

By: Carona

S.B. No. 986

A BILL TO BE ENTITLED

AN ACT

1
2 relating to deregulation of certain telecommunications markets and
3 companies.

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

5 SECTION 1. Section 52.002, Utilities Code, is amended by
6 adding Subsection (c) to read as follows:

7 (c) The commission may not require a telecommunications
8 utility that is not a public utility, including a deregulated or
9 transitioning company, to comply with a requirement or standard
10 that is more burdensome than a requirement or standard the
11 commission imposes on a public utility.

12 SECTION 2. Subsection (b), Section 54.251, Utilities Code,
13 is amended to read as follows:

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

23 SECTION 3. Section 54.3015, Utilities Code, is amended to
24 read as follows:

1 Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter
2 applies to a transitioning company [~~holder of a certificate of~~
3 ~~operating authority issued~~] under Chapter 65 in relation to its
4 regulated exchanges in the same manner and to the same extent this
5 subchapter applies to a holder of a certificate of convenience and
6 necessity.

7 SECTION 4. Subsection (d), Section 56.023, Utilities Code,
8 is amended to read as follows:

9 (d) The commission shall adopt rules for the administration
10 of the universal service fund and this chapter and may act as
11 necessary and convenient to administer the fund and this chapter.
12 The rules must include procedures to ensure reasonable transparency
13 and accountability in the administration of the universal service
14 fund.

15 SECTION 5. Subchapter B, Chapter 56, Utilities Code, is
16 amended by adding Section 56.032 to read as follows:

17 Sec. 56.032. SUPPORT AVAILABLE TO DEREGULATED MARKETS.

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

21 (b) An incumbent local exchange company may receive support
22 from the universal service fund for a deregulated market that has a
23 population of less than 30,000 only if the company demonstrates to
24 the commission that the company needs the support to provide basic
25 local telecommunications service at reasonable rates in the
26 affected market. A company may use evidence from outside the
27 affected market to make the demonstration.

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

4 SECTION 6. Section 65.051, Utilities Code, is amended to
5 read as follows:

6 Sec. 65.051. MARKETS DEREGULATED. A market that is
7 deregulated as of September 1, 2011, shall remain deregulated.
8 Notwithstanding any other provision of this title, the commission
9 may not reregulate a market or company that has been deregulated
10 ~~[(a) Except as provided by Subsection (b), all markets of all~~
11 ~~incumbent local exchange companies are deregulated on January 1,~~
12 ~~2006, unless the commission determines under Section 65.052(a) that~~
13 ~~a market or markets should remain regulated.~~

14 ~~[(b) A market of an incumbent local exchange company in~~
15 ~~which the population in the area included in the market is less than~~
16 ~~30,000 is deregulated on January 1, 2007, unless the commission~~
17 ~~determines under Section 65.052(f) that the market should remain~~
18 ~~regulated].~~

19 SECTION 7. Subsections (a), (b), and (c), Section 65.052,
20 Utilities Code, are amended to read as follows:

21 (a) An incumbent local exchange company may petition the
22 commission to deregulate a market of the company that the
23 commission previously determined should remain regulated.
24 Notwithstanding any other provision of this title, only the
25 incumbent local exchange company may initiate a proceeding to
26 deregulate one of the company's markets. Not later than the 90th
27 day after the date the commission receives the petition, [Except as

1 ~~provided by Subsection (f),~~ the commission shall:

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

5 (2) issue a final order classifying the market
6 ~~[company]~~ in accordance with this section ~~[effective January 1,~~
7 ~~2006]~~.

