

SUBJECT: Designating a telecommunications utility as the provider of last resort

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 5 ayes — King, Hunter, Baxter, Crabb, Guillen

0 nays

2 absent — Turner, Wolens

WITNESSES: For — David Brown and Jan Newton, SBC; James Gandy, Frisco Economic Development Corp.; D.L. Willis, Communications Workers of America; *(Registered, but did not testify:)* Jose Camacho, Valor Telecom; Brad Denton, Texas Telephone Association; Carl Erhart, Verizon Southwest; Jose Estrada, Currie Halford, Maria Jimenez, Xavier Olivarez, Gloria Parra, Luz Riley, Yvette Romeros, and Mark Tedford, Communications Workers of America; Cindy Fitch, Communications Workers of America and Dallas Area Coalition of Labor Union Women; Gary Gilmer, Southwest Texas Telephone Co.; Cammie Hughes, Texas Statewide Telephone Cooperative; Rosa Walker, Texas AFL-CIO and United Labor Legislative Committee; Ben Watson, Sprint; Mark Welch, SBC

Against — Michael Jewell, AT&T; Charles Land, Southwest Competitive Telecommunications Association

On — Becky Klein, Public Utility Commission

BACKGROUND: The Texas Public Utility Regulatory Act (PURA), as revised in 1995, 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 must allow new companies seeking to enter the market to connect with the incumbents' existing networks of telephone lines, switches, and other infrastructure to provide local service. Under PURA (Utilities Code, sec. 54.251), an incumbent utility is the provider of last resort (POLR) for its entire service territory, regardless of whether a competitor offers service within the territory.

A competitive carrier can serve customers in numerous ways, including by reselling services, leasing parts of an incumbent's network, or building its own facilities. A "facilities-based" provider enters a market by building the entire network necessary to begin providing service to customers.

Utilities Code, ch. 56 establishes a Universal Service Fund to:

- assist telecom providers in providing basic service at reasonable rates in high-cost rural areas;
- reimburse the telecom carrier that provides the statewide telecom relay-access service;
- finance the specialized telecom assistance program for disabled people unable to use telephone service without special equipment;
- reimburse the Texas Department of Human Services, Commission for the Deaf and Hard of Hearing, and Public Utility Commission (PUC) for implementation costs;
- reimburse a telecom carrier that provides lifeline service;
- finance an eligibility process for customer service discounts; and
- reimburse a provider required to serve an uncertificated area.

DIGEST:

CSHB 2352 would establish a mechanism for the PUC to relieve an incumbent telecom utility from its POLR obligations for a specific area within its service territory that was served by a facilities-based provider. The PUC could designate a new successor utility as the POLR for a specific area where a facilities-based provider ceased operating and could allow the successor utility to recover costs from the Universal Service Fund.

Before a telecom service provider could cease operations or discontinue an optional service, it would have to notify the State Commission on Emergency Communications, the Office of Public Utility Counsel, and wholesale service providers from which the provider had purchased services.

An incumbent utility could petition the PUC to relieve it from its POLR obligations for a specific area within its service territory where a facilities-based provider had installed facilities to serve customers in that specific area before the incumbent. Within 91 days, the PUC would have to relieve the incumbent utility of its POLR obligations and designate the facilities-based provider as the POLR, if the PUC found that:

- the incumbent did not have facilities in place to serve all customers within the specific area;
- another certified utility had installed facilities to serve the specific area; and
- transferring POLR obligations for the specific area would serve the public interest.

When the PUC discovered, through notification or otherwise, that a telecom provider was ceasing operations in all or part of its service area and that no other provider had facilities to provide service in the area, the PUC would have to begin a contested case hearing to determine the identity of a successor utility to serve as the POLR and the amount of the Universal Service Fund to be made available to the successor.

Upon designating a successor, the PUC would have to provide a reasonable opportunity for the successor to install facilities necessary to serve customers in the area. The successor would have to receive a temporary exemption from any obligation to unbundle the utility's network elements or to provide service for resale within the area.

