

## **BILL ANALYSIS**

Senate Research Center

S.B. 583  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 1987, the 70th Legislature established the Texas Universal Service Fund (TUSF), the Texas equivalent of the Federal Universal Service Fund. The concept of universal service is that all citizens should have access to basic telecommunication services. Originally, long-distance rates subsidized rural local rates, which generally have a higher cost to provide services. Once telecommunication markets became open to competition this method became unsustainable and inefficient and subsidies are now made explicitly through a surcharge. TUSF exists outside the treasury and is authorized by Chapter 56 (Telecommunications Assistance and Universal Service Fund), Utilities Code. Overall support is provided on a per-line, competitively neutral basis, meaning that if the customer chooses another telecommunications provider, that line's support follows the customer to the new company.

The federal government recently reduced universal service funding and shifted its focus to broadband. Furthermore, while universal service funding is meant to ensure that rates in rural areas are not significantly higher than in urban areas, Texas has seen urban area rates that are higher than rural rates.

In order for TUSF to best serve its intended purpose, S.B. 583 establishes a needs test for TUSF so that after December 1, 2016, no company or cooperative with more than 31,000 access lines is eligible for support in an exchange that has two voice providers. This is the same competitor created by S.B. 980, 82nd Legislature, Regular Session, 2011, for deregulation. S.B. 583 also provides a safety net for companies and cooperatives to petition the Public Utility Commission of Texas for support in areas with no unsubsidized competitor that have financial need. The bill states that companies with 31,000 access lines or fewer that are not electing companies under Chapter 58 or 59 may continue to get the support they need. Finally, S.B. 583 eliminates TUSF support for business lines after December 31, 2016.

S.B. 583 amends current law relating to eligibility for support from the universal service fund.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 56.023, Utilities Code), SECTION 3 (Section 56.025, Utilities Code), and SECTION 7 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 56.023, Utilities Code, by amending Subsection (b) and adding Subsections (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q), as follows:

(b) Requires that the eligibility criteria require that a telecommunications provider, in compliance with the Public Utility Commission of Texas's (PUC) quality of service requirements:

(1) offer service to each consumer within an exchange in the company's certificated area for which the incumbent local exchange company receives support under a plan established under Section 56.021(1) (relating to requiring PUC to adopt and enforce rules requiring local exchange companies to establish a

universal service fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas under certain plans) and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F (Service to Uncertificated Area); and

(2) render continuous and adequate service within an exchange in the company's certificated area for which the incumbent local exchange company receives support under a plan established under Section 56.021(1) and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F.

(f) Provides that except as provided by Subsection (g), for an incumbent local exchange company or cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such a company or cooperative, the support that the company or cooperative is eligible to receive on December 31, 2016, under a plan established under Section 56.021(1)(A) (relating to requiring PUC to adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas under the Texas High Cost Universal Service Plan) is reduced:

(1) on January 1, 2017, to 75 percent of the level of support the company or cooperative is eligible to receive on December 31, 2016;

(2) on January 1, 2018, to 50 percent of the level of support the company or cooperative is eligible to receive on December 31, 2016; and

(3) on January 1, 2019, to 25 percent of the level of support the company or cooperative is eligible to receive on December 31, 2016.

(g) Authorizes an incumbent local exchange company or cooperative that is subject to Subsection (f), after PUC has adopted rules under Subsection (j), to petition PUC to initiate a contested case proceeding as necessary to determine the eligibility of the company or cooperative to receive support under a plan established under Section 56.021(1)(A). Prohibits a company or cooperative from filing more than one petition under this subsection. Requires PUC, on receipt of a petition under this subsection, to initiate a contested case proceeding to determine the eligibility of the company or cooperative to receive continued support under a plan established under Section 56.021(1)(A) for service in the exchanges that are the subject of the petition. Requires the company or cooperative to demonstrate that it has a financial need for continued support to be eligible to receive support for service in an exchange under this subsection. Requires PUC to issue a final order on the proceeding not later than the 330th day after the date the petition is filed with PUC. Entitles the company or cooperative to receive the total amount of support the company or cooperative was eligible to receive on the date the company or cooperative filed the petition until PUC issues a final order on the proceeding. Provides that a company or cooperative that files a petition under this subsection is not subject to Subsection (f) after PUC issues a final order on the proceeding. Requires PUC to set the amount of support in the same proceeding if PUC determines that a company or cooperative has demonstrated financial need for continued support under this subsection. Prohibits the amount of support set by PUC for an exchange under this subsection from exceeding:

