

BILL ANALYSIS

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C.S.S.B. 986
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Telecommunication markets have experienced extensive competition, especially from wireless and broadband-based voice services. As such, the test to determine competition in a market should be updated to reflect the proliferation of these technologies. The current competition standards assume that some providers will build their own wired phone networks, yet that business model is not as prevalent in the industry today as it was years ago. S.B. 986 seeks to update the competitive market test to reflect today's services.

Currently, Chapter 65 (Deregulation of Certain Incumbent Local Exchange Company Markets), Utilities Code, provides that telecommunication markets with populations greater than 100,000 are deemed competitive. In markets with populations between 30,000 to 100,000, the incumbent phone companies are required to prove the presence of competition with evidence that the market, or exchange, has at least one each of the following: one competitive local exchange carrier providing residential service as a "reseller" of the incumbent's network; one "facility-based" provider using its own facilities to provide service; and one wireless provider that is not affiliated with the incumbent provider.

C.S.S.B. 986 revises the competitive market test such that in markets with a population of less than 100,000, the presence of two or more unaffiliated local voice service providers, in addition to the incumbent phone company—utilizing any technology (Internet protocol, satellite, or wireless)—would constitute adequate, valid competition in a market. The bill also provides that markets deemed deregulated as of September 1, 2011, shall remain deregulated.

C.S.S.B. 986 amends current law relating to deregulation of certain telecommunications markets and companies.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 4 (Section 56.023, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 52.002, Utilities Code, by adding Subsection (c) 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 PUC imposes on a public utility.

SECTION 2. Amends Section 54.251(b), Utilities Code, to provide that, except as specifically determined otherwise by PUC under this subchapter or Subchapter G (Provider of Last Resort) of this chapter, and except as provided by Subchapter C (Deregulated Company) and Subchapter D (Transitioning Company), Chapter 65 (Deregulation of Certain Incumbent Local Exchange Company Markets), 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 3. Amends Section 54.3015, Utilities Code, to provide that this subchapter applies to a transitioning company under Chapter 65, rather than to a 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 4. Amends Section 56.023(d), Utilities Code, as follows:

(d) Requires PUC to adopt rules for the administration of the universal service fund and this chapter and authorizes PUC to act as necessary and convenient to administer the fund and this chapter. Requires that the rules include procedures to ensure reasonable transparency and accountability in the administration of the universal service fund.

SECTION 5. 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 area 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 6. 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 regulating 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) (relating to incumbent local exchange companies) that the market should remain regulated.

SECTION 7. 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 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, to determine whether the regulated market should remain regulated and issue a final order classifying the market in accordance with this section. Deletes existing text requiring PUC, except as provided by Subsection (f), to determine whether each market of an incumbent local exchange company should remain regulated on and after January 1, 2006, and 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 prohibiting PUC from making a determination under Subsection (a) if the population under 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 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 populations 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 8. Amends Section 65.102(a), Utilities Code, as follows:

(a) Provides that a deregulated company that holds a certificate of operating authority 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 (Certificates);

(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:

(A) Sections 54.156 (Resale of Services), 54.158 (Interference With Resold Services Prohibited), and 54.159 (Retention of Access Service and Intralata Toll Service);

(B) Section 55.012 (Limitations on Discontinuance of Basic Local Telecommunications Service); and

(C) Chapter 60 (Competitive Safeguards). Makes nonsubstantive changes.

Deletes existing text providing that a deregulated company that holds a certificate of operating authority under this subchapter retains the obligations of a provider of last resort under Chapter 54 and may not increase 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 (Incentive Regulation).

SECTION 9. 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. Provides that, if there is a conflict between this subchapter and the other applicable provisions of this title, this subchapter controls.

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

SECTION 10. Amends Section 65.152(b), Utilities Code, as follows:

(b) Prohibits a transitioning company from being required to:

(1) comply with retail quality of service standards, rather than exchange-specific retail quality of service standards, or reporting requirements in a market that is deregulated; or

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

SECTION 11. 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, 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

(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) engaging in predatory pricing or attempting 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:

(1) other law or legal standards governing predatory pricing or anticompetitive conduct; or

(2) 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 12. Repealers: Sections 65.052(d) (relating to classification of a transitioning company), (e) (relating to classification as a regulated company), (f) (relating to determination of regulation of an incumbent local exchange company), 65.054 (Petition for Deregulation), and 65.055 (Commission Authority to Regulate Certain Markets), Utilities Code.

SECTION 13. (a) Defines, in this section, "commission."

(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) Entitles a party to a PUC proceeding examining the universal service, notwithstanding Section 56.024(b) (relating to a report or information being confidential and not subject to disclosure), Utilities Code, to access confidential information provided to PUC under Section 56.024(a) (relating to authorizing PUC to require a telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund.), Utilities Code, if a protective order is issued for the confidential information in the proceeding.

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

SECTION 14. (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.