SUBJECT: Telecommunications regulation and competition

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 15 ayes — Wolens, S. Turner, Alvarado, Bailey, Brimer, Counts, Craddick, Danburg, Hilbert, Hunter, D. Jones, Longoria, Marchant, McCall, Merritt

0 nays

SENATE VOTE: On final passage, April 16 — 30-0

WITNESSES: *(On working committee draft, April 29:)*
For — Neal R. Larsen, MCI Worldcom; Ann Arnold, Texas Association of Broadcasters; David Cole, Southwestern Bell Telephone; Joe D. Gunn, AFL-CIO; D.L. "Dally" Willis, Texas Political and Legislative Committee, Communications Workers of America

Against — W.D. Arnold, Texas Cable and Telecommunications Association; Edwin Rutan and Michael Jewell, AT&T; Janee Briesemeister, Consumers Union; Sheila Holbrook-White, American Association of Retired Persons; Royce J. Holland, Allegiance Telecom; Nancy Krabill, Nestlink; Kelsi Reeves, Time Warner Telecom; David Turetsky, Teligent

On — Judy Walsh and Pat Wood III, Public Utility Commission of Texas

(On working committee draft, May 3:)
For — David Cole, Southwestern Bell Telephone

Against — Sue Ann Harting, City of Greenville; Sheila Holbrook-White, Texas Citizen Action; Chad Kissinger, Texas Internet Service Providers Association; Charles Land, TEXALTEL; Gwen Rowling, Westel; Russell Morgan, AT&T; Kelsi Reeves, Time Warner Telecom and CLEL Coalition; David McCalla

On — Ron Kessler, American Electronics Association; Suzi McClellan, Office of Public Utility Counsel

(On CSSB 560, May 18:)
For — Ron Kessler, Belo Corp.

Against — Royce Holland, Allegiance Telecom; Michael Jewell and Ed Rutan, AT&T

On — Pat Wood III, Public Utility Commission of Texas

BACKGROUND: The 1995 revisions to the Texas Public Utility Regulatory Act (PURA 95) and the Federal Telecommunications Act of 1996 mandated that monopoly power in local-exchange telephone service established by government regulation be ended and the market opened to competition.

Incumbent local telephone service providers, principally Southwestern Bell Telephone (SWB) and GTE Southwest (GTE), were ordered by these two laws to allow new companies seeking to enter the market to connect with their networks of telephone lines, switches, and other infrastructure in order to provide local service.

Many new potential competitors already have been granted licenses to provide service in the local market. However, there is little real incentive for the incumbent local-exchange carriers (ILECs) to negotiate agreements that ultimately pave the way for competing local-exchange carriers to take their customers away.

Legislation approved in 1995 allowed the ILECs to elect to cap their rates and prohibited the Public Utility Commission (PUC) from reducing rates for four years. The cap will expire on September 1, 1999. The expectation was that the market would be sufficiently competitive by the time the rate freeze ended, and that from that point forward, rates would be set at reasonable levels by market forces rather than by regulation. However, in 1997, whether measured in terms of the number of access lines, revenues, or the number of residential or business customers, SWB and GTE retained more than 98 percent of the local phone service market.

POINT BY POINT ANALYSIS:

SUMMARY DIGEST

CSSB 560 would build on current law written to open local telephone service to competition by setting ground rules for fair billing and pricing, consumer protection measures, and access rates charged to long-distance companies.

The bill would declare that it is state policy to ensure that all customers, including low-income customers and those living in rural and other high-cost areas, have access to telecommunications and information services at reasonably comparable prices for similar services.

The PUC could review, compare, and evaluate the availability, pricing, and convergence of telecommunications and information services, including cable, wireless, and advanced telecommunications and information services. The PUC would have to report its recommendations on these issues to the Legislature by January 1, 2001.

The PUC would have express authority to make and enforce rules necessary to protect customers consistent with the public interest. The bill would:

- declare that telephone services, including cable, wireless, and advanced telecommunications service, must be priced reasonably for all customers;
- set parameters for introducing and pricing new telecommunications services, as well as promotions for existing services;
- prohibit predatory, anticompetitive pricing, or discounting practices, including special contracts;
- establish rules for clear and understandable telephone bills and prohibit "cramming," or the adding of unauthorized charges to customers' bills;
- cap basic local service rates for business and residential customers of the largest local phone service providers through September 1, 2005;
- prohibit "slamming," or the unauthorized switching of customers from one company to another;
- prohibit excessive long-distance access charges; and
- repeal requirements that companies competing with ILECs make major investments in new facilities and infrastructure.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

ACCESS CHARGES

BACKGROUND: For decades, government policy in setting local and long-distance telephone rates has been aimed at ensuring basic, affordable telephone service to all customers (universal service), regardless of whether they live in urban or rural areas and regardless of income.

Long-distance companies pay access charges to local companies for the costs of handling each long-distance call. These charges have been used to subsidize local and rural service and to keep these prices low. Long-distance companies pass the costs of access charges on to their retail customers.

