

By: Carona, Van de Putte

S.B. No. 980

A BILL TO BE ENTITLED

AN ACT

relating to communications services and markets.

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

SECTION 1. Subsections (a) and (g), Section 51.001, Utilities Code, are amended to read as follows:

(a) Significant changes have occurred in telecommunications since the law from which this title is derived was originally adopted. Communications providers, including providers not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol providers, have made investments in this state and broadened the range of communications choices available to consumers. To encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure, [new] rules, policies, and principles must be reformulated [~~formulated and applied~~] to reduce regulation of incumbent local exchange companies, ensure fair business practices, and protect the public interest. [~~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. It is the purpose of this subtitle to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest.~~]

1 (g) It is the policy of this state to ensure that customers  
2 in all regions of this state, including low-income customers and  
3 customers in rural and high cost areas, have access to  
4 telecommunications and information services, including  
5 interexchange services, cable services, wireless services, and  
6 advanced telecommunications and information services, that are  
7 reasonably comparable to those services provided in urban areas and  
8 that are available at prices that are reasonably comparable to  
9 prices charged for similar services in urban areas. [~~Not later than~~  
10 ~~November 1, 1999, the commission shall begin a review and~~  
11 ~~evaluation of the availability and the pricing of~~  
12 ~~telecommunications and information services, including~~  
13 ~~interexchange services, cable services, wireless services, and~~  
14 ~~advanced telecommunications and information services, in rural and~~  
15 ~~high cost areas, as well as the convergence of telecommunications~~  
16 ~~services. The commission shall file a report with the legislature~~  
17 ~~not later than January 1, 2001. The report must include the~~  
18 ~~commission's recommendations on the issues reviewed and~~  
19 ~~evaluated.]~~

20 SECTION 2. Section 51.002, Utilities Code, is amended by  
21 adding Subdivisions (3-a) and (13) to read as follows:

22 (3-a) "Internet Protocol enabled service" means a  
23 service, capability, functionality, or application that uses  
24 Internet Protocol or a successor protocol to allow an end user to  
25 send or receive a data, video, or voice communication in Internet  
26 Protocol or a successor protocol.

27 (13) "Voice over Internet Protocol service" means a

1 service that:

2 (A) uses Internet Protocol or a successor  
3 protocol to enable a real-time, two-way voice communication that  
4 originates from or terminates to the user's location in Internet  
5 Protocol or a successor protocol;

6 (B) requires a broadband connection from the  
7 user's location; and

8 (C) permits a user generally to receive a call  
9 that originates on the public switched telephone network and to  
10 terminate a call to the public switched telephone network.

11 SECTION 3. Section 52.002, Utilities Code, is amended by  
12 adding Subsections (c) and (d) to read as follows:

13 (c) The commission may not require a telecommunications  
14 utility that is not a public utility, including a deregulated or  
15 transitioning company, to comply with a requirement or standard  
16 that is more burdensome than a requirement or standard the  
17 commission imposes on a public utility.

18 (d) Notwithstanding any other law, a department, agency, or  
19 political subdivision of this state may not by rule, order, or other  
20 means directly or indirectly regulate rates charged for, service or  
21 contract terms for, conditions for, or requirements for entry into  
22 the market for Voice over Internet Protocol services or other  
23 Internet Protocol enabled services. This subsection does not:

24 (1) affect requirements pertaining to use of a  
25 right-of-way or payment of right-of-way fees applicable to Voice  
26 over Internet Protocol services under Chapter 283, Local Government  
27 Code;

1           (2) affect any person's obligation to provide video or  
2 cable service, as defined under applicable state or federal law;

3           (3) require or prohibit assessment of enhanced 9-1-1,  
4 relay access service, or universal service fund fees on Voice over  
5 Internet Protocol service;

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

9           (5) affect any applicable wholesale tariff;

10           (6) grant, modify, or affect the authority of the  
11 commission to implement, carry out, or enforce the rights or  
12 obligations provided by Sections 251 and 252, Communications Act of  
13 1934 (47 U.S.C. Sections 251 and 252), or of an applicable wholesale  
14 tariff through arbitration proceedings or other available  
15 mechanisms and procedures;

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

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

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

25           SECTION 4. Subchapter A, Chapter 52, Utilities Code, is  
26 amended by adding Section 52.007 to read as follows:

27           Sec. 52.007. TARIFF REQUIREMENTS RELATING TO PROVIDERS NOT

1 SUBJECT TO RATE OF RETURN REGULATION. (a) This section applies  
2 only to a telecommunications provider that is not subject to rate of  
3 return regulation under Chapter 53.

