~~

12 ~~[(c) The incumbent local exchange company shall provide~~
13 ~~network access and interconnection for basic telephone service to~~
14 ~~an electronic publisher:~~

15 ~~[(1) at any technically feasible and economically~~
16 ~~reasonable point in the incumbent local exchange company's network;~~
17 ~~and~~

18 ~~[(2) at a just and reasonable rate that:~~

19 ~~[(A) is tariffed if rates for the service are~~
20 ~~subject to regulation; and~~

21 ~~[(B) is not higher on a per unit basis than the~~
22 ~~rate charged for the service to another electronic publisher or a~~
23 ~~separated affiliate engaged in electronic publishing.~~

24 ~~[(d) If the price for network access or interconnection for~~
25 ~~basic telephone service is not subject to regulation, the incumbent~~
26 ~~local exchange company shall provide the service to an electronic~~
27 ~~publisher on the same terms under which a separated affiliate~~

1 ~~receives the service.~~

2 ~~[(c) If a tariff is not required for a basic telephone~~
3 ~~service used by an electronic publisher, the incumbent local~~
4 ~~exchange company shall provide an electronic publisher with the~~
5 ~~service on the same terms under which a separated affiliate~~
6 ~~receives the service.~~

7 ~~[Sec. 63.036. INFORMATION PROVIDED. (a) An incumbent~~
8 ~~local exchange company under common ownership or control with a~~
9 ~~separated affiliate or an electronic publishing joint venture shall~~
10 ~~give to each affected electronic publisher reasonable advance~~
11 ~~notification of information that:~~

12 ~~[(1) is necessary for an interconnected electronic~~
13 ~~publisher to transmit or route information;~~

14 ~~[(2) is necessary to ensure the interoperability of an~~
15 ~~electronic publisher's network with the exchange company's network;~~
16 ~~or~~

17 ~~[(3) relates to a change in basic telephone service~~
18 ~~network design or a technical standard that may affect the~~
19 ~~provision of electronic publishing.~~

20 ~~[(b) The notification must be given to each electronic~~
21 ~~publisher at the same time and on the same terms.~~

22 ~~[Sec. 63.037. CUSTOMER PROPRIETARY NETWORK INFORMATION. In~~
23 ~~accordance with Subchapter B, Chapter 62, an incumbent local~~
24 ~~exchange company or an affiliate may not provide an electronic~~
25 ~~publisher, including a separated affiliate or electronic~~
26 ~~publishing joint venture, with customer proprietary network~~
27 ~~information for use with or in connection with providing electronic~~

1 ~~publishing disseminated by the basic telephone service of the~~
2 ~~incumbent local exchange company or an affiliate of the incumbent~~
3 ~~local exchange company unless the exchange company or affiliate~~
4 ~~makes the information available to all electronic publishers on the~~
5 ~~same terms.~~

6 ~~[Sec. 63.038. PROHIBITED JOINT ACTIVITIES. Except as~~
7 ~~provided by Sections 63.039-63.041, an incumbent local exchange~~
8 ~~company may not engage in any:~~

9 ~~(1) promotion, marketing, sales, or advertising for~~
10 ~~or with a separated affiliate; or~~

11 ~~(2) promotion, marketing, sales, or advertising for~~
12 ~~or with an affiliate if the activity is related to electronic~~
13 ~~publishing.~~

14 ~~[Sec. 63.039. PERMITTED JOINT MARKETING OR REFERRAL~~
15 ~~ACTIVITIES. (a) An incumbent local exchange company may provide an~~
16 ~~inbound telemarketing or referral service related to the provision~~
17 ~~of electronic publishing for:~~

18 ~~(1) a separated affiliate;~~

19 ~~(2) an electronic publishing joint venture;~~

20 ~~(3) an affiliate; or~~

21 ~~(4) a nonaffiliated electronic publisher.~~

22 ~~(b) To ensure that the company's method of providing the~~
23 ~~service or the company's price structure does not competitively~~
24 ~~disadvantage an electronic publisher, regardless of the~~
25 ~~publisher's size or whether the publisher uses a telemarketing~~
26 ~~service of the company, an incumbent local exchange company that~~
27 ~~provides an inbound telemarketing or referral service to a~~

1 ~~separated affiliate, electronic publishing joint venture, or~~
2 ~~affiliate shall make the service available to all electronic~~
3 ~~publishers.~~

