

BILL ANALYSIS

Senate Research Center

S.B. 980
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, in 1995, incumbent local exchange carriers started the process of deregulating telecommunication markets. Since that time, technology has changed and competition has increased. Consequently, many of the regulatory tools and requirements used to ensure competition are no longer needed. S.B. 980 eliminates outdated or unnecessary filing requirements, such as customer specific contracts and earnings reports, and updates statute to reflect robust competition with modifications to tariffs requirements, extended area services, and Voice over Internet Protocol (VoIP) services.

Currently, the Public Utility Commission (PUC) is generally authorized to require reports per Sections 14.02 (Rules) and 14.003 (Commission Powers Relating to Reports), Utilities Code. Consistent with this authority, PUC, under Rule 26.73, requires incumbent local exchange carriers (ILEC) to file annual earnings report. In addition, Chapter 55 (Regulation of Communications Services), allows PUC, carriers, and customers to initiate the establishment of an extended area service or an expanded local calling (ELC) plans. A telephone company and its customers can initiate the establishment of an ELC plan through PUC as well. Chapter 52 (Commission Jurisdiction), Utilities Code, requires customer-specific contracts to be filed with and approved by PUC. Furthermore, Section 52.251 (Tariff Filings), Utilities Code, requires public utilities to file and maintain tariffs with PUC. Recent Federal Communications Commission and federal court rulings have held that certain IP-enhanced services are not subject to state regulation.

S.B. 980 provides that deregulated telecommunication companies and transitioning telecommunication companies are not required to file any earnings reports, and ILEC filing requirements for customer-specific contracts. The bill prohibits PUC from expanding additional extended areas service or expanded local calling and provides incumbent local exchange carriers the option of maintaining or withdrawing tariffs upon written notice with PUC. S.B. 980 defines VoIP, and prohibits state regulation of rates, service, terms, conditions, or market entry for IP-enabled services and VoIP.

S.B. 980 amends current law relating to communications services and markets.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 10 (Section 56.023, Utilities Code) of this bill.

Rulemaking authority of a department, agency, or political subdivision of this state is expressly prohibited in SECTION 3 (Section 52.002, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 51.001(a) and (g), Utilities Code, as follows:

- (a) Provides that communications providers not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol (VoIP) providers, have made investments in this state and broadened the range of communications choices available to consumers. Provides that to encourage and accelerate the development of a

competitive and advanced telecommunications environment and infrastructure, rules, policies, and principals must be reformulated, rather than new rules, policies, and principles must be formulated and applied, to reduce regulation of incumbent local exchange companies, ensure fair business practices, and protect the public interest. Deletes existing text providing that changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law. Deletes existing text providing that it is the purpose of this subtitle to grant the Public Utility Commission of Texas (PUC) authority to make and enforce rules necessary to protect customers of telecommunication services consistent with the public interest.

(g) Deletes existing text requiring PUC, not later than November 1, 1999, to begin a review and evaluation of the availability and the pricing of telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services in rural and high cost areas, as well as the convergence of telecommunications services. Deletes existing text requiring PUC to file a report with the legislature not later than January 1, 2001. Deletes existing text requiring that the report include PUC recommendations on the issues reviewed and evaluated.

SECTION 2. Amends Section 51.002, Utilities Code, by adding Subdivisions (3-a) and (13), to define, respectively, "Internet Protocol enabled service" and "Voice over Internet Protocol service."

SECTION 3. Amends Section 52.002, Utilities Code, by adding Subsections (c) and (d) as follows:

(c) Prohibits 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 PUC imposes on a public utility.

(d) Prohibits a department, agency, or political subdivision of this state, notwithstanding any other law, from by rule, order, or other means directly or indirectly regulating rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for VoIP services or other Internet Protocol enabled services. Provides that this subsection does not:

(1) affect requirements pertaining to use of a right-of-way or payment of right-of-way fees applicable to VoIP services under Chapter 283 (Management of Public Right-of-Way Used by Telecommunications Provider in Municipality), Local Government Code;

(2) affect any person's obligation to provide video or cable service, as defined under applicable state or federal law, the applicability of Chapter 66 (State Issued Cable and Video Franchise), or a requirement to make a payment under Chapter 66;

(3) require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on VoIP service;