4 (b) A telecommunications provider:

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

8 (2) may make changes in its tariffs, price lists, and  
9 customer service agreements in relation to services that are not  
10 subject to regulation without commission approval; and

11 (3) may cross-reference its federal tariff in its  
12 state tariff if the provider's intrastate switched access rates are  
13 the same as the provider's interstate switched access rates.

14 (c) A telecommunications provider may withdraw a tariff,  
15 price list, or customer service agreement not required to be filed  
16 or maintained with the commission under this section if the  
17 telecommunications provider:

18 (1) files written notice of the withdrawal with the  
19 commission; and

20 (2) notifies its customers of the withdrawal and posts  
21 the current tariffs, price lists, or generic customer service  
22 agreements on the telecommunications provider's Internet website.

23 (d) The commission may not require a telecommunications  
24 provider to withdraw a tariff, price list, or customer service  
25 agreement.

26 (e) This section does not affect the authority of the  
27 commission to regulate wholesale services, or administer or enforce

1 Chapter 56 or any other applicable regulation permitted or required  
2 under this title.

3 SECTION 5. Section 52.056, Utilities Code, is amended to  
4 read as follows:

5 Sec. 52.056. SPECIFICALLY AUTHORIZED REGULATORY  
6 TREATMENTS. The regulatory treatments the commission may implement  
7 under Section 52.054 include:

8 (1) approval of a range of rates for a specific  
9 service; and

10 (2) [~~approval of a customer-specific contract for a~~  
11 ~~specific service; and~~

12 [~~(3)~~] the detariffing of rates.

13 SECTION 6. Subsection (b), Section 54.251, Utilities Code,  
14 is amended to read as follows:

15 (b) Except as specifically determined otherwise by the  
16 commission under this subchapter or Subchapter G of this chapter,  
17 and except as provided by Subchapters C and D, Chapter 65, the  
18 holder of a certificate of convenience and necessity [~~or the~~  
19 ~~holder of a certificate of operating authority issued under Chapter~~  
20 ~~65,~~] for an area has the obligations of a provider of last resort  
21 regardless of whether another provider has a certificate of  
22 operating authority or service provider certificate of operating  
23 authority for that area.

24 SECTION 7. Section 54.3015, Utilities Code, is amended to  
25 read as follows:

26 Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter  
27 applies to a transitioning company [~~holder of a certificate of~~

1 ~~operating authority issued]~~ under Chapter 65 in relation to its  
2 regulated exchanges in the same manner and to the same extent this  
3 subchapter applies to a holder of a certificate of convenience and  
4 necessity.

5 SECTION 8. Subchapter B, Chapter 55, Utilities Code, is  
6 amended by adding Section 55.026 to read as follows:

7 Sec. 55.026. NEW ORDERS PROHIBITED AFTER CERTAIN DATE. On  
8 or after September 1, 2011, the commission may not require a  
9 telecommunications provider to provide mandatory or optional  
10 extended area service to additional metropolitan areas or calling  
11 areas.

12 SECTION 9. Subchapter C, Chapter 55, Utilities Code, is  
13 amended by adding Section 55.049 to read as follows:

14 Sec. 55.049. EXPANSION PROHIBITED AFTER CERTAIN DATE. On  
15 or after September 1, 2011, the commission may not order an  
16 expansion of a toll-free local calling area.

17 SECTION 10. Subsection (d), Section 56.023, Utilities Code,  
18 is amended to read as follows:

19 (d) The commission shall adopt rules for the administration  
20 of the universal service fund and this chapter and may act as  
21 necessary and convenient to administer the fund and this chapter.  
22 The rules must include procedures to ensure reasonable transparency  
23 and accountability in the administration of the universal service  
24 fund.

25 SECTION 11. Subchapter B, Chapter 56, Utilities Code, is  
26 amended by adding Section 56.032 to read as follows:

27 Sec. 56.032. SUPPORT AVAILABLE TO DEREGULATED MARKETS.

1 (a) An incumbent local exchange company may not receive support  
2 from the universal service fund for a deregulated market that has a  
3 population of at least 30,000.