Because the rates of long-distance companies are not regulated in Texas, under current law the PUC has no power to order those companies to pass on any reduction in long-distance access charges equally to all customers.

Access charges. CSSB 560 would prohibit excessive access charges. Under the bill, competing local-exchange carriers could not charge long-distance providers higher access rates than the prevailing rates charged by ILECs unless approved by the PUC. The PUC would have to review the reasonableness of these charges compared with rates charged by all local incumbent telephone service providers.

Access charge reduction pass-through. The bill would require long-distance companies handling more than 6 percent of intrastate long-distance service access minutes to pass the benefits of any access-charge reductions through to customers. Residential customers would have to receive a proportionate share of the rate reduction. Each company would have to submit a compliance report to the PUC every six months. The new rules would be repealed two years after the incumbent local phone service companies no longer were prohibited by federal law from offering interregional and interstate long-distance service.

Switched access rates. CSSB 560 would require a company electing to be under incentive regulation (see below) with more than five million access lines (SWB) to reduce its switched access rates in effect on September 1, 1999. Access rates would have to be reduced by 1 cent on September 1, 1999, and by an additional 2 cents by July 1, 2000, or when the Federal

Communications Commission (FCC) allowed the incumbent into the long-distance market, whichever came first.

Access-charge rate caps. A company electing to be under incentive regulation could not increase access rates above the mandatory rate reductions plus reductions related to the Universal Service Fund (see below). CSSB 560 would allow companies voluntarily to reduce access charges as long as they remained above a floor for the long-run incremental costs of access charges.

The PUC would have to prepare and deliver a report on access rates to the Legislature by January 1, 2001.

Supporters say: SB 560 would mandate access-charge reductions for in-state long-distance calls, benefitting consumers. Incumbent companies should not profit from access charges. Rather, they should reduce those charges to reflect the true cost of access to the local network. Since current access rates were set many years ago, access rates by now also may include substantial additional profits for local companies.

Access charges are higher on calls from region to region within Texas (about 12 to 13 cents per minute for SWB and GTE) than for calls to someone outside Texas (about 2 to 5 cents per minute). Of the total 12-cent-per-minute rate charged, the actual cost of providing access is about 1 cent per minute. The 11-cent-per-minute difference goes to subsidize rural telephone service, keep residential rates low, and add profits for local companies. It is unfair to force long-distance customers and long-distance companies to shoulder the burden for these subsidies.

Opponents say: CSSB 560 would not reduce access charges effectively for consumers. While SWB and GTE would reduce access rates charged to long-distance companies, the bill's flow-through provisions would not guarantee a consumer rate reduction. Access rates traditionally have subsidized local telephone rates, keeping Texas' local rates among the lowest in the country. That is the real benefit to the consumer.

For example, in rural areas, the actual cost of providing service can exceed $100 per month per line. Furthermore, Texas' local residential rates are about

70 percent of the national average. These subsidies are needed and crucial to ensure fair and reasonable prices for both rural and urban Texans.

Even if the flow-through requirements in CSSB 560 would be enforceable, not all consumers would benefit. In a typical month, less than half of SWB's residential customers place any of the in-state long-distance calls that would require access service.

Other opponents say: The rate reductions would not go far enough, as the true cost of access is only 1 cent.

INCENTIVE REGULATION

BACKGROUND: Under current law, companies may choose whether they want to remain under traditional rate-of-return regulation, as provided by the PUC for years, or be under incentive regulation. Incentive regulation provides a framework for orderly transition from rate-of-return regulation to a fully competitive market.

Rate caps. Under CSSB 560, the four-year rate cap on basic local service provided by companies under incentive regulation would run through September 1, 2005. After that, a company could increase rates on basic services with PUC approval, if this would be consistent with universal affordable service.

Elective incentive regulation. By January 1, 2004, the PUC would have to begin reviewing the progress of companies that had elected incentive regulation. By January 1, 2005, the PUC would have to report to the Legislature on whether to revise, extend, replace, or eliminate the incentive regulation laws.

CSSB 560 would allow only companies with fewer than five million access lines (GTE) to cease being under incentive regulation for causes beyond the company's control. A company under incentive regulation could renew its elective status every two years. Otherwise, only the PUC or the Legislature could remove a company from elective status.

PRICES AND SERVICES

BACKGROUND: PURA 95 set up a structure under which deregulation will be phased in gradually, service by service and market by market, as competition develops. Deregulation always raises concerns over whether former monopoly companies will retain too much power in the market as a result of name recognition and customers' inertia when it comes to changing companies. There are also concerns over natural advantages that potentially could allow incumbent companies to price some products below the cost at which rival companies could provide them.

CSSB 560 would lay the ground rules for pricing and introduction of new services to help ensure a competitive market.