(4) affect any entity's obligations under Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), or a right granted to an entity by those sections;

(5) affect any applicable wholesale tariff;

(6) grant, modify, or affect the authority of PUC to implement, carry out, or enforce the rights or obligations provided by Sections 251 and 252,

Communications Act of 1934 (47 U.S.C. Sections 251 and 252), or of an applicable wholesale tariff through arbitration proceedings or other available mechanisms and procedures;

(7) require or prohibit payment of switched network access rates or other intercarrier compensation rates, as applicable;

(8) limit any commission authority over the subjects listed in Subdivisions (1)-(7) or grant PUC any authority over those subjects; or

(9) affect the assessment, administration, collection, or enforcement of any tax or fee over which the comptroller of public accounts has authority.

SECTION 4. Amends Subchapter A, Chapter 52, Utilities Code, by adding Section 52.007, as follows:

Sec. 52.007. TARIFF REQUIREMENTS RELATING TO PROVIDERS NOT SUBJECT TO RATE OF RETURN REGULATION. (a) Provides that this section applies only to a telecommunications provider that is not subject to rate of return regulation under Chapter 53 (Rates).

(b) Provides that a telecommunications provider:

(1) is authorized, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) is authorized 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

(3) may 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.

(c) Authorizes a telecommunications provider to withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with PUC under this section if the telecommunications provider files written notice of the withdrawal with PUC, and 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.

(d) Prohibits PUC from requiring a telecommunications provider to withdraw a tariff, price list, or customer service agreement.

(e) Provides that this section does not affect the authority of PUC to regulate wholesale services, or administer or enforce Chapter 56 (Telecommunications Assistance and Universal Service Fund) or any other applicable regulation permitted or required under this title.

SECTION 5. Amends Section 52.056, Utilities Code, to delete existing text providing that approval of a customer-specific contract for a specific service is among the regulatory treatments PUC may implement under Section 52.054.

SECTION 6. Amends Section 54.251(b), Utilities Code, to provide that, except as specifically determined otherwise by PUC under this subchapter or Subchapter G (Special Procedures for Small Local Exchange Companies and Cooperatives) of this chapter, and except as provided by Subchapters C and D (Service Provider Certificate of Operating Authority), Chapter 65, the holder of a certificate of convenience and necessity, rather than the holder of a certificate of convenience and necessity or the holder of a certificate of operating authority issued under

Chapter 65, 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.

SECTION 7. Amends Section 54.3015, Utilities Code, to provide that this subchapter applies to a transitioning company under Chapter 65, rather than holder of a certificate of operating authority issued under Chapter 65, in relation to its regulated exchanges in the same manner and to the same extent this subchapter applies to a holder of a certificate of convenience and necessity.

SECTION 8. Amends Subchapter B, Chapter 55, Utilities Code, by adding Section 55.026, as follows:

Sec. 55.026. NEW ORDERS PROHIBITED AFTER CERTAIN DATE. Prohibits 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.

SECTION 9. Amends Subchapter C, Chapter 55, Utilities Code, by adding Section 55.049, as follows:

Sec. 55.049. EXPANSION PROHIBITED AFTER CERTAIN DATE. Prohibits PUC, on or after September 1, 2011, from ordering an expansion of a toll-free local calling area.

SECTION 10. Amends Section 56.023(d), Utilities Code, to require that the rules under this subsection include procedures to ensure reasonable transparency and accountability in the administration of the universal service fund.

SECTION 11. Amends Subchapter B, Chapter 56, Utilities Code, by adding Section 56.032, as follows:

Sec. 56.032. SUPPORT AVAILABLE TO DEREGULATED MARKETS. (a) 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.

(b) 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 PUC that the company needs the support to provide basic local telecommunications service at reasonable rates in the affected market. Authorizes a company to use evidence from outside the affected market to make the demonstration.

(c) Authorizes an incumbent local exchange company to make the demonstration described by Subsection (b) in relation to a market before submitting a petition to deregulate the market.

SECTION 12. Amends Section 58.255(c), Utilities Code, to delete existing text requiring each contract to be filed with PUC.

SECTION 13. Amends Section 59.074(c), Utilities Code, to delete existing text requiring each contract to be filed with PUC.

