

1-1 By: Carona S.B. No. 986  
1-2 (In the Senate - Filed February 28, 2011; March 8, 2011,  
1-3 read first time and referred to Committee on Business and Commerce;  
1-4 April 4, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 4, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 986 By: Carona

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to deregulation of certain telecommunications markets and  
1-11 companies.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 52.002, Utilities Code, is amended by  
1-14 adding Subsection (c) to read as follows:

1-15 (c) The commission may not require a telecommunications  
1-16 utility that is not a public utility, including a deregulated or  
1-17 transitioning company, to comply with a requirement or standard  
1-18 that is more burdensome than a requirement or standard the  
1-19 commission imposes on a public utility.

1-20 SECTION 2. Subsection (b), Section 54.251, Utilities Code,  
1-21 is amended to read as follows:

1-22 (b) Except as specifically determined otherwise by the  
1-23 commission under this subchapter or Subchapter G of this chapter,  
1-24 and except as provided by Subchapters C and D, Chapter 65, the  
1-25 holder of a certificate of convenience and necessity[, or the  
1-26 holder of a certificate of operating authority issued under Chapter  
1-27 65,] for an area has the obligations of a provider of last resort  
1-28 regardless of whether another provider has a certificate of  
1-29 operating authority or service provider certificate of operating  
1-30 authority for that area.

1-31 SECTION 3. Section 54.3015, Utilities Code, is amended to  
1-32 read as follows:

1-33 Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter  
1-34 applies to a transitioning company [~~holder of a certificate of~~  
1-35 ~~operating authority issued~~] under Chapter 65 in relation to its  
1-36 regulated exchanges in the same manner and to the same extent this  
1-37 subchapter applies to a holder of a certificate of convenience and  
1-38 necessity.

1-39 SECTION 4. Subsection (d), Section 56.023, Utilities Code,  
1-40 is amended to read as follows:

1-41 (d) The commission shall adopt rules for the administration  
1-42 of the universal service fund and this chapter and may act as  
1-43 necessary and convenient to administer the fund and this chapter.  
1-44 The rules must include procedures to ensure reasonable transparency  
1-45 and accountability in the administration of the universal service  
1-46 fund.

1-47 SECTION 5. Subchapter B, Chapter 56, Utilities Code, is  
1-48 amended by adding Section 56.032 to read as follows:

1-49 Sec. 56.032. SUPPORT AVAILABLE TO DEREGULATED MARKETS.

1-50 (a) An incumbent local exchange company may not receive support  
1-51 from the universal service fund for a deregulated market that has a  
1-52 population of at least 30,000.

1-53 (b) An incumbent local exchange company may receive support  
1-54 from the universal service fund for a deregulated market that has a  
1-55 population of less than 30,000 only if the company demonstrates to  
1-56 the commission that the company needs the support to provide basic  
1-57 local telecommunications service at reasonable rates in the  
1-58 affected market. A company may use evidence from outside the  
1-59 affected market to make the demonstration.

1-60 (c) An incumbent local exchange company may make the  
1-61 demonstration described by Subsection (b) in relation to a market  
1-62 before submitting a petition to deregulate the market.

1-63 SECTION 6. Section 65.051, Utilities Code, is amended to

2-1 read as follows:

2-2 Sec. 65.051. MARKETS DEREGULATED. A market that is  
 2-3 deregulated as of September 1, 2011, shall remain deregulated.  
 2-4 Notwithstanding any other provision of this title, the commission  
 2-5 may not reregulate a market or company that has been deregulated  
 2-6 [~~(a) Except as provided by Subsection (b), all markets of all~~  
 2-7 ~~incumbent local exchange companies are deregulated on January 1,~~  
 2-8 ~~2006, unless the commission determines under Section 65.052(a) that~~  
 2-9 ~~a market or markets should remain regulated.~~

2-10 [~~(b) A market of an incumbent local exchange company in~~  
 2-11 ~~which the population in the area included in the market is less than~~  
 2-12 ~~30,000 is deregulated on January 1, 2007, unless the commission~~  
 2-13 ~~determines under Section 65.052(f) that the market should remain~~  
 2-14 ~~regulated].~~

2-15 SECTION 7. Subsections (a), (b), and (c), Section 65.052,  
 2-16 Utilities Code, are amended to read as follows:

2-17 (a) An incumbent local exchange company may petition the  
 2-18 commission to deregulate a market of the company that the  
 2-19 commission previously determined should remain regulated.  
 2-20 Notwithstanding any other provision of this title, only the  
 2-21 incumbent local exchange company may initiate a proceeding to  
 2-22 deregulate one of the company's markets. Not later than the 90th  
 2-23 day after the date the commission receives the petition, [~~Except as~~  
 2-24 ~~provided by Subsection (f),~~] the commission shall:

2-25 (1) determine whether the regulated [~~each~~] market [~~of~~  
 2-26 ~~an incumbent local exchange company] should remain regulated [~~on~~~~  
 2-27 ~~and after January 1, 2006]; and~~