New services. An incumbent local phone company could introduce a new service after giving 10 days' notice to the PUC, the Office of Public Utility Counsel (OPUC), and all competing carriers in the area. The new service would have to be priced at or above long-run incremental cost. Small local phone companies with fewer than one million access lines could use cost studies done by larger companies to establish prices for new services. Any affected person, OPUC, or the PUC could file a complaint about the price. If the complaint was upheld, the incumbent local phone company would have to adjust the price or discontinue the service.

Special notice requirements specific to SWB would expire September 1, 2003.

Pricing flexibility. The bill would allow incumbent local service providers to package services and change prices after giving 10 days' notice. Setting prices and dealing with complaints would be carried out in the same manner prescribed for pricing new services.

CSSB 560 would prohibit discounting or other forms of setting prices that would be discriminatory, predatory, or anticompetitive. Services priced at or above their long-run incremental cost would be presumed to be in compliance with regulations. Rates for regulated services would be set by the PUC. Pricing flexibility for an incumbent company could include packaging basic local phone service with any other regulated or unregulated service or with

service of an affiliate. However, incumbents would be prohibited from pricing separate or packaged services at rates below long-run costs.

Customer promotional offerings. An incumbent local phone service provider could offer a promotional price on regulated services for no more than 90 days in any 12-month period.

Advanced telecommunications services. After September 1, 2001, the bill would require both incumbents and competitors to act within 15 months to provide certain advanced telecommunications services, plus Caller ID and custom calling, in rural areas at prices that were reasonably comparable to the prices for these services provided in urban areas. An urban area would be defined as having a population greater than 190,000.

Customer-specific contracts. CSSB 560 would prohibit companies under incentive regulation (SWB and GTE) from offering special-service contracts tailored to the needs of individual customers until September 1, 2005, or until 40 percent of their customers had switched to other companies for those services, whichever came earlier. However, these companies could offer customer-specific contracts to government entities. The bill would not preclude these companies from offering customer-specific contracts allowed by law as of August 31, 1999. The affiliate of an electing company with more than five million access lines (SWB) could not use customer-specific contracts so long as the incumbent company itself could not.

Billing. CSSB 560 would require that bills for local phone companies be simplified and written so that customers could understand the reason for each charge listed. CSSB 560 would require, by March 1, 2000, simplified local billing by categorizing information into local service and related charges, optional services, and taxes.

Classification of customer services. For companies under incentive regulation, CSSB 560 would revise the current system of three categories (baskets) of services and replace it with two categories: basic services and nonbasic services. The PUC would have to determine criteria for reclassifying a particular service. Under the new system, basic service would include, among other things:

- flat-rate residential service;
- lifeline service;
- tel-assistance;
- private pay telephone access;
- call trap and trace service;
- 9-1-1 access for all residential and business customers; and
- residential call waiting.

All services not enumerated as basic would be nonbasic services. The bill would include the following among nonbasic services subject to the 2005 rate cap:

- flat-rate business telephone service;
- business tone dialing service;
- service connection for all business services;
- direct inward dialing for basic business services; and
- ISDN high-speed data lines services.

Rates for SWB's residential custom-calling features, such as call forwarding, and call-control options, such as caller ID, would be capped until mandatory access-rate reductions were implemented.

SWB services could be reclassified only after the FCC determined that SWB could enter the long-distance market or if SWB met certain requirements of Texas law.

Companies under incentive regulation would have to offer each basic service as a separately tariffed service, although they also could offer those services as part of packages.

Affiliates of incumbent companies. CSSB 560 would allow the affiliate of an incumbent local phone service provider to obtain a license to operate in the same territory. However, it would prevent the affiliate from selling to a non-affiliate any regulated product or service purchased from the incumbent at a price less than the price paid to the incumbent.

Affiliate rule. The PUC could not impose any rule on an incumbent company in regard to its interactions with an affiliate company that was more

burdensome than federal law and regulations. The PUC could not attribute an affiliate company's price discounts to the incumbent company.

Marketing. Except as otherwise prohibited by state law, federal law, or federal regulation, an incumbent company could market and sell its products and services jointly with its affiliate companies.

Supporters say: CSSB 560 would be another step toward providing competition in the Texas market for local telephone service while protecting consumers and ensuring more and better customer service. CSSB 560 would deregulate the telecommunications industry further while protecting customers from abuses during the transition.

CSSB 560 would save consumers money by capping incumbent local telephone service companies' rates on most services until 2005. It also would save consumers money by reducing long-distance access rates and by requiring the reduction to flow to the customer.

The bill contains strong measures to prevent large incumbent phone companies from taking advantage of their former monopoly position by engaging in predatory pricing, discounting, or any other anticompetitive practice.

The bill would set a floor for the prices charged by incumbent companies to prevent underpricing in an effort to drive rivals from the market. Incumbent companies would have to give 10 days' notice of new services offered, allowable price changes, or allowable promotions. The PUC would have strong monitoring tools to keep an eye on the market and take action in the event of abuses.

