

BILL ANALYSIS

C.S.H.B. 2620
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Incumbent local exchange companies in Texas began the process of deregulating telecommunications markets some time ago. Interested parties assert that many of the regulatory tools and requirements used to ensure competition are no longer needed because technology and competition have proliferated. Incumbent local exchange companies are required to produce certain reports, including earnings reports, and the Public Utility Commission of Texas (PUC), companies, and customers are authorized to initiate the establishment of extended area service or an expanded local calling plan. The parties further note that a telephone company and its customers can initiate the establishment of an expanded local calling plan through the PUC, that customer-specific contracts are filed with and approved by the PUC, and that public utilities file and maintain tariffs with the PUC. Finally, the interested parties report that recent federal court and administrative rulings have held that certain Internet Protocol enabled services are not subject to state regulation.

C.S.H.B. 2620 seeks to address these issues in communications services and markets by changing certain requirements, such as those related to tariffs, extended area services, and Voice over Internet Protocol services, that interested parties contend are outdated or unnecessary.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2620 amends the Utilities Code to prohibit the Public Utility Commission of Texas (PUC) from requiring a telecommunications utility that is not a public utility, including a deregulated or transitioning company, to comply with a requirement or standard that is more burdensome than a requirement or standard the PUC imposes on a public utility. The bill prohibits a department, agency, or political subdivision of this state from directly or indirectly regulating by rule, order, or other means rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice over Internet Protocol services or other Internet Protocol enabled services. The bill provides that this prohibition does not affect requirements pertaining to use of a right-of-way or payment of right-of-way fees applicable to Voice over Internet Protocol services; affect any person's obligation to provide video or cable service, as defined under applicable state or federal law; require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on Voice over Internet Protocol service; affect any entity's obligations under certain provisions of the federal Communications Act of 1934 or a right granted to an entity by those provisions; affect any applicable wholesale tariff; grant, modify, or affect the authority of the PUC to implement, carry out, or enforce certain rights or obligations provided by the federal Communications Act of 1934, or of an applicable wholesale tariff through arbitration proceedings or other available mechanisms and procedures; require or prohibit payment of switched network access rates or other intercarrier compensation rates, as applicable; limit any PUC authority over certain

subjects set out in the bill or grant the PUC any authority over those subjects; or affect the assessment, administration, collection, or enforcement of a tax or fee over which the comptroller of public accounts has authority.

C.S.H.B. 2620 specifies that a telecommunications provider that is not subject to rate of return regulation may, but is not required to, maintain on file with the PUC tariffs, price lists, or customer service agreements governing the terms of providing service. The bill authorizes such a telecommunications provider to make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without PUC approval and to cross-reference its federal tariff in its state tariff if the provider's intrastate switched access rates are the same as the provider's interstate switched access rates. The bill authorizes such a telecommunications provider to withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the PUC if the telecommunications provider files written notice of the withdrawal with the PUC, notifies its customers of the withdrawal, and posts the current tariffs, price lists, or generic customer service agreements on the telecommunications provider's Internet website. The bill prohibits the PUC from requiring such a telecommunications provider to withdraw a tariff, price list, or customer service agreement. The bill provides that these provisions described relating to telecommunications providers not subject to rate of return regulation do not affect the authority of the PUC to regulate wholesale services or administer or enforce provisions of law relating to the telecommunications assistance and universal service fund or any other applicable regulation permitted or required under the Public Utility Regulatory Act.

C.S.H.B. 2620 removes approval of a customer-specific contract for a specific service in a provision specifying the regulatory treatments the PUC is authorized to implement under rules and procedures for incumbent local exchange companies and repeals provisions of law relating to customer-specific contracts. The bill removes the specification that an incumbent local exchange company holding a certificate of operating authority for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area. The bill makes provisions of law relating to the provider of last resort applicable to a transitioning company in relation to its regulated exchanges, rather than to a holder of a certificate of operating authority, in the same manner and to the same extent those provisions of law apply to a holder of a certificate of convenience and necessity. The bill prohibits the PUC, on or after September 1, 2011, from requiring a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas and from ordering an expansion of a toll-free local calling area.

C.S.H.B. 2620 requires the PUC's rules regarding the administration of the universal service fund and other provisions relating to telecommunications assistance to include procedures to ensure reasonable transparency and accountability in the administration of the universal service fund. The bill prohibits an incumbent local exchange company from receiving support from the universal service fund for a deregulated market that has a population of at least 30,000 and authorizes an incumbent local exchange company to receive support from the universal service fund for a deregulated market that has a population of less than 30,000 only if the company demonstrates to the PUC that the company needs the support to provide basic local telecommunications service at reasonable rates in the affected market. The bill authorizes the incumbent local exchange company to use evidence from outside the affected market to make that demonstration and authorizes the company to make the demonstration in relation to a market before submitting a petition to deregulate the market. The bill makes its provisions relating to universal service fund support for certain deregulated markets effective January 2, 2012.