2-28 (2) issue a final order classifying the market  
 2-29 [~~company~~] in accordance with this section [~~effective January 1,~~  
 2-30 ~~2006].~~

2-31 (b) In making a determination under Subsection (a), the  
 2-32 commission may not determine that a market should remain regulated  
 2-33 if:

2-34 (1) the population in the area included in the market  
 2-35 is at least 100,000; or

2-36 (2) the population in the area included in the market  
 2-37 is [~~at least 30,000 but~~] less than 100,000 and, in addition to the  
 2-38 incumbent local exchange company, there are at least two  
 2-39 competitors operating in all or part of the market that [~~three~~  
 2-40 ~~competitors of which]:~~

2-41 (A) are unaffiliated with the incumbent local  
 2-42 exchange company [~~at least one is a telecommunications provider~~  
 2-43 ~~that holds a certificate of operating authority or service provider~~  
 2-44 ~~certificate of operating authority and provides residential local~~  
 2-45 ~~exchange telephone service in the market]; and~~

2-46 (B) provide voice communications service without  
 2-47 regard to the delivery technology, including through:

2-48 (i) Internet Protocol or a successor  
 2-49 protocol;

2-50 (ii) satellite; or

2-51 (iii) a technology used by a wireless  
 2-52 provider or a commercial mobile service provider, as that term is  
 2-53 defined by Section 64.201 [~~at least one is an entity providing~~  
 2-54 ~~residential telephone service in the market using facilities that~~  
 2-55 ~~the entity or its affiliate owns; and~~

2-56 [~~(C) at least one is a provider in that market of~~  
 2-57 commercial mobile service as defined by Section 332(d),  
 2-58 Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal  
 2-59 Communications Commission rules, and the Omnibus Budget  
 2-60 Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not  
 2-61 affiliated with the incumbent local exchange company].

2-62 (c) If the commission deregulates a market under this  
 2-63 section and the deregulation results in a regulated or  
 2-64 transitioning company no longer meeting the definition of a  
 2-65 regulated or transitioning company, the commission shall issue an  
 2-66 order reclassifying the company as a transitioning company or  
 2-67 deregulated company, as those terms are defined by Section 65.002  
 2-68 [~~The commission shall issue an order classifying an incumbent local~~  
 2-69 ~~exchange company as a deregulated company that is subject to~~

3-1 Subchapter C if:

3-2 ~~[(1) the company does not have any markets in which the~~  
3-3 ~~population in the area included in the market is less than 30,000;~~  
3-4 ~~and~~

3-5 ~~[(2) the commission does not determine that a market~~  
3-6 ~~of the company should remain regulated on and after January 1,~~  
3-7 ~~2006].~~

3-8 SECTION 8. Subsection (a), Section 65.102, Utilities Code,  
3-9 is amended to read as follows:

3-10 (a) A deregulated company that holds a certificate of  
3-11 operating authority issued under this subchapter:

3-12 (1) is a nondominant carrier governed in the same  
3-13 manner as a holder of a certificate of operating authority issued  
3-14 under Chapter 54;

3-15 (2) is not required to:

3-16 (A) fulfill the obligations of a provider of last  
3-17 resort;

3-18 (B) comply with retail quality of service  
3-19 standards or reporting requirements;

3-20 (C) file an earnings report with the commission  
3-21 unless the company is receiving support from the Texas High Cost  
3-22 Universal Service Plan; or

3-23 (D) comply with a pricing requirement other than  
3-24 a requirement prescribed by this subchapter; and

3-25 (3) ~~[, except that the deregulated company:~~

3-26 ~~[(1) retains the obligations of a provider of last~~  
3-27 ~~resort under Chapter 54,~~

3-28 ~~[(2)]~~ is subject to the following provisions in the  
3-29 same manner as an incumbent local exchange company that is not  
3-30 deregulated:

3-31 (A) Sections 54.156, 54.158, and 54.159;

3-32 (B) Section 55.012; and

3-33 (C) Chapter 60~~[, and~~

3-34 ~~[(3) may not increase the company's rates for~~  
3-35 ~~stand-alone residential local exchange voice service before the~~  
3-36 ~~date that the commission has the opportunity to revise the monthly~~  
3-37 ~~per line support under the Texas High Cost Universal Service Plan~~  
3-38 ~~pursuant to Section 56.031, regardless of whether the company is an~~  
3-39 ~~electing company under Chapter 58].~~

3-40 SECTION 9. Section 65.151, Utilities Code, is amended to  
3-41 read as follows:

3-42 Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING  
3-43 COMPANY. (a) Except as provided by Subsection (b), a [A]  
3-44 transitioning company is governed by this subchapter and the  
3-45 provisions of this title that applied to the company immediately  
3-46 before the date the company was classified as a transitioning  
3-47 company. If there is a conflict between this subchapter and the  
3-48 other applicable provisions of this title, this subchapter  
3-49 controls.