CSSB 560 would prevent SWB and GTE from exercising their remaining dominance by tailoring contracts to specific needs of customers and "cherry-picking" high-dollar accounts. The companies could not offer customer-specific prices until 2005 or until they clearly had lost 40 percent of their market share. The 40 percent figure represents the market loss that AT&T experienced when it was declared no longer dominant in 1993. It also is the market-share loss criterion used in electric utility restructuring legislation this session.

CSSB 560 would give companies needed flexibility to offer attractive prices and packages of services appealing to the consumer. The bill contains plenty of safeguards to prevent price undercutting in basic service when services are grouped together to benefit customers. The bill would ensure that customers of incumbent companies as well as those of their competitors could realize the same pricing and promotional savings.

SWB and GTE are competing not only with other telephone service providers but with a myriad of new companies in the fast-growing world of high technology, including cable and computer firms. They are key players and employers in the Texas economy and they need the packaging and pricing flexibility that this bill would provide to stay in business.

Competition would flourish under CSSB 560. About 70 percent of incumbent companies' prices would be capped through 2005. With the pricing flexibility allowed under the bill, less than 20 percent of services could be priced outside of the floor and ceiling. The floor price would be set at long-range incremental cost. The ceiling would be the current price rate cap. Competitors would not be subject to the same floor and ceiling prices, packaging restrictions, and prohibitions on customer-specific contracts to which incumbent companies were subject.

The PUC and OPUC could bring complaints against an electing incumbent company about pricing flexibility, pricing changes, new services, or promotional offering. This would allow action without an affected party having to complain first. Effectively, it would speed up the PUC's response time in regulating the industry to keep competition a reality.

Opponents say: The unregulated pricing flexibility granted incumbent companies in CSSB 560 would allow monopolies to stay monopolies. SWB has a 98 percent market share in the local residential market and somewhere between 85 percent and 95 percent in the business market. This bill would do very little to change those figures.

The policy embodied in PURA 95 is to encourage a diversity of telecommunications providers in a fully competitive marketplace with customer choice. By overturning current law, this bill would help delay competition.

CSSB 560 would deregulate services at a time when few customers have the power to choose among alternate providers for those services. CSSB 560 would deregulate business and nonbasic services such as caller ID and other custom-calling features before competition had gained a foothold in the Texas market. By treating all business services as competitive, SWB and GTE could lower rates in very select places in large cities and keep rates high in small towns and rural areas.

CSSB 560 would remove much of the PUC's authority to prevent anticompetitive behavior. For example, the bill would allow rates to become effective on 10 days' notice. That would not be enough time for the PUC to review a proposed rate and decide whether it was appropriate. Some rate changes would not require PUC approval. Some of the bill's provisions would limit severely the scope of review that the PUC could conduct.

Throughout the bill, references to competitive and pricing safeguards have been deleted or overridden. Although the bill would retain language to the effect that services could not be offered in an anticompetitive or discriminatory manner, it is drafted in such a way that these safeguards would be moot.

Allowing big companies to write contracts tailored to specific customers as soon as they have lost a 40 percent market share would not protect competitors sufficiently against this powerful form of maintaining customers. All forms of pricing flexibility should be delayed until the 40 percent transfer of customers has been completed.

In general, most of the provisions that competitors are concerned about in CSSB 560 are designed to allow SWB and GTE to increase revenues and diminish competitive losses through "pricing flexibility." This flexibility is intended to offset the access-charge reductions required by the bill. CSSB 560 would allow SWB and GTE to raise certain rates and to keep other rates high to subsidize their efforts to thwart local competition.

Pricing flexibility refers to a variety of marketing tools that the Legislature concluded in 1995 should not be available to a monopoly like SWB, absent true competition. In 1995, the Legislature identified five specific forms of pricing flexibility practices that could hurt competitors: customer-specific contracts; packaging of services; volume, term, and discount pricing; zone-

density pricing; and other promotional pricing. Under CSSB 560, only customer-specific pricing would be forbidden.

This bill would allow a company like SWB to offer a package of telecommunications services at a discount in combination with unrelated items like frequent flyer miles, on condition that a subscriber agreed to stay with SWB for five years. If the customer did not stay the five years, the customer would have to repay the discount and give back all the miles. With SWB holding 98 percent of residential customers, this kind of practice aimed at locking up the market would be a real threat to competition. This example is not hypothetical but reflects a proposal that SWB previously filed with the PUC that was found to be anticompetitive.

One severe flaw is the automatic presumption that a rate would not be anticompetitive as long as it was above a big phone company's long-run incremental cost of the service. This would mean only that SWB could not price a service below SWB's most efficient cost, whatever that might be. Such a price often would be lower than the cost at which a competitive provider could provide for the same service, especially when having to purchase the components necessary to provide the service from SWB itself. In short, the price floor proposed in this bill would be too low because no competitor could survive if SWB and GTE were to reduce all of their competitive prices to incremental costs.

Less than a year after the bill would take effect, GTE and SWB would be able to raise rates for all but basic residential and business telephone lines, ISDN high-speed data line service, and residential call waiting. Nothing could stop SWB and GTE from raising other rates. Rate increases would fall on areas of the state that did not yet have the ability to switch to other telephone companies.