4 ~~[(1) on request,~~

5 ~~[(2) on nondiscriminatory terms,~~

6 ~~[(3) at compensatory prices, and~~

7 ~~[(4) subject to rules of the commission.~~

8 ~~[Sec. 63.040. ELECTRONIC PUBLISHING TEAMING OR BUSINESS~~
9 ~~ARRANGEMENTS. (a) An incumbent local exchange company may engage~~
10 ~~in a nondiscriminatory teaming or business arrangement to engage in~~
11 ~~electronic publishing with a separated affiliate or with another~~
12 ~~electronic publisher.~~

13 ~~[(b) An incumbent local exchange company engaged in a~~
14 ~~teaming or business arrangement under Subsection (a) may not own~~
15 ~~the teaming or business arrangement.~~

16 ~~[(c) An incumbent local exchange company engaged in a~~
17 ~~teaming or business arrangement under Subsection (a) may provide~~
18 ~~only facilities, services, and basic telephone service information~~
19 ~~authorized by this chapter.~~

20 ~~[Sec. 63.041. JOINT VENTURE PARTICIPATION. (a) Except as~~
21 ~~provided by Subsection (b), an incumbent local exchange company or~~
22 ~~affiliate may participate on a nonexclusive basis in an electronic~~
23 ~~publishing joint venture to provide electronic publishing services~~
24 ~~with an entity that is not:~~

25 ~~[(1) an incumbent local exchange company,~~

26 ~~[(2) an affiliate, or~~

27 ~~[(3) a separated affiliate.~~

1 ~~[(b) An incumbent local exchange company or affiliate may~~
2 ~~not participate in an electronic publishing joint venture if the~~
3 ~~company or affiliate has:~~

4 ~~[(1) a direct or indirect equity interest in the~~
5 ~~venture, or the equivalent, of more than 50 percent; or~~

6 ~~[(2) the right to more than 50 percent of the gross~~
7 ~~revenues of the venture under a revenue sharing or royalty~~
8 ~~agreement.~~

9 ~~[(c) Officers and employees of an incumbent local exchange~~
10 ~~company or affiliate that participates in an electronic publishing~~
11 ~~joint venture may not have more than 50 percent of the voting~~
12 ~~control over the venture.~~

13 ~~[(d) The commission for good cause shown may authorize an~~
14 ~~incumbent local exchange company or affiliate to have a larger~~
15 ~~percentage of equity interest, revenue share, or voting control~~
16 ~~than that prescribed by Subsection (b) or (c) for a joint venture~~
17 ~~between the company and a small, local, electronic publisher. The~~
18 ~~larger percentage may not exceed 80 percent.~~

19 ~~[(e) An incumbent local exchange company that participates~~
20 ~~in an electronic publishing joint venture may provide promotion,~~
21 ~~marketing, sales, or advertising personnel or services to the joint~~
22 ~~venture.~~

23 ~~[Sec. 63.042. OTHER ELECTRONIC PUBLISHERS. (a) Except as~~
24 ~~provided by Section 63.041.~~

25 ~~[(1) an incumbent local exchange company may not have~~
26 ~~an officer, employee, property, or facility in common with an~~
27 ~~entity whose principal business is publishing if the business~~

1 ~~includes electronic publishing; and~~

2 ~~[(2) an officer or employee of an incumbent local~~
3 ~~exchange company may not serve as a director of an entity whose~~
4 ~~principal business is publishing if the business includes~~
5 ~~electronic publishing.]~~

6 ~~[(b) For the purposes of Subsection (a), an incumbent local~~
7 ~~exchange company or affiliate that owns an electronic publishing~~
8 ~~joint venture is not considered engaged in the electronic~~
9 ~~publishing business solely because of that ownership.]~~

10 ~~[(c) Except as provided by Section 63.041, an incumbent~~
11 ~~local exchange company may not:~~

12 ~~[(1) market or sell for an entity that engages in~~
13 ~~electronic publishing;~~

14 ~~[(2) provide a facility, service, or basic telephone~~
15 ~~service information to an entity that engages in electronic~~
16 ~~publishing, for use with or in connection with the provision of~~
17 ~~electronic publishing that is disseminated by the basic telephone~~
18 ~~service of the incumbent local exchange company or an affiliate of~~
19 ~~the incumbent local exchange company, unless an equivalent~~
20 ~~facility, service, or information is made available on equivalent~~
21 ~~terms to all other entities; or~~