C.S.H.B. 2620 removes a requirement that each contract for private network services entered into by certain incumbent local exchange companies be filed with the PUC. The bill requires an incumbent local exchange company market that is deregulated as of September 1, 2011, to remain deregulated and prohibits the PUC from reregulating a market or company that has been

deregulated. The bill, in provisions of law authorizing an incumbent local exchange company to petition the PUC to deregulate a market of the company that the PUC previously determined should remain regulated, authorizes only the incumbent local exchange company to initiate a proceeding to deregulate one of the company's markets. The bill requires the PUC, not later than the 90th day after the date the PUC receives such a petition, to determine whether the regulated market should remain regulated and issue a final order classifying the market. The bill, in provisions of law prohibiting the PUC from determining that certain markets with populations less than 100,000 should remain regulated, removes the condition that the population is at least 30,000 and makes the prohibition applicable if, in addition to the incumbent local exchange company, there are at least two competitors operating in all or part of the market that are unaffiliated with the incumbent local exchange company and provide voice communications without regard to the delivery technology, including through Internet Protocol or a successor protocol, satellite, or a technology used by a wireless provider or a commercial mobile service provider, rather than if there are at least three competitors with each providing certain specified services. The bill removes outdated provisions of law relating to the deregulation and classification of incumbent local exchange company markets.

C.S.H.B. 2620 establishes that a deregulated incumbent local exchange company that holds a certificate of operating authority is not required to fulfill the obligations of a provider of last resort; comply with retail quality of service standards or reporting requirements; file an earnings report with the PUC unless the company is receiving support from the Texas High Cost Universal Service Plan; or comply with a pricing requirement other than a requirement prescribed by provisions of law relating to a deregulated incumbent local exchange company. The bill removes the prohibition against a deregulated company that holds such a certificate increasing the company's rates for stand-alone residential local exchange voice service before the date that the PUC has the opportunity to revise the monthly per line support under the Texas High Cost Universal Service Plan, regardless of whether the company is an electing company. The bill, in provisions of law requiring a deregulated or transitioning company to make available to all residential customers uniformly throughout a deregulated market the same price, terms, and conditions for all basic and non-basic services consistent with any available pricing flexibility, removes the specification that the pricing flexibility is that available to the company on or before August 31, 2005. The bill authorizes a deregulated or transitioning company to offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer. The bill establishes that a transitioning incumbent local exchange company is not required to fulfill the obligations of a provider of last resort in a deregulated market.

C.S.H.B. 2620 provides that a transitioning incumbent local exchange company is not required to comply with the following requirements prescribed by the Public Utility Regulatory Act on submission of a written notice to the PUC: a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services; or a requirement to file with the PUC a long-run incremental cost study for residential or business services. The bill prohibits a transitioning company from the following: establishing a retail rate, price, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory; establishing a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or engaging in predatory pricing or attempting to engage in predatory pricing. The bill clarifies that a rate or price for a basic local telecommunications service is not anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff for that service in effect on the date the transitioning company submits written notice to the PUC. The bill establishes that its provisions exempting a transitioning company from certain requirements and prohibiting a transitioning company from establishing certain rates, prices, terms, or conditions or engaging in predatory pricing do not affect other law or legal standards governing

predatory pricing or anticompetitive conduct or an infrastructure commitment entered into by the transitioning company and makes those bill provisions effective January 2, 2012. The bill authorizes an affected person, effective January 2, 2012, to file a complaint at the PUC challenging whether a transitioning company is complying with the prohibitions relating to anticompetitive or unreasonably preferential, prejudicial, or discriminatory rates, retail rates for service in certain deregulated markets, and predatory pricing and authorizes the PUC to require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of such a complaint.

C.S.H.B. 2620, in provisions relating to the authority of a transitioning incumbent local exchange company, specifies that the company may exercise pricing flexibility and introduce a new service in a market subject only to the price and rate standards prescribed by certain specified provisions of the bill and provisions of law establishing rate requirements for such companies, rather than in the manner prescribed by provisions of law relating to pricing and packaging flexibility for basic network services, and removes provisions authorizing a transitioning incumbent local exchange company to exercise the pricing flexibility and introduce a new service in a market one day after providing an informational notice. The bill, in a provision specifying that a transitioning incumbent local exchange company may not be required to comply with exchange-specific retail quality of service standards or reporting requirements in a deregulated market, removes the requirement that such standards and requirements be exchange-specific and includes filing an earnings report with the PUC as an action the company may not be required to perform, unless the company is receiving support from the Texas High Cost Universal Service Plan.