SWB and GTE would be allowed to create unregulated affiliates to avoid regulation. The PUC's ability to develop safeguards to prevent affiliate abuses would be limited. SWB and GTE could begin to offer their services through affiliates in the same territories they now serve. The affiliate would not have to abide by the rate caps that the law required for SWB and GTE. Although an affiliate would be called a "competitive local exchange company," it would have all of the benefits of the incumbent and many opportunities to use this close relationship to ensure that a true competitor could not compete.

Under CSSB 560, new entrants would be relegated to filing a complaint with the PUC or filing an antitrust suit, either of which can be too costly and time-consuming to be effective.

Moreover, while CSSB 560 would limit the current statutory grounds for challenging a flexibly priced service or package of services, it would put the burden on the complainant to prove that a price above long-run incremental cost was illegal, rather than requiring SWB to demonstrate that it was legal.

Without CSSB 560, customers would benefit because SWB and GTE could not raise rates in an unrestricted manner. Under current law, the PUC has the authority to approve or deny rate increases for telephone services.

The fact that the current rate cap will expire in September 1999 is not a good reason to pass this legislation. PURA 95 specifically envisioned the end of the rate cap and gave the PUC explicit authority to protect against rate increases. The law also provided SWB and GTE with the mechanisms to obtain pricing flexibility for services in areas where competitive alternatives have developed sufficiently. The current law allows the PUC to reclassify services to authorize the type of pricing flexibility that is appropriate.

It is critical to the development of competition that SWB and GTE be required to conform to the rate-setting requirements in present law. Today, if SWB feels a need to reduce an overpriced rate to meet competition, it must reduce that rate region-wide or statewide. This is helpful to consumers, as competition would force rates down for all consumers, not just the few with access to market choice.

Other opponents say: The 40 percent customer transfer provision in CSSB 560 is unrealistic. In effect, the bill would allow competitors to cherry-pick the high-revenue customers, leaving incumbents as the providers of last resort for the remaining customers. Once those customers were gone, the subsidy for residential local service would disappear as well. For example, 30 percent of SWB's business customers account for 80 percent of its revenues from business customers. A flat 40 percent test for whether the market had become competitive would allow competitors to take the most profitable customers. This would encourage competitors to stay out of the less profitable residential market while aggressively pursuing the high-end business user.

CONSUMER ISSUES

Regulating the Disconnection of Phone Service

CSSB 560 would prohibit basic local service providers from disconnecting that service because of nonpayment of long-distance charges. Partial payments of bills would have to be applied first to local basic services. The bill would prohibit a company from charging less for basic local service in any package deal including long-distance service or any other service. At the request and expense of long-distance companies, a local phone company could block long-distance access by a customer with an unpaid bill. The PUC would have to adopt rules to implement the no-disconnect and long-distance blocking provisions by January 1, 2000. A provider also could discontinue basic local service due to fraudulent activities.

Lifeline and Tel-Assistance Services

BACKGROUND: Lifeline and tel-assistance are state service funds set up to help low-income telephone subscribers keep their basic telephone service. Both services provide assistance in paying bills and installation fees at reduced rates. Lifeline service as defined by the FCC includes local service, single-party service, access to emergency services, access to operator services, access to directory services, and toll limits.

CSSB 560 would prohibit a telecommunications provider from disconnecting local service for nonpayment of other services, including long distance, to customers who subscribed to lifeline or tel-assistance services. The company could block a lifeline or tel-assistance subscriber's long-distance access, except to toll-free numbers, when a long-distance charge was outstanding. When the consumer settled the debt, the company would have to unblock the service at no charge. The PUC would have to set disconnection rules.
The bill would direct the PUC and the Texas Department of Human Services to adopt rules for automatically enrolling eligible consumers into lifeline or tel-assistance services. A telecommunications company would have to offer, at no cost to lifeline or tel-assistance consumers, the options of blocking toll calls or, if technically possible, limiting toll calls.

Supporters say: CSSB 560 would protect vulnerable Texans and help low-income families by making sure basic telephone service was in place and could not be cut off if charges for additional services remained unpaid. The bill would require state agencies automatically to enroll eligible low-income telephone customers into lifeline or tel-assistance programs, allowing use of existing state-agency information to serve as a basis for eligibility.

Similar programs in states like New York have been successful in helping low-income subscribers keep their basic phone service. Automatic enrollment also makes sense in comparison to an individual program outreach campaign. Such campaigns are expensive and difficult to administer in a targeted fashion. Automatic enrollment would target the population that qualified for the program. This would ensure that the Universal Service Fund fees on local phone bills truly supported universal telephone service.

Allowing phone companies to receive reimbursement from the Universal Service Fund (see below) for lost revenue due to their expenses for lifeline programs would further help low-income subscribers. Part of federal lifeline service requires state matching dollars to provide additional rate reductions to low-income subscribers. This provision would make state eligibility guidelines, and thus dollars, match federal guidelines to attract more federal program dollars.