A customer within the specific area would be considered to have applied for service from the successor on the date when the PUC designated the successor. Customers would have every right, privilege, and obligation of being a customer of the successor and would be subject to the successor's terms of service.

The PUC could institute an expedited proceeding to designate a successor utility if it found that:

- a competitive facilities-based provider was the predominant provider of telecom service in a specific area;
- no other provider had facilities to provide service in that area; and
- the competitive facilities-based provider had stopped providing service or had abandoned operation of its facilities in the area.

In the expedited proceeding, the PUC could declare an emergency and issue an order to protect the health, safety, and welfare of customers and expedite the restoration of service to those customers. The order could provide for

temporary operation of the utility's facilities by an uncertified entity that agreed to provide service; authorize third parties to enter the premises of abandoned facilities; or grant temporary waivers from quality-of-service requirements.

Upon being notified that a utility was in bankruptcy proceedings, the PUC could inform the court of the commission's interest in obtaining notice of the proceedings. Within the time prescribed in applicable statutes, rules, or court orders, the PUC could intervene in any bankruptcy proceeding that affected telecom customers in the state.

When designating a successor utility, the PUC would have to determine to what extent the successor should recover costs for providing service to the specific area. The commission would have to consider relevant information, including the costs of acquiring, restoring, and upgrading facilities in the area to make them compatible with the utility's other service area and to comply with PUC quality-of-service standards.

The PUC would have to authorize a successor utility to recover costs from the Universal Service Fund. The costs could be amortized and recovered with interest at the prevailing commercial rate within one year if the costs were above \$1 million; within two years if the costs were between \$1 million and \$2 million; or within three years if the costs were above \$2 million.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2352 would help protect Texas telecom customers and incumbent utilities by allowing the PUC to oversee an orderly transition of service for customers of a provider that went out of business. A recent situation highlights the need for this bill.

A competitive provider, Coserve Communications, had entered into an exclusive contract with a developer to install and provide telecom service to a new housing development. Midway through the project, however, Coserve entered bankruptcy proceedings. As the designated POLR for that area, the incumbent utility would have had to provide service to the new development, even though it did not have facilities to serve the area and providing service would have harmed the incumbent's business.

CSHB 2352 would prevent similar situations from occurring in the future. If a facilities-based provider built facilities to serve a new development, the PUC could designate the facilities-based provider, instead of the incumbent utility, as the POLR for that area. Because of the dynamic nature of the telecom market, many providers may be in danger of bankruptcy. An incumbent utility should not have to step in and provide service where it did not have facilities to do so, merely because someone else's business venture failed.

The bill would protect customers by ensuring a smooth transition between a failed carrier and a new provider. The PUC could declare an emergency and provide for temporary operation of the failed carrier's facilities, ensuring that customers were not left without service in the event their carrier failed.

Using the Universal Service Fund to recover the costs of transferring POLR service to a successor utility would not be out of line with current uses of the fund. Money from the fund already is used for purposes other than providing service at reasonable rates to high-cost rural areas — for example, to provide specialized telephone services for deaf people and lifeline telecom service for low-income customers.

**OPPONENTS
SAY:**

CSHB 2352 would allow the Universal Service Fund to be used for something other than its original purpose. The fund was created to help utilities provide affordable telecom service to rural areas where providing service otherwise would be extremely expensive. Under this bill, a successor utility could use money from the fund to serve a new high-end housing development in an urban area.

NOTES:

The committee substitute substantially amended the bill as filed, including:

- amending notice requirements for a utility discontinuing service;
- eliminating requirements of a utility ceasing operations in all or part of its service area, including providing a bond or other security; and
- eliminating a cash deposit requirement for competitive providers.

The companion bill, SB 1829 by Averitt, passed the Senate on the Local and Uncontested Calendar on April 25 and has been referred to the House Regulated Industries Committee.

HB 2352
House Research Organization
page 6