(1) 100 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2016, if the petition is filed before January 1, 2016;

(2) 75 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2016, if the petition is filed on or after January 1, 2016, and before January 1, 2017;

(3) 50 percent of the amount of support the company or cooperative is eligible to receive on December 31, 2016, if the petition is filed on or after January 1, 2017, and before January 1, 2018; or

(4) 25 percent of the amount of support that the company or cooperative is eligible to receive on December 31, 2016, if the petition is filed on or after January 1, 2018, and before January 1, 2019.

(h) Provides that except as provided by Subsection (i), for an incumbent local exchange company that is an electing company under Chapter 58 (Incentive Regulation) or 59 (Infrastructure Plan) or a cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such a company or cooperative, the support that the company or cooperative is eligible to receive on December 31, 2017, under a plan established under Section 56.021(1)(B) (relating to requiring PUC to adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas under the Small and Rural Incumbent Local Exchange Company Universal Service Plan) is reduced:

(1) on January 1, 2018, to 75 percent of the level of support the company or cooperative is eligible to receive on December 31, 2017;

(2) on January 1, 2019, to 50 percent of the level of support the company or cooperative is eligible to receive on December 31, 2017; and

(3) on January 1, 2020, to 25 percent of the level of support the company or cooperative is eligible to receive on December 31, 2017.

(i) Authorizes an incumbent local exchange company or cooperative that is subject to Subsection (h), after PUC has adopted rules under Subsection (j), to petition PUC to initiate a contested case proceeding as necessary to determine the eligibility of the company or cooperative to receive support under a plan established under Section 56.021(1)(B). Prohibits a company or cooperative from filing more than one petition under this subsection. Requires PUC, on receipt of a petition under this subsection, to initiate a contested case proceeding to determine the eligibility of the company or cooperative to receive continued support under a plan established under Section 56.021(1)(B) for service in the exchanges that are the subject of the petition. Requires the company or cooperative to demonstrate that it has a financial need for continued support to be eligible to receive support for service in an exchange under this subsection. Requires PUC to issue a final order on the proceeding no later than the 330th day after the date the petition is filed with PUC. Requires the company or cooperative to continue to receive the total amount of support it was eligible to receive on the date the company or cooperative filed a petition under this subsection until PUC issues a final order on the proceeding. Provides that a company or cooperative that files a petition under this subsection is not subject to Subsection (h) after PUC issues a final order on the proceeding. Requires PUC to set the amount of support in the same proceeding if PUC determines that a company or cooperative has demonstrated financial need for continued support under this subsection. Prohibits the amount of support set by PUC for an exchange under this subsection from exceeding:

(1) 100 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2017, if the petition is filed before January 1, 2017;

(2) 75 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2017, and before January 1, 2018;

(3) 50 percent of the amount of support that the company or cooperative is eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2018, and before January 1, 2019; or

(4) 25 percent of the amount of support that the company or cooperative is eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2019, and before January 1, 2020.

(j) Requires PUC by rule to establish the standards and criteria for an incumbent local exchange company or cooperative to demonstrate under Subsection (g) or (i) that the company or cooperative has a financial need for continued support for residential and business lines under a plan established under Section 56.021(1).

(k) Provides that Subsections (g) and (i) do not authorize PUC to initiate a contested case hearing concerning a local exchange company that has elected to participate in a total support reduction plan under 16 T.A.C. Section 26.403 that requires the company to forego funding under a plan established under Section 56.021(1) after January 1, 2017. Provides that this section does not affect any obligation of a local exchange company subject to such a total support reduction plan.