22 ~~[(3) hire personnel, purchase, or carry out production~~
23 ~~for an entity that engages in electronic publishing.]~~

24 ~~[SUBCHAPTER C. ELECTRONIC PUBLISHING TRANSACTIONS~~

25 ~~[Sec. 63.061. ELECTRONIC PUBLISHING TRANSACTIONS BETWEEN~~
26 ~~INCUMBENT LOCAL EXCHANGE COMPANY AND AFFILIATE GENERALLY. (a) If~~
27 ~~related to the provision of electronic publishing, the provision of~~

1 ~~a facility, a service, or basic telephone service information by an~~
2 ~~incumbent local exchange company to an affiliate or the transfer of~~
3 ~~an asset, including personnel or something of commercial or~~
4 ~~competitive value, from an incumbent local exchange company to an~~
5 ~~affiliate shall be:~~

6 ~~[(1) recorded in the books and records of the~~
7 ~~incumbent local exchange company and the affiliate,~~

8 ~~[(2) able to be audited in accordance with generally~~
9 ~~accepted auditing standards; and~~

10 ~~[(3) done in accordance with a written contract or~~
11 ~~tariff filed with the commission.~~

12 ~~[(b) A transfer of an asset directly related to the~~
13 ~~provision of electronic publishing from an incumbent local exchange~~
14 ~~company to an affiliate shall be valued at the greater of the~~
15 ~~asset's net book cost or fair market value.~~

16 ~~[(c) A transfer of an asset related to the provision of~~
17 ~~electronic publishing from an affiliate to the incumbent local~~
18 ~~exchange company shall be valued at the lesser of the asset's net~~
19 ~~book cost or fair market value.~~

20 ~~[(d) An incumbent local exchange company may not directly or~~
21 ~~indirectly provide to a separated affiliate a facility, a service,~~
22 ~~or basic telephone service information related to the provision of~~
23 ~~electronic publishing unless the facility, service, or information~~
24 ~~is made available to nonaffiliated companies on the same terms.~~

25 ~~[Sec. 63.062. ELECTRONIC PUBLISHING TRANSACTIONS BETWEEN~~
26 ~~INCUMBENT LOCAL EXCHANGE COMPANY AND SEPARATED AFFILIATE. (a) If~~
27 ~~an incumbent local exchange company provides to an affiliate a~~

1 ~~facility, a service, or basic telephone service information subject~~
2 ~~to Section 63.061(a) or transfers to an affiliate an asset subject~~
3 ~~to that section and the affiliate provides the facility, service,~~
4 ~~or information to a separated affiliate or transfers the asset to a~~
5 ~~separated affiliate, the transaction shall be:~~

6 ~~[(1) recorded in the books and records of each entity,~~

7 ~~[(2) able to be audited in accordance with generally~~
8 ~~accepted auditing standards; and~~

9 ~~[(3) done in accordance with a written contract or~~
10 ~~tariff filed with the commission.~~

11 ~~[(b) A transfer of an asset directly related to the~~
12 ~~provision of electronic publishing from an incumbent local exchange~~
13 ~~company to an affiliate as described by Section 63.061 and then~~
14 ~~transferred to a separated affiliate shall be valued at the greater~~
15 ~~of the asset's net book cost or fair market value.~~

16 ~~[(c) A transfer of an asset related to the provision of~~
17 ~~electronic publishing from a separated affiliate to an affiliate~~
18 ~~and then transferred to the incumbent local exchange company as~~
19 ~~described by Section 63.061 shall be valued at the lesser of the~~
20 ~~asset's net book cost or fair market value.~~

21 ~~[(d) An affiliate may not provide directly or indirectly to~~
22 ~~a separated affiliate a facility, a service, or basic telephone~~
23 ~~service information related to the provision of electronic~~
24 ~~publishing unless the facility, service, or information is made~~
25 ~~available to nonaffiliated companies on the same terms.~~

26 ~~[Sec. 63.063. EXCEPTION. This subchapter does not apply to~~
27 ~~an investment described by Section 63.005.]~~

CHAPTER 64. CUSTOMER PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. CUSTOMER PROTECTION POLICY. (a) The ~~[legislature finds that new developments in telecommunications services, as well as changes in market structure, marketing techniques, and technology, make it essential that customers have safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive business practices and against businesses that do not have the technical and financial resources to provide adequate service.~~

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

~~(b) [(c) Nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.~~

~~[(d)]~~ This chapter does not limit the constitutional, statutory, and common law authority of the office of the attorney general.

