HOUSE
RESEARCH
ORGANIZATION bill analysis 3/23/2005

HB 789
P. King, Edwards
(CSHB 789 by P. King)

SUBJECT: Restructuring telecommunications regulation

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 7 ayes — P. King, Hunter, Baxter, R. Cook, Crabb, Hartnett, Turner

0 nays

WITNESSES: For — Robin Casey, Kathy Grant, Texas Cable & Telecommunications Association; Kristie Flippo, Time Warner Telecom; Kyle M. Gillman, Texas Building Owners & Managers; Sheri Hicks, Charles D. Land, TEXALTEL; Bill Morrow, Grande Communications; Tom Pelto, AT&T; Scott Pospisil, Texas Payphone Association. (*Registered but did not testify*: Sandra Haverlah, Texas Consumer Association; Robert Howden, Texans for Economic Progress)

Against —Steve Banta, Verizon Communications; Jose A. Camacho, Valor Telecom; Charles Carrathers, Verizon Southwest; Paul Elliott, Austin Linux Enthusiasts; Ron Hinkle, Verizon Wireless; Michael Hunsucker, Sprint Corporation; Steve Lowe, TROPOS Networks/Intel; Richard MacKinnon, Coalition of Texas Community Wireless Organizations; Thomas Ratliff, T-Mobile USA and Western Wireless; Wayne Caswell. (*Registered but did not testify:* Tramell Alexander, Verizon Wireless; Marion Grayson, Belton Wireless Project; John A. Green, OFDM Technologies; Lynn Jones, North East Texas Wireless Initiative; John Nelson, Taylor CNET; Bill Ojile, Valor Telecom; Chip Rosenthol, Save Muni Wireless Coalition; Christopher Boyd)

On —Monte Akers, The Texas Coalition of Cities for Utility Issues; Snapper Carr, Texas Municipal League; Randall Chapman, Texas Legal Services Center; David Davault, North East Texas Wireless Initiative; Martha Fuentes-Bautista, Nobuya Inagaki, The University of Texas at Austin Telecommunications & Information Policy Institute; Ogilvie Gericke, City of Corpus Christi; Weldon R. Gray, Texas Statewide Telephone Cooperative Inc. and Eastex Telephone Cooperative Inc.; Paul Hudson, Public Utility Commission of Texas; Andrew Macfarlane, Texas.net; Gloria Meraz, Texas Library Association; Jan Newton, SBC; Clarence West (*Registered but did not testify:* Carlos Fernandez, Texas Association of Broadcasters; Gary Gilmer, Texas Telephone Association;

Robert Hunt, Guadalupe Valley Telephone Cooperative Inc.; Bill Lindsay, Mayor, City of Denison; William Reed, Technology For All; Ken Whalen, Texas Daily Newspaper Association and Texas Press Association; Ronald B. Yokubaitis, Texas.net Inc. Internet & Data Center Services; J. Fagner)

BACKGROUND:

As of June 2004, the Public Utility Commission (PUC) had regulatory authority over about 557 telecommunications companies in Texas. The utilities included 64 incumbent local exchange carriers (ILECs), such as SBC and Verizon, that held certificates from the PUC on or before September 1, 1995, as well as 493 competitive local exchange companies (CLECs), or companies that were certified to provide local exchange telecommunications service in Texas after September 1, 1995. The agency settles disputes between companies, enforces consumer protections, and administers programs to ensure telephone access service to low-income and rural consumers.

In 1995, the Legislature enacted HB 2128 by Seidlits, which opened the local telephone market to competition. This bill allowed CLECs to enter the telecommunications market and required all telecommunications providers to interconnect their networks. In 1996, Congress enacted the Federal Telecommunications Act (FTA), which opened local telephone competition at the national level. Among its provisions, the FTA required regional bell operating companies (RBOCs), such as Southwestern Bell (now SBC), to allow local competitors access to their networks. In return, RBOCs were given the opportunity to enter the long distance market. In Texas, ILECs now control about 80 percent of access line market share in the state, and CLECs control the remaining 20 percent.

ILECs may elect into a reduced regulatory framework, including pricing flexibility under Incentive Regulation, ch. 58 of the Utilities Code. Under Sec. 58.054, the rate that a Chapter 58 company may charge for basic network service is capped until September 1, 2005. Companies electing into incentive regulation under ch. 58, including SBC, Verizon, Valor, and Sprint, must provide private network services and meet the infrastructure needs of hospitals, educational institutions, and libraries, in addition to other technology-related infrastructure goals. Companies also may elect into other categories of regulation, including Chapter 59, which offers some pricing flexibility, provided the companies meet certain infrastructure obligations.

In addition to regulation of ILECs and CLECs, the PUC oversees other entities that came about as a result of the legislative changes in the 1990s. Because telecommunications carriers must interconnect their networks and because ILECs must allow competitive carriers to use their networks, the PUC is charged with overseeing the wholesale telecommunications market, including interexchange telecommunications services that regulate this flow, to ensure the all providers have an equal opportunity to compete.

The PUC also manages disbursements from the Texas Universal Service Fund (TUSF), which was established in 1987 to ensure access to basic telephone service for all residents of the state. This fund is generated from an assessment (currently 5.65 percent) on intrastate telecommunications receipts. This assessment may be passed through to consumers through the normal billing process. Disbursements from the fund are made to eligible companies to support service in high-cost rural areas. The fund also supports the Lifeline and Link Up programs, which offer a discount on service rates to low-income consumers and reimburses companies that offer reduced rates for hearing- or speech-impaired persons who use special services.

DIGEST:

CSHB 789 would state that all public policy regarding new telecommunications technologies must be driven by free market principles for the benefit of consumers. The state's regulatory framework would serve to guarantee affordability of basic telephone service for low-income persons specifically, rather than for all persons as under current law. The bill would specify that the state's goal is to foster "intermodal" competition, or competition between and among different telecommunications technologies.