The access and disconnection requirements in CSSB 560 would bring state law up to FCC standards.

Opponents say: Lifeline and tel-assistance programs essentially redistribute wealth. While the programs have been in existence for a while, these changes would expand their coverage and would use the Universal Service Fund fee paid by all telephone users to pay for it.

UNIVERSAL SERVICE FUND

BACKGROUND: The Universal Service Fund (USF) is a fund used to subsidize the cost of providing basic service in rural areas at affordable rates and to reimburse local phone service providers for revenue lost because of the obligation to provide tel-assistance service for low-income and disabled

elderly persons, as well as services for the hearing-impaired and the speech-impaired. The USF provides a financial incentive to new companies to invest in rural parts of Texas that otherwise might be uneconomic to serve.

CSSB 560 would allow USF distributions to make up for reduced access rates for large companies proportionally, based on their volume of intrastate long-distance calls. USF distributions would have to offset access-rate reductions for small and rural companies in a competitively neutral manner.

CSSB 560 would entitle small incumbent companies not under incentive regulation to receive USF distributions for high-capacity service to public community institutions.

CSSB 560 would direct the PUC to use the USF to reimburse a carrier providing lifeline service as provided by federal law.

Generally, if a company electing incentive regulation reduced rates due to USF receipts, the PUC could not reduce that company's USF receipts. If, however, a rural customer switched to another provider, the original company's USF receipts could be reduced proportionally as determined by the PUC.

CUSTOMER PROTECTION

BACKGROUND: With the advent of competition in the telecommunications market, the PUC's role is changing from regulation of prices to education and protection of customers, along with oversight of the marketplace. In July 1997, the PUC created the Office of Customer Protection to handle customer complaints, monitor and provide penalties for deceptive practices, and provide educational materials.

In 1997, the Legislature enacted SB 253 by Barrientos, making it illegal for a carrier to change a customer's long-distance provider without permission, a practice called "slamming." The PUC has been active in pursuing companies that have a record for slamming.

With more choices of service, telephone bills have become longer, including charges and terms that may be hard for customers to understand. This opens

the door to adding unauthorized charges that could go unnoticed. Customers have been charged for services they did not authorize and often did not actually receive. This practice is called "cramming."

Under current law, the PUC has limited authority to regulate these practices.

Billing. CSSB 560 would require that bills for local phone companies be simplified and written so that customers could understand the reason for each charge listed. CSSB 560 would require, by March 1, 2000, simplified local billing by categorizing information into local service and related charges, optional services, and taxes.

Slamming. The bill would prohibit slamming and would:

- provide that a customer would not be liable for charges incurred during the first 30 days after the date when slamming had occurred;
- require the customer's original company to be paid what the customer would have paid if had slamming not occurred; and
- return to the customer any amount that exceeded charges that would have been billed by the original company.

The PUC would have to adopt rules to prohibit slamming, and those rules would have to be consistent with applicable federal laws and rules.

Protection of retail customers. CSSB 560 would add a new chapter 64 to the Utilities Code on protection of retail telecommunications customers. For a violation of this chapter or of chapter 55, relating to telecommunications services, a service provider could not avoid PUC penalties by taking remedial action within 30 days of receiving notice of the violation, as in current law.

The bill expressly states that it would *not*:

- abridge customer rights set forth in PUC rules in effect at the time of the bill's enactment; or
- limit the attorney general's constitutional, statutory, or common-law authority.

The PUC would have to adopt and enforce rules that would:

- ensure that customers were protected from deceptive practices designed to obtain permission to choose or switch providers;
- provide for clear identification of each provider with charges on each bill;
- ensure that every service provider submitting charges was identified clearly on the customer's bill;
- provide for remedying unauthorized changes in service at no cost to the customer within a period established by rule;
- require refunds or credits to the customer in the event of an unauthorized charge; and
- provide for penalties, including revocation of certificates or registration, for rule violations.

CSSB 560 would define the PUC's authority to deny or amend a provider's certificate or registration for repeated or reckless violations of slamming laws and rules. The PUC could prohibit a telecommunications provider from using deceptive or fraudulent practices as defined by the commission.

CSSB 560 also would establish protections against cramming. A service provider or billing agent could submit charges for new products and services only if:

- the provider had fully explained the service or product and its charges and had informed the customer explicitly that the charges would appear on the customer's telephone bill;
- the customer clearly and explicitly had authorized the new product or service and the associated charges; and
- the service provider or billing agent had provided the customer with the number of a toll-free customer service line to call and an address to which the customer could write to resolve billing disputes, and the billing agent had agreed to keep a record of the service provider's name, number, and address for at least 24 months after services were discontinued.

The service provider would have to maintain a record of the customer's consent for at least 24 months after obtaining consent and verification. A service provider could not use fraudulent, unfair, misleading, deceptive, or anticompetitive marketing practices to obtain customers and would have to cease charging a customer for unauthorized products and services if notified by the billing agent.

