

BILL ANALYSIS

Senate Research Center
82R5882 JXC-D

S.B. 980
By: Carona, Van de Putte
Business & Commerce
3/14/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, in 1995, incumbent local exchange carriers (ILEC) 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 S.B. 980 eliminates outdated or unnecessary filing requirements, such as customer specific contracts and earnings reports, and updates statute to reflect robust competition with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 14.002 (Rules) and 14.003 (Commission Powers Relating to Reports) of the Utilities Code. Consistent with this authority, PUC, under Rule 26.73, requires ILECs to file annual earnings reports. 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, Utilities Code, requires public utilities to file and maintain tariffs with PUC. Lastly, recent Federal Communications Commission and federal court rulings have held that certain IP-enabled 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 ILECs the option of maintaining or withdrawing tariffs upon written notice with PUC. Lastly, S.B. 980 defines VoIP, and prohibits state regulation of rates, service, terms, conditions, or market entry for IP-enabled services and VoIP.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly prohibited to a department, agency, or political subdivision of this state 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 significant changes have occurred in telecommunications since the law from which this title is derived was originally adopted. 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 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 health 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 (PUC) authority to make and enforce rules necessary to protect customers of telecommunication services consistent with the public interest.

(g) Provides that it is the policy of this state to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at prices that are reasonably comparable to prices charged for similar services in urban areas. 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 converge 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 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 payment of right-of-way fees applicable to voice over internet protocol 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 service, as defined by Section 66.002 (Definitions), under any applicable state or federal law; or

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

(d) Requires payment of switched access rates or other intercarrier compensation rates, as applicable, with respect to VoIP services or other Internet Protocol enabled services, to be determined through commercial agreements or by the Federal Commissions Commission.

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 not required to maintain on file with the tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) may make changes in its tariffs, price lists, and customer service agreements 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 provides written notice to its customers of the rates, terms, and conditions of the services affected by the withdrawn tariff, price list, or agreement or posts the rates, terms, and conditions on the telecommunications provider's Internet website.

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

SECTION 5. Amends Section 52.056, Utilities Code, to provide that the regulatory treatments PUC may implement under Section 52.054 (Rules and Procedures for Incumbent Local Exchange Companies) include approval of a range of rates for a specific service and the detariffing of rates. Deletes 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 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 ordering a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.

SECTION 7. 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 8. Amends Section 58.255(c), Utilities Code, to delete existing text requiring each contract to be filed with PUC.

SECTION 9. Amends Section 59.074(c), Utilities Code, to make conforming changes.

SECTION 10. Amends Section 65.102, Utilities Code, by adding Subsection (c), to prohibit a deregulated company from being required to comply with retail quality of service standards or reporting requirements, or file an earnings report with PUC.

SECTION 11. Amends Section 65.152, Utilities Code, as follows:

Sec. 65.152. GENERAL REQUIREMENTS. (a) Authorizes a transitioning company:

(1) exercising pricing flexibility in a market subject only to the price and rate standards prescribed by Section 58.063 (Pricing and Packaging Flexibility), rather than exercise pricing flexibility in a market in the manner provided by Section 58.063 one day after providing an informational notice as required by that section; and

(2) introduce a new service in a market subject only to the price and rate standards prescribed by Section 58.153 (New Services), rather than introduce a new service in a market in the 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 of service, rather than exchange-specific, standards or reporting requirements in a market that is deregulated, or file an earnings report with PUC.

SECTION 12. Repealer: Section 52.057 (Customer Specific Contracts), Utilities Code.

Repealer: Section 53.065(b) (relating to limiting the ability of an incumbent local exchange company), Utilities Code.

SECTION 13. Effective date: September 1, 2011.