Sec. 64.002. DEFINITIONS. In this chapter:

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

(2) "Billing ~~[utility]~~ provider" means any ~~[telecommunications]~~ service provider~~[, as defined by Section~~

1 ~~51.002,~~ or network provider that issues a bill directly to a
2 customer for any telecommunications product or service.

3 (3) [~~"Certificated telecommunications utility" means~~
4 ~~a telecommunications utility that has been granted either a~~
5 ~~certificate of convenience and necessity, a certificate of~~
6 ~~operating authority, or a service provider certificate of operating~~
7 ~~authority.~~

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

13 (4) [~~(5)~~] ~~"Service provider" means any entity that~~
14 ~~offers a product or service to a customer and that directly or~~
15 ~~indirectly charges to or collects from a customer's bill an amount~~
16 ~~for the product or service on a customer's bill received from a~~
17 ~~billing utility.~~

18 [~~(6)~~] ~~"Telecommunications utility" has the meaning]~~
19 "Network provider" and "service provider" and "provider" have the
20 meanings assigned by Section 51.002.

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 [~~a certificated telecommunications utility~~] service providers and
5 network providers to give clear, uniform, and understandable
6 information to customers about rates, terms, services, and customer
7 rights [~~, and other necessary information as determined~~] directed by
8 [~~the~~] this [~~commission~~] Chapter.

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

12 Sec. 64.004. CUSTOMER PROTECTION STANDARDS. (a) All
13 buyers of [~~telecommunications~~] services from providers subject to
14 this Title are entitled to:

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

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

20 (3) information in English and Spanish [~~and any other~~
21 ~~language as the commission deems necessary~~] concerning rates, key
22 terms [~~7~~] and conditions;

23 (4) protection from discrimination on the basis of
24 race, color, sex, nationality, religion, marital status, income
25 level, or source of income and from unreasonable discrimination on
26 the basis of geographic location;

27 (5) impartial and prompt resolution of disputes with

1 ~~[a certificated telecommunications utility and disputes with a~~
2 ~~telecommunications service]~~ provider related to unauthorized
3 charges and switching of service;

4 (6) privacy of customer consumption and credit
5 information;

6 (7) accuracy of metering and billing;

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

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

12 (10) all consumer protections and disclosures
13 established by the Fair Credit Reporting Act (15 U.S.C. Section
14 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601
15 et seq.); and

16 (11) apply for programs ~~[that]~~ to ~~[offer]~~ assist
17 eligible low-income customers, ~~[an]~~ receive affordable ~~[rate]~~
18 telecommunications ~~[package]~~ services and to obtain bill payment
19 assistance programs designed to reduce uncollectible accounts.

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

1 (c) The commission shall request the comments of the office
2 of the attorney general in developing the rules that may be
3 necessary or appropriate to carry out this section.

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

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

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

20 (g) [~~Nothing in this section shall be construed to abridge~~
21 ~~customer rights set forth in commission rules in effect at~~] Where
22 federal rules or requirements exist with respect to issues governed
23 by this Chapter, the [time of] Commission's rules shall be
24 identical to those federal rules or requirements and shall in no
25 case be more burdensome or stringent on the [enactment] providers
26 of [this chapter] services than the federal rules or requirements.

27 Sec. 64.005. ELIGIBILITY PROCESS FOR CUSTOMER SERVICE

1 DISCOUNTS. The commission by rule shall provide for an integrated
2 eligibility process for customer service discounts.

3 SUBCHAPTER B. [~~CERTIFICATION, REGISTRATION, AND REPORTING~~
4 [~~REQUIREMENTS~~

5 [~~Sec. 64.051. ADOPTION OF RULES. (a) The commission shall~~
6 ~~adopt rules relating to certification, registration, and reporting~~
7 ~~requirements for a certificated telecommunications utility, all~~
8 ~~telecommunications utilities that are not dominant carriers, and~~
9 ~~pay telephone providers.~~

10 [~~(b) The rules adopted under Subsection (a) shall be~~
11 ~~consistent with and no less effective than federal law and may not~~
12 ~~require the disclosure of highly sensitive competitive or trade~~
13 ~~secret information.~~

14 [~~Sec. 64.052. SCOPE OF RULES. The commission may adopt and~~
15 ~~enforce rules to:~~

16 [~~(1) require certification or registration with the~~
17 ~~commission as a condition of doing business in this state,~~