SECTION 14. Amends Section 65.051, Utilities Code, as follows:

Sec. 65.051. MARKETS DEREGULATED. Requires a market that is deregulated as of September 1, 2011, to remain deregulated. Prohibits PUC, notwithstanding any other provision of this title, from reregulating a market or company that has been deregulated.

Deletes existing Subsection (a) providing that except as provided by Subsection (b), all markets of all incumbent local exchange companies are deregulated on January 1, 2006, unless PUC determines under Section 65.052(a) that a market or markets should remain regulated. Deletes existing Subsection (b) providing that a market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 is deregulated on January 1, 2007, unless PUC determines under Section 65.052(f) that the market should remain regulated.

SECTION 15. Amends Sections 65.052(a), (b), and (c), Utilities Code, as follows:

(a) Authorizes an incumbent local exchange company to petition PUC to deregulate a market of the company that PUC previously determined should remain regulated. Authorizes only the local incumbent local exchange company, notwithstanding any other provision of this title, to initiate a proceeding to deregulate one of the company's markets. Requires PUC, not later than the 90th day after the date PUC receives the petition, rather than except as provided by Subsection (f), to:

(1) determine whether the regulated market should remain regulated, rather than determine whether each market of an incumbent local exchange company should remain regulated on or after January 1, 2006; and

(2) issue a final order classifying the market in accordance with this section, rather than issue a final order classifying the company in accordance with this section effective January 1, 2006.

(b) Prohibits PUC, in making a determination under Subsection (a), from determining that a market should remain regulated if:

(1) the population in the area included in the market is at least 100,000; or

(2) the population in the area included in the market is less than 100,000 and, 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 service 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, as that term is defined by Section 64.201 (Definition).

Deletes existing text providing that the population in the area included in the market is at least 30,000 but less than 100,000, and, in addition to the incumbent local exchange company, there are at least three competitors of which at least one is a telecommunications provider that holds a certificate of operating authority or service provider certificate of operating authority and provide residential local exchange telephone service in the market; at least one is an entity providing residential telephone service in the market using facilities that the entity or its affiliate owns; and at least one is a provider in that market of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not affiliated with the incumbent local exchange company.

(c) Requires PUC, if PUC deregulates a market under this section and the deregulation results in a regulated or transitioning company no longer meeting the definition of a regulated or transitioning company, to issue an order reclassifying the company as a transitioning company or deregulated company, as those terms are defined by Section 65.002 (Definitions). Deletes existing text requiring PUC to issue an order classifying an incumbent local exchange company as a deregulated company that is subject to Subchapter C if the company does not have any markets in which the population in the

area included in the market is less than 30,000, and PUC does not determine that a market of the company should remain regulated on and after January 1, 2006.

SECTION 16. Amends Section 65.102, Utilities Code, as follows:

Sec. 65.102. REQUIREMENTS. (a) Provides that a deregulated company that holds a certificate of operating authority issued under this subchapter:

(1) is a nondominant carrier governed in the same manner as a holder of a certificate of operating authority issued under Chapter 54;

(2) is not required to:

(A) fulfill the obligations of a provider of last resort;

(B) comply with retail quality of service standards or reporting requirements;

(C) file an earnings report with PUC unless the company is receiving support from the Texas High Cost Universal Service Plan; or

(D) comply with a pricing requirement other than a requirement prescribed by this subchapter; and

(3) is subject to the following provisions in the same manner as an incumbent local exchange company that is not deregulated: Sections 54.156 (Resale of Services), 54.158 (Interference with Resold Services Prohibited), and 54.159 (retention of Access Service and Intralata Toll Service); Section 55.012 (Limitations on Discontinuance of Basic Local Telecommunications Service); and Chapter 60 (Competitive Safeguards).

Deletes existing text providing that a deregulated company that holds a certificate of operating authority issued under this subchapter is a nondominant carrier governed in the same manner as a holder of a certificate of operating authority issued under Chapter 54, except that the deregulated company retains the obligations of a provider of last resort under Chapter 54, and is prohibited from increasing the company's rates for stand alone residential local exchange voice service before the date that PUC has the opportunity to revise the monthly per line support under the Texas High Cost Universal Service Plan pursuant to Section 56.031 (Adjustments), regardless of whether the company is an electing company under Chapter 58. Makes nonsubstantive changes.