C.S.H.B. 2620 requires the PUC to initiate one or more proceedings to review and evaluate whether the universal service fund accomplishes the fund's purposes or whether changes are necessary to accomplish those purposes. The bill prohibits the PUC from initiating a proceeding to review the Texas High Cost Universal Service Plan before January 2, 2012. The bill grants the PUC all authority necessary to conduct the review, including determining issues relevant to each telecommunications provider's need for universal service fund support, adjusting monthly per line support amounts, and implementing any other changes it determines are necessary and in the public interest. The bill entitles a party to a PUC proceeding examining the universal service fund to access confidential information provided to the PUC if a protective order is issued for the confidential information in the proceeding. The bill requires the PUC to complete each proceeding not later than November 1, 2012, and to provide to the legislature a copy of the commission's findings and of any orders issued under the bill's provisions requiring the review.

C.S.H.B. 2620 revises the policy statement regarding telecommunications utilities and removes expired provisions from the statement. The bill defines "commission," "Internet Protocol enabled service," and "Voice over Internet Protocol service." The bill makes conforming and nonsubstantive changes.

C.S.H.B. 2620 repeals the following sections of the Utilities Code:

- Section 52.057
- Section 53.065(b)
- Sections 65.052(d), (e), and (f)
- Section 65.054
- Section 65.055

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2620, in a provision revising the policy statement regarding telecommunications utilities, differs from the original by establishing that communications providers, including providers not subject to state regulation, have made investments in Texas and broadened the range of communications choices available to consumers, whereas the original establishes that communications providers not subject to state regulation have made such investments and broadened the range of available choices. The substitute, in a provision defining "Voice over Internet Protocol service," differs from the original by specifying that, to be considered such a service, the service requires a broadband connection from the user's location, whereas the original specifies that such service requires the use of a broadband connection from the user's location.

C.S.H.B. 2620 contains a provision not included in the original prohibiting the Public Utility Commission of Texas (PUC) from requiring a telecommunications utility that is not a public utility to comply with a requirement or standard that is more burdensome than a requirement or standard the PUC imposes on a public utility. The substitute differs from the original by establishing that the prohibition against certain regulations relating to Voice over Internet Protocol services or other Internet Protocol enabled services does not affect any person's obligation to provide video service or cable service as defined under applicable state or federal law, whereas the original establishes that the prohibition does not affect any person's obligation to provide video service, as defined by reference to state law, under any applicable state or federal law. The substitute contains provisions not included in the original establishing that the prohibition does not affect requirements pertaining to use of a right-of-way; affect any entity's obligations under certain federal law or a right granted to an entity by that law; affect any applicable wholesale tariff; grant, modify, or affect the authority of the PUC to implement, carry out, or enforce the rights or obligations provided by certain provisions of federal law, or of an applicable wholesale tariff through arbitration proceedings or other available mechanisms and procedures; require or prohibit payment of switched network access rates or other intercarrier compensation rates, as applicable; limit any PUC authority over certain subjects or grant the PUC any authority over the same subjects; or affect the assessment, administration, collection, or enforcement of a tax or fee over which the comptroller has authority. The substitute omits a provision included in the original requiring payment of switched access rates or other intercarrier compensation rates with respect to Voice over Internet Protocol services or other Internet Protocol enabled services to be determined through commercial agreements or by the Federal Communications Commission.

C.S.H.B. 2620, in a provision specifying that certain telecommunications providers are not required to maintain on file with the PUC tariffs, price lists, or customer service agreements governing the terms of providing service, differs from the original by providing that the provider may, but is not required to, maintain such information on file with the PUC, whereas the original provides that the providing service is not required to maintain the information. The substitute contains a provision not included in the original, in a provision authorizing certain telecommunications providers to make changes in its tariffs, price lists, and customer service agreements, specifying that the changes are in relation to services that are not subject to regulation. The substitute, in a provision authorizing a telecommunications provider to withdraw certain agreements under certain conditions, differs from the original by conditioning the withdrawal on the provider notifying its customers of the withdrawal and posting the current tariffs, price lists, or generic customer service agreements on the provider's Internet website, whereas the original conditions the withdrawal on the provider providing written notice to its customers of the rates, terms, and conditions of the services affected by the withdrawn tariff, price list, or agreement or posting the rates, terms, and conditions on the provider's Internet website. The substitute contains a provision not included in the original prohibiting the PUC from requiring certain telecommunications providers to withdraw a tariff, price list, or customer service agreement. The substitute differs from the original, in a provision establishing that its provisions relating to telecommunications providers who are not subject to rate of return

regulation do not affect the authority of the PUC to perform certain actions, by specifying that one of those actions is to regulate wholesale services, whereas the original does not contain that specification in that provision. The substitute, in that same provision, omits the specification included in the original that the regulation is price regulation.