3-50 (b) A transitioning company is not required to fulfill the  
3-51 obligations of a provider of last resort in a deregulated market.

3-52 SECTION 10. Subsection (b), Section 65.152, Utilities Code,  
3-53 is amended to read as follows:

3-54 (b) A transitioning company may not be required to:

3-55 (1) comply with [exchange-specific] retail quality of  
3-56 service standards or reporting requirements in a market that is  
3-57 deregulated; or

3-58 (2) file an earnings report with the commission unless  
3-59 the company is receiving support from the Texas High Cost Universal  
3-60 Service Plan.

3-61 SECTION 11. Subchapter D, Chapter 65, Utilities Code, is  
3-62 amended by adding Sections 65.154 and 65.155 to read as follows:

3-63 Sec. 65.154. RATE AND PRICE REQUIREMENTS NOT APPLICABLE.

3-64 (a) A transitioning company is not required to comply with the  
3-65 following requirements prescribed by this title on submission of a  
3-66 written notice to the commission:

3-67 (1) a direct or indirect requirement to price a  
3-68 residential service at, above, or according to the long-run  
3-69 incremental cost of the service or to otherwise use long-run

4-1 incremental cost in establishing prices for residential services;  
4-2 or  
4-3 (2) a requirement to file with the commission a  
4-4 long-run incremental cost study for residential or business  
4-5 services.

4-6 (b) Notwithstanding Subsection (a), a transitioning company  
4-7 may not:  
4-8 (1) establish a retail rate, price, term, or condition  
4-9 that is anticompetitive or unreasonably preferential, prejudicial,  
4-10 or discriminatory;

4-11 (2) establish a retail rate for a basic or non-basic  
4-12 service in a deregulated market that is subsidized either directly  
4-13 or indirectly by a basic or non-basic service provided in an  
4-14 exchange that is not deregulated; or

4-15 (3) engage in predatory pricing or attempt to engage  
4-16 in predatory pricing.

4-17 (c) A rate or price for a basic local telecommunications  
4-18 service is not anticompetitive, predatory, or unreasonably  
4-19 preferential, prejudicial, or discriminatory if the rate or price  
4-20 is equal to or greater than the rate or price in the transitioning  
4-21 company's tariff for that service in effect on the date the  
4-22 transitioning company submits notice to the commission under  
4-23 Subsection (a).

4-24 (d) This section, including Subsection (a)(1), does not  
4-25 affect:

4-26 (1) other law or legal standards governing predatory  
4-27 pricing or anticompetitive conduct; or

4-28 (2) an infrastructure commitment under Chapter 58 or  
4-29 59.

4-30 Sec. 65.155. COMPLAINT BY AFFECTED PERSON. (a) An  
4-31 affected person may file a complaint at the commission challenging  
4-32 whether a transitioning company is complying with Section  
4-33 65.154(b).

4-34 (b) Notwithstanding Section 65.154(a)(2), the commission  
4-35 may require a transitioning company to submit a long-run  
4-36 incremental cost study for a business service that is the subject of  
4-37 a complaint submitted under Subsection (a).

4-38 SECTION 12. Subsections (d), (e), and (f), Section 65.052,  
4-39 and Sections 65.054 and 65.055, Utilities Code, are repealed.

4-40 SECTION 13. (a) In this section, "commission" means the  
4-41 Public Utility Commission of Texas.

4-42 (b) Not earlier than January 2, 2012, the commission shall  
4-43 initiate one or more proceedings to review and evaluate whether the  
4-44 universal service fund accomplishes the fund's purposes, as  
4-45 prescribed by Section 56.021, Utilities Code, or whether changes  
4-46 are necessary to accomplish those purposes.

4-47 (c) The commission has all authority necessary to conduct  
4-48 the review, including determining issues relevant to each  
4-49 telecommunications provider's need for universal service fund  
4-50 support, adjusting monthly per line support amounts under Section  
4-51 56.031, Utilities Code, and implementing any other changes it  
4-52 determines are necessary and in the public interest.

4-53 (d) Notwithstanding Subsection (b), Section 56.024,  
4-54 Utilities Code, a party to a commission proceeding examining the  
4-55 universal service fund is entitled to access confidential  
4-56 information provided to the commission under Subsection (a),  
4-57 Section 56.024, Utilities Code, if a protective order is issued for  
4-58 the confidential information in the proceeding.

4-59 (e) The commission shall complete the proceeding or  
4-60 proceedings required by this section and issue any associated  
4-61 orders not later than November 1, 2012. The commission shall  
4-62 provide to the legislature a copy of any findings or orders issued  
4-63 under this section.

4-64 SECTION 14. (a) Except as provided by Subsection (b) of  
4-65 this section, this Act takes effect September 1, 2011.

4-66 (b) Sections 56.032, 65.154, and 65.155, Utilities Code, as  
4-67 added by this Act, take effect January 2, 2012.

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