Services initiated by a customer's dialing would be exempt from cramming provisions if the provider kept adequate records to detail the services initiated by dialing.

Rules adopted by the PUC to enforce cramming laws would have to be consistent with and could not be more burdensome than applicable federal laws and rules.

The PUC would have authority prescribed under Utilities Code, chapter 15 to enforce the anti-cramming measures of CSSB 560. For repeated violations, the PUC could revoke a provider's certificate or registration and could order a billing utility to terminate billing services for a service provider.

Billing utility responsibilities. Within 45 days of notification of an unauthorized charge, a billing utility would have to:

- notify the service provider to stop charging the customer;
- remove any unauthorized charges from the customer's bill;
- refund or credit the customer for the unauthorized charges, including interest if not corrected within three billing cycles;
- provide upon request all billing records associated with the unauthorized charges; and
- for at least 24 months, maintain a record of all customers who had notified the utility of unauthorized charges.

A billing utility could not:

- disconnect or terminate service for nonpayment of an unauthorized charge;
- file an unfavorable credit report against a customer who did not pay charges the customer had alleged were unauthorized until the dispute was finalized; or
- interrupt or terminate local exchange service if charges were paid, unless the local-exchange provider offered prepaid local telephone service to the customer and notified eligible customers of their eligibility for this service.

Disputed charges. The service provider would have to maintain a record of every disputed charge for at least 24 months. The PUC could resolve disputes

between a retail customer and a billing utility or service provider. CSSB 560 would grant the PUC rulemaking authority over the procedures of dispute resolution. The resolution process could not take more than 60 days.

Registration and certification. The PUC would have to adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications providers. The rules would have to be consistent with and no less effective than federal law and could not require a company to disclose highly sensitive competitive or trade secret information.

The PUC could adopt and enforce rules to:

- require telecommunications companies to obtain certification or registration with the PUC;
- amend certificates or registrations to reflect changed ownership and control;
- establish rules for customer service and protection;
- suspend or revoke certificates or registrations for repeated violations of laws or rules; and
- order disconnection of a pay telephone service provider's pay telephones or revoke certification or registration for repeated violations.

The PUC could require telecommunications providers to submit reports concerning any matter over which the PUC had authority under this bill.

Customer bill of rights. Under CSSB 560, telecom consumers would be entitled to:

- protection from fraudulent, unfair, misleading, deceptive, and anticompetitive practices, including cramming;
- choice of a service provider where permitted by law;
- public information in English and Spanish;
- protection from discrimination, including unreasonable discrimination by geographic location;
- impartial and prompt resolution of disputes over cramming or slamming;
- privacy in regard to credit and consumption information;
- accurate meter readings and billing;
- clear and understandable bills;
- information on low-income assistance and deferred payment plans;

- consumer protections extended by the federal Fair Credit Reporting Act and Truth in Lending Act; and
- low-income assistance programs designed to reduce uncollectible accounts.

The PUC, with the advice of the attorney general, would have to adopt and enforce rules to enforce the customer bill or rights, including rules for minimum service standards relating to customer deposits, the extension of credit, and other aspects of service. The PUC could waive language requirements for good cause. The commission would have to coordinate enforcement efforts with the attorney general to ensure consistent treatment of specific alleged violations.

Customer awareness. CSSB 560 would require the PUC to adopt and enforce industry standards on information provided to consumers. The PUC would have to promote public awareness of telecommunications markets to help customers make informed decisions. The commission would have to develop an annual customer service report and to conduct customer awareness efforts in English, Spanish, and any other language as necessary. Each billing utility would have to give customers clear information on rates, terms, services, customer rights, and other necessary information as determined by the PUC.

Supporters say: CSSB 560 would enable the PUC to crack down on providers that bill customers for charges they have not authorized and strengthen the protections enacted last session against unauthorized switching of providers. In addition, this bill would establish a utility customer's bill of rights and the groundwork for a consumer awareness campaign.

The bill would direct the PUC to adopt rules and procedures for stopping these practices and would give the commission power to develop new rules as companies come up with new ploys to try to beat the system. As with last session's highly successful "slamming" bill, the PUC would have the power to levy fines or to revoke or suspend licenses of companies who continued to violate the rules.

Telephone companies supply services essential to everyday life. However, with intense competition in telecommunications, serious problems such as slamming, cramming, and other unfair practices have entrenched themselves

alongside the benefits of competition. The PUC now receives more than 400 complaints about slamming and 200 complaints about cramming per month.

CSSB 560 would provide the authority and guidelines for the PUC to carry out its major new role of a fair-trade "traffic cop" in a competitive utility market. This bill would put customers first and would put basic customer protections into law without creating obstacles that would hinder participation in the market by either customers or providers.

The few providers who practice unfairly taint the whole industry, erode customer confidence, cost customers dearly in time and money, and keep people from wanting to make choices in the market. Such tactics also create an unfair competitive advantage for the companies that practice them.