C.S.H.B. 2620, in a provision of law providing that holders of certain authorizations for an area have the obligations of a provider of last resort, contains a provision not included in the original removing a provision authorizing certain holders of a certificate of operating authority to be such a provider. The substitute contains a provision not included in the original making provisions of law relating to the provider of last resort applicable to a transitioning company in relation to its regulated exchanges in the same manner and to the same extent those provisions of law apply to a holder of a certificate of convenience and necessity. The substitute, in a provision prohibiting new orders after a certain date, differs from the original by prohibiting the PUC, on or after September 1, 2011, from requiring a telecommunications provider to provide certain services, whereas the original prohibits the PUC from ordering the provider to provide such services.

C.S.H.B. 2620 contains a provision not included in the original requiring the PUC's rules relating to the universal service fund and telecommunications assistance to include procedures to ensure reasonable transparency and accountability in the administration of the fund. The substitute contains provisions not included in the original prohibiting an incumbent local exchange company from receiving support from the universal service fund for certain deregulated markets and authorizing such a company to demonstrate that the company needs support from the fund under certain conditions.

C.S.H.B. 2620 contains provisions not included in the original requiring an incumbent local exchange company market that is deregulated as of a certain date to remain deregulated and prohibiting the PUC from reregulating a market or company that has been deregulated. The substitute contains provisions not included in the original authorizing only the incumbent local exchange company to initiate a proceeding to deregulate one of the company's markets that the PUC had previously determined should remain regulated. The substitute contains provisions not included in the original revising the conditions under which the PUC is prohibited from deregulating an incumbent local exchange company market and removing outdated provisions relating to the deregulation of such markets.

C.S.H.B. 2620, in a provision of law relating to the requirements of a deregulated incumbent local exchange company that holds a certificate of operating authority, differs from the original by providing for additional requirements under the provision and removing a provision relating to increasing the company's rates for stand-alone residential local exchange voice service before a certain date, whereas the original adds a specification to that provision of law specifying the actions a deregulated company may not be required to perform. The substitute contains a provision not included in the original authorizing a deregulated incumbent local exchange company to offer to an individual residential customer a promotional offer under certain circumstances.

C.S.H.B. 2620 contains a provision not included in the original specifying that a transitioning company is not required to fulfill the obligations of a provider of last resort in a deregulated market. The substitute differs from the original by specifying that a transitioning company may exercise pricing flexibility and introduce a new service in a market subject only to the price and rate standards prescribed by certain specified provisions of the substitute and provisions of law establishing rate requirements for such companies, whereas the original specifies that such a company may exercise pricing flexibility and introduce a new service in a market subject only to the price and rate standards prescribed by provisions of law relating to pricing and packaging flexibility for basic network services. The substitute contains a provision not included in the original making the prohibition against requiring a transitioning company to file an earnings report with the PUC contingent on the condition that the company is not receiving support from the Texas High Cost Universal Service Plan.

C.S.H.B. 2620 contains a provision not included in the original removing the specification that the pricing flexibility available to a transitioning company is that available on or before August 31, 2005. The substitute contains a provision not included in the original authorizing a transitioning company to offer to an individual residential customer a promotional offer that is not available uniformly throughout the market under certain circumstances. The substitute contains provisions not included in the original exempting a transitioning company from certain requirements prescribed by the Public Utility Regulatory Act on submission of a written notice to the PUC. The substitute contains provisions not included in the original establishing certain prohibitions for a transitioning company relating to anticompetitive or unreasonably preferential prejudicial, or discriminatory rates, prices, terms, or conditions, establishing retail rates in certain deregulated markets, and engaging in predatory pricing and clarifying that certain rates or prices are not anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory. The substitute contains a provision not included in the original specifying that certain provisions of the substitute do not affect other law, legal standards, or certain infrastructure commitments. The substitute contains a provision not included in the original authorizing an affected person to file a complaint at the PUC challenging whether a transitioning company is complying with certain prohibitions and authorizing the PUC to require a transitioning company to submit a long-run incremental cost study for a business that is the subject of a complaint.

C.S.H.B. 2620 contains provisions not included in the original repealing specified sections of the Utilities Code. The substitute contains provisions not included in the original requiring the PUC to initiate one or more proceedings to review and evaluate whether the universal service fund accomplishes the fund's purposes, prohibiting the PUC from initiating certain proceedings before a specified date, and granting the PUC certain authority relating to the review. The substitute contains provisions not included in the original entitling certain parties to access confidential information provided to the PUC, requiring the PUC to complete each required proceeding by a specified date, and requiring the PUC to provide certain information to the legislature. The substitute contains a provision not included in the original making certain provisions of the substitute effective January 2, 2012.