4 (b) An incumbent local exchange company may receive support  
5 from the universal service fund for a deregulated market that has a  
6 population of less than 30,000 only if the company demonstrates to  
7 the commission that the company needs the support to provide basic  
8 local telecommunications service at reasonable rates in the  
9 affected market. A company may use evidence from outside the  
10 affected market to make the demonstration.

11 (c) An incumbent local exchange company may make the  
12 demonstration described by Subsection (b) in relation to a market  
13 before submitting a petition to deregulate the market.

14 SECTION 12. Subsection (c), Section 58.255, Utilities Code,  
15 is amended to read as follows:

16 (c) ~~[Each contract shall be filed with the commission.]~~  
17 Commission approval of a contract is not required.

18 SECTION 13. Subsection (c), Section 59.074, Utilities Code,  
19 is amended to read as follows:

20 (c) ~~[Each contract shall be filed with the commission.]~~  
21 Commission approval of a contract is not required.

22 SECTION 14. Section 65.051, Utilities Code, is amended to  
23 read as follows:

24 Sec. 65.051. MARKETS DEREGULATED. A market that is  
25 deregulated as of September 1, 2011, shall remain deregulated.  
26 Notwithstanding any other provision of this title, the commission  
27 may not reregulate a market or company that has been deregulated



1 ~~[(a) Except as provided by Subsection (b), all markets of all~~  
2 ~~incumbent local exchange companies are deregulated on January 1,~~  
3 ~~2006, unless the commission determines under Section 65.052(a) that~~  
4 ~~a market or markets should remain regulated.~~

5 ~~[(b) A market of an incumbent local exchange company in~~  
6 ~~which the population in the area included in the market is less than~~  
7 ~~30,000 is deregulated on January 1, 2007, unless the commission~~  
8 ~~determines under Section 65.052(f) that the market should remain~~  
9 ~~regulated].~~

10 SECTION 15. Subsections (a), (b), and (c), Section 65.052,  
11 Utilities Code, are amended to read as follows:

12 (a) An incumbent local exchange company may petition the  
13 commission to deregulate a market of the company that the  
14 commission previously determined should remain regulated.  
15 Notwithstanding any other provision of this title, only the  
16 incumbent local exchange company may initiate a proceeding to  
17 deregulate one of the company's markets. Not later than the 90th  
18 day after the date the commission receives the petition, ~~Except as~~  
19 ~~provided by Subsection (f),~~ the commission shall:

20 (1) determine whether the regulated ~~[each]~~ market ~~[of~~  
21 ~~an incumbent local exchange company]~~ should remain regulated ~~[on~~  
22 ~~and after January 1, 2006]~~; and

23 (2) issue a final order classifying the market  
24 ~~[company]~~ in accordance with this section ~~[effective January 1,~~  
25 ~~2006]~~.

26 (b) In making a determination under Subsection (a), the  
27 commission may not determine that a market should remain regulated

1 if:

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

4 (2) the population in the area included in the market  
5 is ~~[at least 30,000 but]~~ less than 100,000 and, in addition to the  
6 incumbent local exchange company, there are at least two  
7 competitors operating in all or part of the market that ~~[three~~  
8 ~~competitors of which]~~:

9 (A) are unaffiliated with the incumbent local  
10 exchange company ~~[at least one is a telecommunications provider~~  
11 ~~that holds a certificate of operating authority or service provider~~  
12 ~~certificate of operating authority and provides residential local~~  
13 ~~exchange telephone service in the market]~~; and

14 (B) provide voice communications service without  
15 regard to the delivery technology, including through:

16 (i) Internet Protocol or a successor  
17 protocol;

18 (ii) satellite; or

19 (iii) a technology used by a wireless  
20 provider or a commercial mobile service provider, as that term is  
21 defined by Section 64.201 ~~[at least one is an entity providing~~  
22 ~~residential telephone service in the market using facilities that~~  
23 ~~the entity or its affiliate owns; and~~

24 ~~[(C) at least one is a provider in that market of~~  
25 ~~commercial mobile service as defined by Section 332(d),~~  
26 ~~Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal~~  
27 ~~Communications Commission rules, and the Omnibus Budget~~