8 (b) In making a determination under Subsection (a), the
9 commission may not determine that a market should remain regulated
10 if:

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

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

18 (A) are unaffiliated with the incumbent local
19 exchange company ~~[at least one is a telecommunications provider~~
20 ~~that holds a certificate of operating authority or service provider~~
21 ~~certificate of operating authority and provides residential local~~
22 ~~exchange telephone service in the market]~~; and

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

25 (i) Internet Protocol or a successor
26 protocol;

27 (ii) satellite; or

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

6 [~~(C) at least one is a provider in that market of~~
7 ~~commercial mobile service as defined by Section 332(d),~~
8 ~~Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal~~
9 ~~Communications Commission rules, and the Omnibus Budget~~
10 ~~Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not~~
11 ~~affiliated with the incumbent local exchange company].~~

12 (c) If the commission deregulates a market under this
13 section and the deregulation results in a regulated or
14 transitioning company no longer meeting the definition of a
15 regulated or transitioning company, the commission shall issue an
16 order reclassifying the company as a transitioning company or
17 deregulated company, as those terms are defined by Section 65.002
18 [~~The commission shall issue an order classifying an incumbent local~~
19 ~~exchange company as a deregulated company that is subject to~~
20 ~~Subchapter C if:~~

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

24 [~~(2) the commission does not determine that a market~~
25 ~~of the company should remain regulated on and after January 1,~~
26 ~~2006].~~

27 SECTION 8. Subsection (a), Section 65.102, Utilities Code,

1 is amended to read as follows:

2 (a) A deregulated company that holds a certificate of
3 operating authority issued under this subchapter:

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

7 (2) is not required to:

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

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

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

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

17 (3) [~~except that the deregulated company:~~

18 [~~(1) retains the obligations of a provider of last~~
19 ~~resort under Chapter 54,~~

20 [~~(2)~~] is subject to the following provisions in the
21 same manner as an incumbent local exchange company that is not
22 deregulated:

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

24 (B) Section 55.012; and

25 (C) Chapter 60 [~~and~~

26 [~~(3) may not increase the company's rates for~~
27 ~~stand-alone residential local exchange voice service before the~~

1 ~~date that the commission has the opportunity to revise the monthly~~
2 ~~per line support under the Texas High Cost Universal Service Plan~~
3 ~~pursuant to Section 56.031, regardless of whether the company is an~~
4 ~~electing company under Chapter 58].~~

5 SECTION 9. Section 65.151, Utilities Code, is amended to
6 read as follows:

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

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

17 SECTION 10. Subsection (b), Section 65.152, Utilities Code,
18 is amended to read as follows:

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

20 (1) comply with [exchange-specific] retail quality of
21 service standards or reporting requirements in a market that is
22 deregulated; or

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

26 SECTION 11. 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 12. Subsections (d), (e), and (f), Section 65.052,
19 and Sections 65.054 and 65.055, Utilities Code, are repealed.

20 SECTION 13. (a) In this section, "commission" means the
21 Public Utility Commission of Texas.

22 (b) Not earlier than January 2, 2012, the commission shall
23 initiate one or more proceedings to review and evaluate whether the
24 universal service fund accomplishes the fund's purposes, as
25 prescribed by Section 56.021, Utilities Code, or whether changes
26 are necessary to accomplish those purposes.

27 (c) The commission has all authority necessary to conduct

1 the review, including determining issues relevant to each
2 telecommunications provider's need for universal service fund
3 support, adjusting monthly per line support amounts under Section
4 56.031, Utilities Code, and implementing any other changes it
5 determines are necessary and in the public interest.

6 (d) Notwithstanding Subsection (b), Section 56.024,
7 Utilities Code, a party to a commission proceeding examining the
8 universal service fund is entitled to access confidential
9 information provided to the commission under Subsection (a),
10 Section 56.024, Utilities Code, if a protective order is issued for
11 the confidential information in the proceeding.

12 (e) The commission shall complete the proceeding or
13 proceedings required by this section and issue any associated
14 orders not later than November 1, 2012. The commission shall
15 provide to the legislature a copy of any findings or orders issued
16 under this section.

17 SECTION 14. (a) Except as provided by Subsection (b) of
18 this section, this Act takes effect September 1, 2011.

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