18 [~~(2) amend certificates or registrations to reflect~~
19 ~~changed ownership and control,~~

20 [~~(3) establish rules for customer service and~~
21 ~~protection,~~

22 [~~(4) suspend or revoke certificates or registrations~~
23 ~~for repeated violations of this chapter or commission rules, except~~
24 ~~that the commission may not revoke a certificate of convenience and~~
25 ~~necessity of a telecommunications utility except as provided by~~
26 ~~Section 54.008, and~~

27 [~~(5) order disconnection of a pay telephone service~~

1 ~~provider's pay telephones or revocation of certification or~~
2 ~~registration for repeated violations of this chapter or commission~~
3 ~~rules.~~

4 ~~[Sec. 64.053. REPORTS. The commission may require a~~
5 ~~telecommunications service provider to submit reports to the~~
6 ~~commission concerning any matter over which it has authority under~~
7 ~~this chapter.~~

8 ~~[SUBCHAPTER C.]~~ CUSTOMER'S RIGHT TO CHOICE

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

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 ~~[SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES~~

13 ~~[Sec. 64.151. REQUIREMENTS FOR SUBMITTING CHARGES. (a) A~~
14 ~~service provider or billing agent may submit charges for a new~~
15 ~~product or service to be billed on a customer's telephone bill on or~~
16 ~~after the effective date of this section only if:~~

17 ~~[(1) the service provider offering the product or~~
18 ~~service has thoroughly informed the customer of the product or~~
19 ~~service being offered, including all associated charges, and has~~
20 ~~explicitly informed the customer that the associated charges for~~
21 ~~the product or service will appear on the customer's telephone~~
22 ~~bill,~~

23 ~~[(2) the customer has clearly and explicitly consented~~
24 ~~to obtain the product or service offered and to have the associated~~
25 ~~charges appear on the customer's telephone bill and the consent has~~
26 ~~been verified as provided by Subsection (b), and~~

27 ~~[(3) the service provider offering the product or~~

1 ~~service and any billing agent for the service provider.~~

2 ~~[(A) has provided the customer with a toll-free~~
3 ~~telephone number the customer may call and an address to which the~~
4 ~~customer may write to resolve any billing dispute and to answer~~
5 ~~questions; and~~

6 ~~[(B) has contracted with the billing utility to~~
7 ~~bill for products and services on the billing utility's bill as~~
8 ~~provided by Subsection (c).~~

9 ~~[(b) The customer consent required by Subsection (a)(2)~~
10 ~~must be verified by the service provider offering the product or~~
11 ~~service by authorization from the customer. A record of the~~
12 ~~customer consent, including verification, must be maintained by the~~
13 ~~service provider offering the product or service for a period of at~~
14 ~~least 24 months immediately after the consent and verification have~~
15 ~~been obtained. The method of obtaining customer consent and~~
16 ~~verification must include one or more of the following:~~

17 ~~[(1) written authorization from the customer;~~

18 ~~[(2) toll-free electronic authorization placed from~~
19 ~~the telephone number that is the subject of the product or service;~~

20 ~~[(3) oral authorization obtained by an independent~~
21 ~~third party; or~~

22 ~~[(4) any other method of authorization approved by the~~
23 ~~commission or the Federal Communications Commission.~~

24 ~~[(c) The contract required by Subsection (a)(3)(B) must~~
25 ~~include the service provider's name, business address, and business~~
26 ~~telephone number and shall be maintained by the billing utility for~~
27 ~~as long as the billing for the products and services continues and~~

1 ~~for the 24 months immediately following the permanent~~
2 ~~discontinuation of the billing.~~

3 ~~[(d) A service provider offering a product or service to be~~
4 ~~charged on a customer's telephone bill and any billing agent for the~~
5 ~~service provider may not use any fraudulent, unfair, misleading,~~
6 ~~deceptive, or anticompetitive marketing practice to obtain~~
7 ~~customers, including the use of negative option marketing,~~
8 ~~sweepstakes, and contests.~~

9 ~~[(e) Unless verification is required by federal law or rules~~
10 ~~implementing federal law, Subsection (b) does not apply to~~
11 ~~customer-initiated transactions with a certificated~~
12 ~~telecommunications provider for which the service provider has the~~
13 ~~appropriate documentation.~~