(b) Requires a deregulated company, except as provided by Subsection (c), in each deregulated market, to make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company, rather than to such company on or before August 31, 2005.

(c) Authorizes a deregulated 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.

SECTION 17. Amends Section 65.151, Utilities Code, as follows:

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY. (a) Provides that except as provided by Subsection (b), a transitioning company is governed by this subchapter and the provisions of this title that applied to the company

immediately before the date the company was classified as a transitioning company. Makes a nonsubstantive change.

(b) Provides that a transitioning company is not required to fulfill the obligations of a provider of last resort in a deregulated market.

SECTION 18. Amends Section 65.152, Utilities Code, as follows:

Sec. 65.152. GENERAL REQUIREMENTS. (a) Authorizes a transitioning company to exercise pricing flexibility in a market subject only to the price and rate standards prescribed by Sections 65.153 and 65.154, rather than in the manner provided by Section 58.063 one day after providing an informational notice as required by that section; and introduce a new service in a market subject only the price and rate standards prescribed by Sections 65.153 and 65.154, rather than in a manner provided by Section 58.153 one day after providing an informational notice as required by that section.

(b) Prohibits a transitioning company from being required to comply with retail quality, rather than exchange specific retail quality, of service standards, or reporting requirements in a market that is deregulated, or file an earnings report with PUC unless the company is receiving support from the Texas High Cost Universal Service Plan.

SECTION 19. Amends Section 65.153, Utilities Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires a transitioning company, except as provided by Subsection (c-1), in each deregulated market, to make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company. Makes a conforming and a nonsubstantive change.

(c-1) Authorizes a 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.

SECTION 20. Amends Subchapter D, Chapter 65, Utilities Code, by adding Sections 65.154 and 65.155, as follows;

Sec. 65.154. RATE AND PRICE REQUIREMENTS NOT APPLICABLE. (a) Provides that a transitioning company is not required to comply with the following requirements prescribed by this title on submission of a written notice to PUC:

(1) a direct or indirect requirement to price a residential service at, about, 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

(2) a requirement to file with PUC a long-run incremental cost study for residential or business services.

(b) Prohibits a transitioning company, notwithstanding Subsection (a), from:

(1) establishing a retail rate, price, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(2) 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

(3) engage in predatory pricing or attempt to engage in predatory pricing.

(c) Provides 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 notice to PUC under Subsection (a).

(d) Provides that this section, including Subsection (a)(1), does not affect other law or legal standards governing predatory pricing or anticompetitive conduct, or an infrastructure commitment under Chapter 58 (Incentive Regulation) or 59 (Infrastructure Plan).

Sec. 65.155. COMPLAINT BY AFFECTED PERSON. (a) Authorizes an affected person to file a complaint at PUC challenging whether a transitioning company is complying with Section 65.154(b).

(b) Authorizes PUC, notwithstanding Section 65.154(a)(2), to require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under Subsection (a).

SECTION 21. Repealers: Sections 52.057 (Customer-Specific Contracts); 53.065(b) (relating to incumbent local exchange company contracts); 65.052(d) (relating to classification of transitioning company), (e) (relating to classification of regulated company), and (f) (relating to market tests); 65.054 (Petition for Deregulation); and 65.055 (Commission Authority to Reregulate Certain Markets), Utilities Code.

SECTION 22. (a) Defines "commission" in this section.

(b) Requires PUC, not earlier than January 2, 2012, to initiate one or more proceedings to review and evaluate whether the universal service fund accomplishes the fund's purposes, as prescribed by Section 56.021 (Universal Service Fund Established), Utilities Code, or whether changes are necessary to accomplish those purposes.

(c) Provides that PUC has 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 under Section 56.031, Utilities Code, and implementing any other changes it determines are necessary and in the public interest.

(d) Provides that, notwithstanding Section 56.024(b), Utilities Code, a party to a PUC proceeding examining the universal service fund is entitled to access confidential information provided to PUC under Section 56.024(a), Utilities Code, if a protective order is issued for the confidential information in the proceeding.

(e) Requires PUC to complete each proceeding required by this section not later than November 1, 2012. Requires PUC to provide to the legislature a copy of PUC's findings and of any orders issued under this section.

SECTION 23. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 56.032, 65.154, and 65.155, Utilities Code, as added by this Act: January 2, 2012.