CSSB 560 would streamline the administrative penalty procedures pertaining to slamming and cramming and would add greater protections for low-income customers.

A 1997 report of the comptroller's Texas Performance Review, *Light Years*, advocated strengthening the PUC's enforcement powers. CSSB 560 would implement the comptroller's recommendations by ending the "30-day cure" loophole for administrative penalties, by giving the PUC authority to revoke certificates, and by requiring all providers to meet protection standards. With these measures, CSSB 560 would make it possible to prevent the repeat "bad actors" from doing business in Texas.

CSSB 560 would ensure quick remedies for customers. The billing process is a multiple-step process involving the customer, the billing utility, the billing agent, and the service provider. The billing utility is generally the most accessible and reliable link in that chain for the customer. Billing utilities have a contractual relationship with other service providers that permits those providers to place charges on the local provider's bill. By allowing such "through" billing, for which they are compensated, billing utilities have chosen to place themselves between the customer and the service provider. It makes sense, then, for the billing utility to bear some responsibility to help locate the violating service providers and to help customers rectify unauthorized charges. SWB is doing this voluntarily now, and it has proven to be very effective.

CSSB 560 would provide a two-prong approach for effective enforcement. Both the PUC and the attorney general would have enforcement power. Currently, the attorney general has broad authority to pursue deceptive trade and fraud cases under the Deceptive Trade Practices Act. This bill would ensure that power remained unabridged. The attorney general's office handles complaints from state agencies and school districts, but individual cases of utility fraud typically fall below the office's threshold. In 1995, the Legislature gave the PUC enforcement authority to lessen some of the attorney general's workload and to provide for prompt action against certain utility violations. The 1997 slamming law gave the PUC authority to assess penalties for slamming. The PUC and attorney general's office have a close working relationship, and the provisions of CSSB 560 would ensure that relationship would not change.

Opponents say: CSSB 560 would grant too much authority to the PUC to enforce the proposed law and PUC rules adopted under the bill. The attorney general already has the authority to enforce against deceptive trade practices and outright fraud.

The billing utility should not be responsible for accommodating a customer that it did not wrong. That responsibility should rest with the service provider that initiated the unauthorized charges.

Other opponents say: CSSB 560's requirement for PUC rules not to be more burdensome than federal regulations would strip the bill of its effectiveness. While the bill might seem to protect customers, this provision would make it impossible for Texas to act aggressively to stop cramming as well as misleading and fraudulent activities.

The FCC specifically has deferred to the states in certain areas of customer protection. The FCC has established few protections against fraudulent, deceptive, or misleading practices by telecom companies. For example, cramming began in 1997, and there is still no federal rule against it. The FCC does not have a bill of rights for customers. By and large, the FCC has been more concerned with promoting competition than with protecting customers.

Texans should have the best of both worlds: federal protection when that is more aggressive and state protection when the federal government has not

acted. Nothing in federal rules prevents a state from enacting stronger penalties.

Under CSSB 560, customer-initiated transactions would be exempt from the requirement for verification records. This would exempt the billing utility from these rules. A company that did not do its own billing would have to comply with the law, but the billing utility would not. However, customers complain of cramming by billing utilities as well as by others. Deleting this provision of the bill would strengthen protection for Texas consumers.

The provision of CSSB 560 that would allow local telecom service providers to cut off basic service for nonpayment of other services if prepaid local service was offered instead should be deleted. Under this provision, even customers paying the local portion of their phone service would be treated like second-class customers just to keep local basic service. Customers who have financial difficulty for a short time but who continue to pay for the basic local service should be able to keep their service without prepaying for it.

MISCELLANEOUS PROVISIONS

Video and audio programming. CSSB 560 would allow incumbent companies to market and sell audio or video programming products or services of its affiliates without doing so for non-affiliates. CSSB 560 would extend the expiration date of the subchapter on Video and Audio Carriage until August 31, 2005.

Infrastructure buildout. The bill would repeal a section of PURA 95 found to be in conflict with federal telecommunications statutes. It would remove all new certificate requirements for competing companies to build certain amounts of physical facilities and other infrastructure in Texas.

Sunset. CSSB 560 would change the expiration date for the PUC and OPUC from September 1, 2001, to September 1, 2005.

NOTES:

Broadly speaking, CSSB 560 differs from the Senate-passed version in that the House committee substitute would:

- set floor prices at long-run incremental costs;
- add the simplified billing provision;
- add the limits on disconnecting basic local service;
- add certain provisions for lifeline and tel-assistance services;
- add the customer-specific pricing and market-test provisions;
- add the customer protection sections dealing with slamming and cramming;
- change the OPUC sunset date; and
- allow the PUC to compare services in rural and urban areas.

A bill with similar provisions regulating slamming and cramming, SB 86 by Nelson, passed the Senate on March 3 and passed the House, with amendments, on May 22. A bill with similar provisions on lifeline and tel-assistance services, HB 1700 by Danburg, has passed both houses and been sent to the governor.