14 ~~[(f) If a service provider is notified by a billing utility~~
15 ~~that a customer has reported to the billing utility that a charge~~
16 ~~made by the service provider is unauthorized, the service provider~~
17 ~~shall cease to charge the customer for the unauthorized product or~~
18 ~~service.~~

19 ~~[(g) This section does not apply to message~~
20 ~~telecommunications services charges that are initiated by dialing~~
21 ~~1+, 0+, 0-, 1010XXX, or collect calls and charges for video services~~
22 ~~if the service provider has the necessary call detail record to~~
23 ~~establish the billing for the call or service.~~

24 ~~[Sec. 64.152. RESPONSIBILITIES OF BILLING UTILITY. (a) If~~
25 ~~a customer's telephone bill is charged for any product or service~~
26 ~~without proper customer consent or verification, the billing~~
27 ~~utility, on its knowledge or notification of any unauthorized~~

1 ~~charge, shall promptly, not later than 45 days after the date of~~
2 ~~knowledge or notification of the charge:~~

3 ~~[(1) notify the service provider to cease charging the~~
4 ~~customer for the unauthorized product or service;~~

5 ~~[(2) remove any unauthorized charge from the~~
6 ~~customer's bill;~~

7 ~~[(3) refund or credit to the customer all money that~~
8 ~~has been paid by the customer for any unauthorized charge, and if~~
9 ~~the unauthorized charge is not adjusted within three billing~~
10 ~~cycles, shall pay interest on the amount of the unauthorized~~
11 ~~charge;~~

12 ~~[(4) on the customer's request, provide the customer~~
13 ~~with all billing records under its control related to any~~
14 ~~unauthorized charge within 15 business days after the date of the~~
15 ~~removal of the unauthorized charge from the customer's bill; and~~

16 ~~[(5) maintain for at least 24 months a record of every~~
17 ~~customer who has experienced any unauthorized charge for a product~~
18 ~~or service on the customer's telephone bill and who has notified the~~
19 ~~billing utility of the unauthorized charge.~~

20 ~~[(b) A record required by Subsection (a)(5) shall contain~~
21 ~~for each unauthorized charge:~~

22 ~~[(1) the name of the service provider that offered the~~
23 ~~product or service;~~

24 ~~[(2) any affected telephone numbers or addresses;~~

25 ~~[(3) the date the customer requested that the billing~~
26 ~~utility remove the unauthorized charge;~~

27 ~~[(4) the date the unauthorized charge was removed from~~

1 ~~the customer's telephone bill; and~~

2 ~~[(5) the date any money that the customer paid for the~~
3 ~~unauthorized charges was refunded or credited to the customer.]~~

4 ~~[(c) A billing utility may not:~~

5 ~~[(1) disconnect or terminate telecommunications~~
6 ~~service to any customer for nonpayment of an unauthorized charge,~~
7 ~~or~~

8 ~~[(2) file an unfavorable credit report against a~~
9 ~~customer who has not paid charges the customer has alleged were~~
10 ~~unauthorized unless the dispute regarding the unauthorized charge~~
11 ~~is ultimately resolved against the customer, except that the~~
12 ~~customer shall remain obligated to pay any charges that are not in~~
13 ~~dispute, and this subsection does not apply to those undisputed~~
14 ~~charges.]~~

15 ~~[Sec. 64.153. RECORDS OF DISPUTED CHARGES. (a) Every~~
16 ~~service provider shall maintain a record of every disputed charge~~
17 ~~for a product or service placed on a customer's bill.]~~

18 ~~[(b) The record required under Subsection (a) shall contain~~
19 ~~for every disputed charge:~~

20 ~~[(1) any affected telephone numbers or addresses,~~

21 ~~[(2) the date the customer requested that the billing~~
22 ~~utility remove the unauthorized charge,~~

23 ~~[(3) the date the unauthorized charge was removed from~~
24 ~~the customer's telephone bill; and~~

25 ~~[(4) the date action was taken to refund or credit to~~
26 ~~the customer any money that the customer paid for the unauthorized~~
27 ~~charges.]~~

1 ~~[(c) The record required by Subsection (a) shall be~~
2 ~~maintained for at least 24 months following the completion of all~~
3 ~~steps required by Section 64.152(a).~~

4 ~~[Sec. 64.154. NOTICE. (a) A billing utility shall provide~~
5 ~~notice of a customer's rights under this section in the manner~~
6 ~~prescribed by the commission.~~