1 ~~Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not~~  
2 ~~affiliated with the incumbent local exchange company].~~

3       (c) If the commission deregulates a market under this  
4 section and the deregulation results in a regulated or  
5 transitioning company no longer meeting the definition of a  
6 regulated or transitioning company, the commission shall issue an  
7 order reclassifying the company as a transitioning company or  
8 deregulated company, as those terms are defined by Section 65.002  
9 ~~[The commission shall issue an order classifying an incumbent local~~  
10 ~~exchange company as a deregulated company that is subject to~~  
11 ~~Subchapter C if:~~

12             ~~[(1) the company does not have any markets in which the~~  
13 ~~population in the area included in the market is less than 30,000,~~  
14 ~~and~~

15             ~~[(2) the commission does not determine that a market~~  
16 ~~of the company should remain regulated on and after January 1,~~  
17 ~~2006].~~

18       SECTION 16. Section 65.102, Utilities Code, is amended to  
19 read as follows:

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

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

26             (2) is not required to:

27                     (A) fulfill the obligations of a provider of last

1 resort;

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

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

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

9 (3) [~~, except that the deregulated company:~~

10 [(1) retains the obligations of a provider of last  
11 resort under Chapter 54,

12 [(2)] is subject to the following provisions in the  
13 same manner as an incumbent local exchange company that is not  
14 deregulated:

15 (A) Sections 54.156, 54.158, and 54.159;

16 (B) Section 55.012; and

17 (C) Chapter 60 [~~, and~~

18 [(3) may not increase the company's rates for  
19 stand-alone residential local exchange voice service before the  
20 date that the commission has the opportunity to revise the monthly  
21 per line support under the Texas High Cost Universal Service Plan  
22 pursuant to Section 56.031, regardless of whether the company is an  
23 electing company under Chapter 58].

24 (b) Except as provided by Subsection (c), in [In] each  
25 deregulated market, a deregulated company shall make available to  
26 all residential customers uniformly throughout that market the same  
27 price, terms, and conditions for all basic and non-basic services,

1 consistent with any pricing flexibility available to such company  
2 [~~on or before August 31, 2005~~].

3 (c) A deregulated company may offer to an individual  
4 residential customer a promotional offer that is not available  
5 uniformly throughout the market if the company makes the offer  
6 through a medium other than direct mail or mass electronic media and  
7 the offer is intended to retain or obtain a customer.

8 SECTION 17. Section 65.151, Utilities Code, is amended to  
9 read as follows:

10 Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING  
11 COMPANY. (a) Except as provided by Subsection (b), a [A]  
12 transitioning company is governed by this subchapter and the  
13 provisions of this title that applied to the company immediately  
14 before the date the company was classified as a transitioning  
15 company. If there is a conflict between this subchapter and the  
16 other applicable provisions of this title, this subchapter  
17 controls.

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

20 SECTION 18. Section 65.152, Utilities Code, is amended to  
21 read as follows:

22 Sec. 65.152. GENERAL REQUIREMENTS. (a) A transitioning  
23 company may:

24 (1) exercise pricing flexibility in a market subject  
25 only to the price and rate standards prescribed by Sections 65.153  
26 and 65.154 [~~in the manner provided by Section 58.063 one day after~~  
27 ~~providing an informational notice as required by that section~~]; and

1           (2) introduce a new service in a market subject only to  
2 the price and rate standards prescribed by Sections 65.153 and  
3 65.154 [~~in the manner provided by Section 58.153 one day after~~  
4 ~~providing an informational notice as required by that section~~].

5           (b) A transitioning company may not be required to:

6           (1) comply with [~~exchange-specific~~] retail quality of  
7 service standards or reporting requirements in a market that is  
8 deregulated; or

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

12           SECTION 19. Section 65.153, Utilities Code, is amended by  
13 amending Subsection (c) and adding Subsection (c-1) to read as  
14 follows:

15           (c) Except as provided by Subsection (c-1), in [~~In~~] each  
16 deregulated market, a transitioning company shall make available to  
17 all residential customers uniformly throughout that market the same  
18 price, terms, and conditions for all basic and non-basic services,  
19 consistent with any pricing flexibility available to such company  
20 [~~on or before August 31, 2005~~].

