

SUBJECT: Telecommunication and electric service customer protections

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Wolens, S. Turner, Bailey, Brimer, Counts, Craddick, Danburg, Hilbert, Hunter, Marchant, McCall, Merritt

2 nays — Alvarado, Longoria

1 absent — D. Jones

SENATE VOTE: On final passage, March 3 — 31-0

WITNESSES: For — Carol Biedrzycki, Texas Ratepayers' Organization to Save Energy; Janee Briesemeister, Consumers Union, Southwest Regional Office; Randy Chapman, Texas Legal Services Center

Against — None

On — Henry Flores, Texas Telephone Association; Michael Jewell, AT&T; Suzi McClellan, Office of Public Utility Counsel; Pat Wood, Public Utility Commission of Texas

BACKGROUND: SB 253 by Barrientos, enacted in 1997, allows the Public Utility Commission (PUC) to adopt rules regarding unauthorized switching of telecommunications utilities, also called "slamming."

If an unauthorized change occurs, the service provider initiating the change must pay all costs to return the customer to the original utility; pay the original utility any amount that should have been paid to it for service had the customer not been changed; return to the customer any amount paid over what would have been paid if the change had not occurred; and provide billing records to the original utility. All customers changed without authorization are entitled to any benefits through the original utility. For repeated violations, utilities may be ordered to take corrective action and may be subject to administrative penalties. In cases of repeated and reckless violations of the rules, the PUC may suspend,

restrict or revoke the telecommunications company's certificate allowing it to provide service in Texas.

DIGEST: CSSB 86 would add a new chapter 17 to the Utilities Code on protection of retail 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;
- ! limit the attorney general's constitutional, statutory, or common law authority; or
- ! authorize a customer to receive retail electric service from a person other than a certificated retail electric utility.

Slamming. CSSB 86 would make it state policy to protect all telecommunication and electric utility customers from the unauthorized switching of providers, known as "slamming." A customer would not be liable for charges incurred during the first 30 days after an unauthorized change of carriers.

The PUC would have to adopt and enforce rules that:

- ! ensure that customers are 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 is 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 86 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 telecom provider from using deceptive or fraudulent practices as defined by the commission.

Cramming. CSSB 86 also would establish protections against unauthorized charges or "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 or electric bill;
- ! the customer had clearly and explicitly 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 anticramming measures of CSSB 86. 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 86 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 telecom utility, a retail electric provider, an electric utility, and other 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 all utilities, except municipally owned utilities, 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 telecom or retail electric service providers to submit reports concerning any matter over which the commission had authority under this bill.

Customer bill of rights. Under CSSB 86, telecom and retail electric service 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 of 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.

The governing board of a municipal-owned utility would have to adopt and enforce rules to implement the customer bill of rights for its retail clients.

Customer awareness. CSSB 86 would require the PUC to adopt and enforce industry standards on information provided to consumers. The PUC would have to promote public awareness of the electric and telecom 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.

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

**SUPPORTERS
SAY:**

CSSB 86 would enable the PUC to crack down on telecom providers that bill customers for charges they have not authorized and strengthen the protections enacted last session against unauthorized switching of providers. The bill would extend these protections to electric service customers, who would be vulnerable to this type of deceptive marketing should the Legislature open that industry to competition as well. 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 and 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 and electric 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 86 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 86 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 86 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 86 would make it possible to prevent the repeat “bad actors” from doing business in Texas.

Billing utility responsibility. CSSB 86 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. Southwestern Bell is doing this voluntarily now, and it has proven to be very effective.

Effective enforcement. CSSB 86 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 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 86 would ensure that that relationship will not change.

OPPONENTS
SAY:

CSSB 86 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 deceptive trade practice 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 86'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 Federal Communications Commission (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. No federal customer protections exist for electric service customers. 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 86, 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 86 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.

NOTES:

The House committee substitute made many changes to the Senate-passed version. Among other changes, the substitute:

- ! added to the discrimination protection provision that customers would be entitled to protection from discrimination on the basis of income level or source of income and of geographic location;
- ! added a provision that would give customers a right to energy efficiency programs, an affordable rate package, and bill payment assistance programs designed to reduce uncollectible accounts;
- ! added to the PUC's rulemaking authority energy efficiency programs, an affordable rate package, and bill payment assistance programs for low-income customers;
- ! added provisions for telecom utilities parallel to the ones for electric utilities in regard to revocation of certificates of convenience and necessity, rather than creating a second revocation standard;

- ! deleted a provision that would have required the PUC to promulgate rules to require a telecom service provider, a retail electric provider, or an electric utility to maintain for 24 months records of nonpublic customer-specific information that could be used to establish that the customer authorized a change in service;
- ! deleted a requirement to pay interest on refunds or credits to the customer for an unauthorized change;
- ! added a provision that would allow service providers to use certain methods of authorization designated by the FCC for changes in a customer's selected carrier;
- ! exempted from the cramming provisions services initiated by a customer's dialing;
- ! added a provision that would prohibit a billing utility from interrupting or terminating local exchange service if charges for local exchange service were paid; and
- ! added a provision that would allow the PUC to prohibit a utility from engaging in deceptive or fraudulent practice.