7 ~~[(b) Notice of a customer's rights must be provided by mail~~
8 ~~to each residential and retail business customer within 60 days of~~
9 ~~the effective date of this section or by inclusion in the~~
10 ~~publication of the telephone directory next following the effective~~
11 ~~date of this section. In addition, each billing utility shall send~~
12 ~~the notice to new customers at the time service is initiated or to~~
13 ~~any customer at that customer's request.~~

14 ~~[Sec. 64.155. PROVIDING COPY OF RECORDS. A billing utility~~
15 ~~shall provide a copy of records maintained under Sections~~
16 ~~64.151(c), 64.152, and 64.154 to the commission staff on request. A~~
17 ~~service provider shall provide a copy of records maintained under~~
18 ~~Sections 64.151(b) and 64.153 to the commission on request.~~

19 ~~[Sec. 64.156. VIOLATIONS. (a) If the commission finds that~~
20 ~~a billing utility violated this subchapter, the commission may~~
21 ~~implement penalties and other enforcement actions under Chapter 15.~~

22 ~~[(b) If the commission finds that any other service provider~~
23 ~~or billing agent subject to this subchapter has violated this~~
24 ~~subchapter or has knowingly provided false information to the~~
25 ~~commission on matters subject to this subchapter, the commission~~
26 ~~may enforce the provisions of Chapter 15 against the service~~
27 ~~provider or billing agent as if it were regulated by the commission.~~

1 ~~[(c) Neither the authority granted under this section nor~~
2 ~~any other provision of this subchapter shall be construed to grant~~
3 ~~the commission jurisdiction to regulate service providers or~~
4 ~~billing agents who are not otherwise subject to commission~~
5 ~~regulation, other than as specifically provided by this chapter.~~

6 ~~[(d) If the commission finds that a billing utility or~~
7 ~~service provider repeatedly violates this subchapter, the~~
8 ~~commission may, if the action is consistent with the public~~
9 ~~interest, suspend, restrict, or revoke the registration or~~
10 ~~certificate of the telecommunications service provider, by this~~
11 ~~action denying the telecommunications service provider the right to~~
12 ~~provide service in this state, except that the commission may not~~
13 ~~revoke a certificate of convenience and necessity of a~~
14 ~~telecommunications utility except as provided by Section 54.008.~~

15 ~~[(e) If the commission finds that a service provider or~~
16 ~~billing agent has repeatedly violated any provision of this~~
17 ~~subchapter, the commission may order the billing utility to~~
18 ~~terminate billing and collection services for that service provider~~
19 ~~or billing agent.~~

20 ~~[(f) Nothing in this subchapter shall be construed to~~
21 ~~preclude a billing utility from taking action on its own to~~
22 ~~terminate or restrict its billing and collection services.~~

23 ~~[Sec. 64.157. DISPUTES. (a) The commission may resolve~~
24 ~~disputes between a retail customer and a billing utility, service~~
25 ~~provider, or telecommunications utility.~~

26 ~~[(b) In exercising its authority under Subsection (a), the~~
27 ~~commission may:~~

1 ~~[(1) order a billing utility or service provider to~~
2 ~~produce information or records,~~

3 ~~[(2) require that all contracts, bills, and other~~
4 ~~communications from a billing utility or service provider display a~~
5 ~~working toll-free telephone number that customers may call with~~
6 ~~complaints and inquiries,~~

7 ~~[(3) require a billing utility or service provider to~~
8 ~~refund or credit overcharges or unauthorized charges with interest~~
9 ~~if the billing utility or service provider has failed to comply with~~
10 ~~commission rules or a contract with the customer,~~

11 ~~[(4) order appropriate relief to ensure that a~~
12 ~~customer's choice of a telecommunications service provider is~~
13 ~~honored,~~

14 ~~[(5) require the continuation of service to a~~
15 ~~residential or small commercial customer while a dispute is pending~~
16 ~~regarding charges the customer has alleged were unauthorized, and~~

17 ~~[(6) investigate an alleged violation.~~

18 ~~[(c) The commission shall adopt procedures for the~~
19 ~~resolution of disputes in a timely manner, which in no event shall~~
20 ~~exceed 60 days.~~

21 ~~[Sec. 64.158. CONSISTENCY WITH FEDERAL LAW. Rules adopted~~
22 ~~by the commission under this subchapter shall be consistent with~~
23 ~~and not more burdensome than applicable federal laws and rules.]~~

24 SECTION 2. This Act takes effect September 1, 2005.