21           (c-1) A transitioning company may offer to an individual  
22 residential customer a promotional offer that is not available  
23 uniformly throughout the market if the company makes the offer  
24 through a medium other than direct mail or mass electronic media and  
25 the offer is intended to retain or obtain a customer.

26           SECTION 20. Subchapter D, Chapter 65, Utilities Code, is  
27 amended by adding Sections 65.154 and 65.155 to read as follows:

1       Sec. 65.154. RATE AND PRICE REQUIREMENTS NOT APPLICABLE.

2       (a) A transitioning company is not required to comply with the  
3 following requirements prescribed by this title on submission of a  
4 written notice to the commission:

5               (1) a direct or indirect requirement to price a  
6 residential service at, above, or according to the long-run  
7 incremental cost of the service or to otherwise use long-run  
8 incremental cost in establishing prices for residential services;  
9 or

10              (2) a requirement to file with the commission a  
11 long-run incremental cost study for residential or business  
12 services.

13       (b) Notwithstanding Subsection (a), a transitioning company  
14 may not:

15               (1) establish a retail rate, price, term, or condition  
16 that is anticompetitive or unreasonably preferential, prejudicial,  
17 or discriminatory;

18               (2) establish a retail rate for a basic or non-basic  
19 service in a deregulated market that is subsidized either directly  
20 or indirectly by a basic or non-basic service provided in an  
21 exchange that is not deregulated; or

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

24       (c) A rate or price for a basic local telecommunications  
25 service is not anticompetitive, predatory, or unreasonably  
26 preferential, prejudicial, or discriminatory if the rate or price  
27 is equal to or greater than the rate or price in the transitioning

1 company's tariff for that service in effect on the date the  
2 transitioning company submits notice to the commission under  
3 Subsection (a).

4 (d) This section, including Subsection (a)(1), does not  
5 affect:

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

8 (2) an infrastructure commitment under Chapter 58 or  
9 59.

10 Sec. 65.155. COMPLAINT BY AFFECTED PERSON. (a) An  
11 affected person may file a complaint at the commission challenging  
12 whether a transitioning company is complying with Section  
13 65.154(b).

14 (b) Notwithstanding Section 65.154(a)(2), the commission  
15 may require a transitioning company to submit a long-run  
16 incremental cost study for a business service that is the subject of  
17 a complaint submitted under Subsection (a).

18 SECTION 21. The following provisions of the Utilities Code  
19 are repealed:

- 20 (1) Section 52.057;
- 21 (2) Subsection (b), Section 53.065;
- 22 (3) Subsections (d), (e), and (f), Section 65.052;
- 23 (4) Section 65.054; and
- 24 (5) Section 65.055.

25 SECTION 22. (a) In this section, "commission" means the  
26 Public Utility Commission of Texas.

27 (b) The commission shall initiate one or more proceedings to



1 review and evaluate whether the universal service fund accomplishes  
2 the fund's purposes, as prescribed by Section 56.021, Utilities  
3 Code, or whether changes are necessary to accomplish those  
4 purposes. The commission may not initiate a proceeding to review  
5 the Texas High Cost Universal Service Plan before January 2, 2012.

6 (c) The commission has all authority necessary to conduct  
7 the review, including determining issues relevant to each  
8 telecommunications provider's need for universal service fund  
9 support, adjusting monthly per line support amounts under Section  
10 56.031, Utilities Code, and implementing any other changes it  
11 determines are necessary and in the public interest.

12 (d) Notwithstanding Subsection (b), Section 56.024,  
13 Utilities Code, a party to a commission proceeding examining the  
14 universal service fund is entitled to access confidential  
15 information provided to the commission under Subsection (a),  
16 Section 56.024, Utilities Code, if a protective order is issued for  
17 the confidential information in the proceeding.

18 (e) The commission shall complete each proceeding required  
19 by this section not later than November 1, 2012. The commission  
20 shall provide to the legislature a copy of the commission's  
21 findings and of any orders issued under this section.

22 SECTION 23. (a) Except as provided by Subsection (b) of  
23 this section, this Act takes effect September 1, 2011.

24 (b) Sections 56.032, 65.154, and 65.155, Utilities Code, as  
25 added by this Act, take effect January 2, 2012.