(l) Provides that Subsections (f), (g), (h), and (i) do not apply to an incumbent local exchange company that elects, not later than March 1, 2014, to eliminate, not later than September 1, 2018, the support it receives under a plan established under Section 56.021(1).

(m) Provides that nothing in this chapter relieves any party of an obligation entered into in PUC's Docket No. 40521.

(n) Provides that nothing in this section is intended to affect the rate rebalancing proceeding in PUC's Docket No. 41097.

(o) Provides that notwithstanding the provisions of this chapter (Telecommunications Assistance and Universal Service Fund), PUC has no authority, except as provided by Subsections (f), (g), (h), (i), (j), (k), (m), and (n) to reduce support provided to an incumbent local exchange company that is an electing company under Chapter 58 or 59 or is a cooperative that served greater than 31,000 access lines in this state on September 1, 2013:

(1) under a plan established under Section 56.021(1)(A) before January 1, 2019;  
or

(2) under a plan established under Section 56.021(1)(B) before January 1, 2020.  
Provides that this subsection expires on January 2, 2020.

(p) Prohibits a plan established under Section 56.021(1), if an incumbent local exchange company or cooperative is ineligible for support under a plan established under Section 56.021(1) for services in an exchange, from providing support to any other telecommunications providers for services in that exchange, except that an eligible telecommunications provider that is receiving support under Section 56.021(1)(A) in that exchange is required to continue to receive such support for a 24-month period following the date the incumbent local exchange provider or cooperative ceases receiving support in that exchange. Requires that the support received by the eligible telecommunications provider during the 24-month period be at the same monthly per line support level in effect for that exchange as of the date the incumbent local exchange provider or cooperative ceases receiving funding in that exchange.

(q) Entitles the telecommunications provider to continued support through December 31, 2017, at the same monthly per-line support amount as the provider is receiving as of the date the support ceases for that exchange for the incumbent local exchange company or cooperative, notwithstanding the period for continued support specified by Subsection

(p), if the eligible telecommunications provider receiving continued support under that subsection is a cooperative or an affiliate of a cooperative. Provides that support authorized under this subsection ceases December 31, 2017.

SECTION 2. Amends Section 56.024, Utilities Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Provides that a report or information PUC requires a telecommunications provider to provide under Subsection (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) is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(c) Requires a telecommunications provider to file with PUC the provider's annual earnings report if the provider:

(1) is not a local exchange company subject to a total support reduction plan under 16 T.A.C. Section 26.403 or that has made an election under Section 56.023(l);

(2) serves greater than 31,000 access lines; and

(3) receives support under a plan established under Section 56.021(1).

(d) Provides that a report filed under Subsection (c) is confidential and not subject to disclosure under Chapter 552, Government Code.

SECTION 3. Amends Section 56.025, Utilities Code, by amending Subsection (a) and adding Subsection (g), as follows:

(a) Provides that in addition to the authority provided by Section 56.021:

(1) for each local exchange company that serves fewer than 31,000 access lines and each cooperative, PUC is authorized to adopt a mechanism necessary to maintain reasonable rates for local exchange telephone service; and

(2) for each local exchange company and each cooperative that serves 31,000 or fewer access lines and that on June 1, 2013, is not an electing company under Chapter 58 or 59, PUC is required to adopt rules to expand the universal service fund in the circumstances prescribed by this section.

Makes nonsubstantive changes.

(g) Prohibits PUC, notwithstanding any other provision of this section, after December 31, 2013, from distributing support granted under this section, including any support granted before that date, to a local exchange company or cooperative that serves greater than 31,000 access lines or that is an electing company under Chapter 58 or 59 on June 1, 2013.

