

By: Armbrister

S.B. No. 1402

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation of voice communications provided by a person holding a cable franchise.

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

SECTION 1. Section 51.002, Utilities Code, is amended to read as follows:

Sec. 51.002. DEFINITIONS. In this subtitle:

(1) "Basic local telecommunications service" means:

- (A) flat rate residential and business local exchange telephone service, including primary directory listings;
- (B) tone dialing service;
- (C) access to operator services;
- (D) access to directory assistance services;
- (E) access to 911 service provided by a local authority or dual party relay service;
- (F) the ability to report service problems seven days a week;
- (G) lifeline and tel-assistance services; and
- (H) any other service the commission determines after a hearing is a basic local telecommunications service.

(2) "Dominant carrier" means a provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in

1 that market in a manner adverse to the public interest. The term
2 includes a provider who provided local exchange telephone service
3 within a certificated exchange area on September 1, 1995, as to that
4 service and as to any other service for which a competitive
5 alternative is not available in a particular geographic market. In
6 addition, with respect to:

7 (A) intraLATA long distance message
8 telecommunications service originated by dialing the access code
9 "1-plus," the term includes a provider of local exchange telephone
10 service in a certificated exchange area for whom the use of that
11 access code for the origination of "1-plus" intraLATA calls in the
12 exchange area is exclusive; and

13 (B) interexchange services, the term does not
14 include an interexchange carrier that is not a certificated local
15 exchange company.

16 (3) "Incumbent local exchange company" means a local
17 exchange company that has a certificate of convenience and
18 necessity on September 1, 1995 and the holder of a franchise
19 pursuant to Title VI of the Communications Act of 1934, 47 U.S.C.
20 521 et. seq., to the extent the franchise holder provides voice
21 communications.

22 (4) "Local exchange company" means a
23 telecommunications utility that has a certificate of convenience
24 and necessity or a certificate of operating authority to provide in
25 this state:

26 (A) local exchange telephone service;

27 (B) basic local telecommunications service; or

1 (C) switched access service.

2 (5) "Local exchange telephone service" means
3 telecommunications service provided within an exchange to
4 establish connections between customer premises within the
5 exchange, including connections between a customer premises and a
6 long distance provider serving the exchange. The term includes
7 tone dialing service, service connection charges, and directory
8 assistance services offered in connection with basic local
9 telecommunications service and interconnection with other service
10 providers. The term does not include the following services,
11 whether offered on an intraexchange or interexchange basis:

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

14 (B) billing and collection services;

15 (C) high-speed private line services of 1.544
16 megabits or greater;

17 (D) customized services;

18 (E) private line or virtual private line
19 services;

20 (F) resold or shared local exchange telephone
21 services if permitted by tariff;

22 (G) dark fiber services;

23 (H) non-voice data transmission service offered
24 as a separate service and not as a component of basic local
25 telecommunications service;

26 (I) dedicated or virtually dedicated access
27 services; or

1 (J) any other service the commission determines
2 is not a "local exchange telephone service."

3 (6) "Long run incremental cost" has the meaning
4 assigned by 16 T.A.C. Section 23.91 or its successor.

5 (7) "Pricing flexibility" includes:

6 (A) customer specific contracts;

7 (B) packaging of services;

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

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

11 (E) other promotional pricing.

12 (8) "Public utility" or "utility" means a person or
13 river authority that owns or operates for compensation in this state
14 equipment or facilities to convey, transmit, or receive
15 communications over a telephone system as a dominant carrier. The
16 term includes a lessee, trustee, or receiver of any of those entities,
17 or a combination of those entities and the holder of a franchise
18 pursuant to Title VI of the Communications Act of 1934, 47 U.S.C. 521
19 et. seq., to the extent the franchise holder provides voice
20 communications. The term does not include a municipal corporation. A
21 person is not a public utility solely because the person:

22 (A) furnishes or furnishes and maintains a
23 private system;

24 (B) manufactures, distributes, installs, or
25 maintains customer premise communications equipment and
26 accessories; or

27 (C) furnishes a telecommunications service or

1 commodity only to itself, its employees, or its tenants as an
2 incident of employment or tenancy, if that service or commodity is
3 not resold to or used by others.

4 (9) "Separation" means the division of plant,
5 revenues, expenses, taxes, and reserves applicable to exchange or
6 local service if these items are used in common to provide public
7 utility service to both local exchange telephone service and other
8 service, such as interstate or intrastate toll service.

9 (10) "Telecommunications provider":

10 (A) means:

11 (i) a certificated telecommunications
12 utility;

13 (ii) a shared tenant service provider;

14 (iii) a nondominant carrier of
15 telecommunications services;

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

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

25 (vi) an interexchange telecommunications
26 carrier;

27 (vii) a specialized common carrier;

1 (viii) a reseller of communications;
2 (ix) a provider of operator services;
3 (x) a provider of customer-owned pay
4 telephone service; or

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

8 (xii) the holder of a franchise pursuant to
9 Title VI of the Communications Act of 1934, 47 U.S.C. 521 et. seq.,
10 to the extent the franchise holder provides voice communications;
11 and

12 (B) does not mean:

13 (i) a provider of enhanced or information
14 services, or another user of telecommunications services, who does
15 not also provide telecommunications services; or

16 (ii) a state agency or state institution of
17 higher education, or a service provided by a state agency or state
18 institution of higher education.

19 (11) "Telecommunications utility" means:

20 (A) a public utility;
21 (B) an interexchange telecommunications carrier,
22 including a reseller of interexchange telecommunications services;

23 (C) a specialized communications common carrier;

24 (D) a reseller of communications;

25 (E) a communications carrier who conveys,
26 transmits, or receives communications wholly or partly over a
27 telephone system;

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

4 (G) a separated affiliate or an electronic
5 publishing joint venture as defined in Chapter 63 [~~-~~]; and

6 (H) the holder of a franchise pursuant to Title
7 VI of the Communications Act of 1934, 47 U.S.C. 521 et. seq., to the
8 extent the franchise holder provides voice communications.

9 (12) "Tier 1 local exchange company" has the meaning
10 assigned by the Federal Communications Commission.

11 SECTION 2. This Act takes effect September 1, 2005.