SECTION 4. Amends Section 56.026, Utilities Code, as follows:

Sec. 56.026. New heading: PROMPT AND EFFICIENT DISBURSEMENTS. Deletes existing Subsection (a) providing that a revenue requirement showing is not required for a disbursement from the universal service fund under this subchapter. Deletes existing Subsection (b) designation and makes no further change to this section.

SECTION 5. Amends Sections 56.032(b), (c), (d), (e), (f), and (h), Utilities Code, as added by Chapter 535 (H.B. 2603), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

(b) Authorizes PUC, except as provided by Subsections (d) and (e), rather than Subsections (c), (d), (e), and (f), to revise the monthly support amounts to be made available from the Small and Rural Incumbent Local Exchange Company Universal Service Plan by any mechanism, including support reductions resulting from rate rebalancing approved by PUC, rather than by revising the monthly per line support amounts, after notice and an opportunity for hearing. Requires PUC to consider the adequacy of basic rates to support universal service in determining appropriate monthly support amounts, rather than in determining appropriate monthly per line support amounts.

(c) Entitles a company that receives frozen monthly support amounts as prescribed by a final order issued by PUC in PUC's Docket No. 39643 to continue to receive that monthly support until the support is revised under Subsection (b). Deletes existing text requiring PUC to disburse funds in a certain way on the written request of a small or rural incumbent local exchange company that receives monthly per line support amounts and authorizing a company to submit only one request under this subsection and requiring the request submission on or before December 31, 2011.

(d) Requires PUC to annually set the company's monthly support amounts for the following 12 months by dividing by 12 the annualized support amount calculated under this subsection for each small or rural incumbent local exchange company, rather than on the written request of a small or rural incumbent local exchange company, that is not receiving frozen support amounts as described by Subsection (c) and is not an electing company under Chapter 58 or 59. Requires PUC to calculate the annualized amount:

(1) for the initial 12-month period for which a company makes an election under this subsection, by determining the annualized support amount received by the company as of January 1, 2013; and

(2) for subsequent 12-month periods, by adjusting the most recent annualized support amount calculated by PUC by a factor equal to the percentage change in the consumer price index for the most recent 12-month period.

Deletes existing text requiring PUC to calculate the annualized amount for the initial 12-month period for which a company makes an election under this subsection, by determining the annualized support amount calculated for the requestor in the final order issued by PUC in Docket No. 18516 and adjusting that support amount at the beginning of each calendar year by a factor equal to the most recent consumer price index published at that time, beginning with the 1999 calendar year and ending in the year the company makes an election under this subsection; and through certain methods for the 12-month period following the initial period for which a company made an election under this subsection.

(e) Authorizes PUC, on its own motion or on the written request of the company, rather than if a company elects to receive monthly support amounts under Subsection (d), to initiate a proceeding to recalculate the most recent annualized support amount to be used as the basis for adjustment for a subsequent 12-month period under Subsection (d)(2).

(f) Deletes existing text requiring PUC to administratively review requests filed under Subsections (c) and (d). Requires PUC, except for good cause, to establish monthly support amounts under Subsection (d) not later than the 60th day after the date PUC determines the company is eligible, rather than requiring PUC to approve the request not later than the 60th day after the date PUC determines the company is eligible and has met all the procedural requirements under this subchapter.

(h) Provides that Subsections (a), (c), (d), (e), and (f) and any monthly support amount approved under those subsections expire September 1, 2017, rather than providing that this section and any monthly support amount approved under this section expire on September 1, 2013.

SECTION 6. Repealer: Section 3 (relating to amending Section 56.031 (Adjustments), Utilities Code, effective September 1, 2013), Chapter 535 (H.B. 2603), Acts of the 82nd Legislature, Regular Session, 2011, Utilities Code.

SECTION 7. Requires PUC to adopt rules under Section 56.023(j), Utilities Code, as added by this Act, not later than December 1, 2014. Requires PUC to initiate the rulemaking proceeding not later than January 1, 2014.

SECTION 8. Effective date: June 1, 2013, or the 91st day after the last day of the legislative session.