The bill would make several changes to telecommunications regulation in Texas, including:

- redefining "telecommunications provider" as any person or entity offering telecommunications service to others for a fee;
- prohibiting an entity from providing telecommunications services as a network or service provider without first obtaining a certificate from the PUC;
- allowing certain companies increased pricing flexibility for basic network services;
- reducing intrastate switched access rates;

- promoting deployment of advanced broadband network infrastructure by encouraging private investment and promoting competition;
- authorizing providers to negotiate interconnectivity rates that are in the public interest and nondiscriminatory;
- requiring PUC to adopt rules for e-911, number portability and other consumer protections for all providers;
- providing standards for municipalities requiring the relocation of providers' facilities that are located in public rights-of-way;
- authorizing review of expenditures from the Texas Universal Service Fund; and
- repealing several provisions in the Public Utilities Regulatory Act, including sections prohibiting "slamming" and "cramming."

Telecommunications regulation. CSHB 789 would prohibit an entity from providing telecommunications services as a network or service provider without first obtaining a certificate from the PUC. "Service provider" would be defined as a local exchange company or a provider of interexchange telecommunication services. "Network provider" would be defined as an entity that is not a service provider that uses any technology to offer voice communication to the public over its own wireline network. In the bill, "provider" would include both service and network providers.

"Interexchange telecommunications service" would be defined as landline telecommunications service provided between a point located within a local access and transport area and a point located within another local access and transport area.

Effective October 1, 2005, an entity holding a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority would be considered to hold a service provider certificate unless that certificate holder filed either a request for a network provider certificate or a notice of exemption. A service or network provider would be exempt if the Federal Communications Commission had preemptively precluded state certification of a provider.

The PUC would have to grant or deny an application for a certificate within 60 days of its filing. The commission would grant a certificate on a nondiscriminatory basis after considering the applicant's technical and financial qualifications. An applicant with a director or officer who had been convicted of a felony could not receive a certificate.

The bill would remove a provision directing the PUC to require a public utility to provide service in an area affected by the revocation or amendment of a certificate held by a public utility.

CSHB 789 would allow companies electing into incentive regulation, also known as "Chapter 58 companies," pricing flexibility for basic network services beginning January 1, 2008, at which time those companies would be required to reduce intrastate access rates to parity with interstate access rates. An ILEC could not raise its rate for basic network service above what it charged for that service on January 1, 2005, until the company reduced its originating and terminating intrastate switched access rates to parity with interstate access rates.

Chapter 58 companies would have pricing flexibility for basic network services, including packaging of regulated services with unregulated services. A company could exercise pricing flexibility without providing 10-day notice to the PUC, OPUC, or an interconnecting entity as required under current law. The bill would reclassify basic network service that was received with other basic or nonbasic service as nonbasic service. The definition of nonbasic service also would be expanded to include residential call waiting. An ILEC could set the retail price of any nonbasic service at any level at or above the long-run incremental cost. A local exchange company could introduce a new service at any time, without providing 10-day notice to the PUC, OPUC, or an interconnecting entity.

As of January 1, 2005, Chapter 58 companies would be subject only to certain provisions of the Public Utilities Regulatory Act, including those governing:

- PUC jurisdictions over those companies;
- certain prohibited practices;
- tariff filing;
- certification;
- service in annexed or incorporated areas;
- prohibition of municipal and property owner discrimination;
- provider of last resort provisions;
- required access to emergency services;
- discontinuance of service;
- Lifeline Services;
- cost of a pay phone access line;
- directory assistance and listings;

- Texas Universal Service Fund, including the TUSF study that would be created under this bill;
- telecommunications relay access service;
- the Specialized Telecommunications Assistance Program;
- funding for certain telecommunications utilities;
- Utilities Code ch. 57, which governs distance learning and other advanced services;
- reductions in switched access rate reductions;
- Utilities Code ch. 60, which governs competitive safeguards;
- Utilities Code ch. 64, which governs customer protections; and
- other minor provisions.

ILECs would have provider of last resort obligations. "Provider of last resort" would be defined as a certificated provider of local exchange telephone service that is required to offer such service throughout an area. An ILEC could meet this obligation through use of any available technology. Certificated providers would have to provide access to 911 service.

Companies operating under Utilities Code Ch. 59 as of August 31, 2005, would be able to introduce a new service and exercise pricing flexibility without providing 10-day notification to the PUC, the Office of the Public Utility Council (OPUC), or any certificated entity involved in an interconnection agreement with the company, as they are now required under current law.

The bill also would delete current statutory language stating that the PUC has jurisdiction over the business and property of telecommunications utilities in the state and to ensure that services are adequate and efficient and that rates are just and reasonable. The commission could enter into an order to protect the public interest when a provider of interexchange service stopped providing such service in an area where no competitive alternative existed. However, the PUC no longer would enter into action if a provider engaged in a pattern of preferential treatment or discriminatory practices, or failed to pass switched access rate reductions on to customers.

A certificated non-ILEC providing local exchange service would have to file a tariff list showing each rate subject to commission jurisdiction.

The PUC's biennial scope-of-competition report would have to include information on all telecommunications and information services, regardless of technology used.

An ILEC could impose a monthly fee against each residential and business customer in an exchange petitioning for expansion of the company's toll-free local calling area.

Operator service providers no longer would have to provide rate, fee, or other surcharge information to callers at their request. The charge imposed by a local exchange company for an access line to a pay phone could not exceed the amount charged for a line used for regular business purposes in that exchange.

Access charges. The bill would mandate that ILECs reduce the rates charged for intrastate originating and terminating switched access to 4 cents for each minute of use, effective January 1, 2006. ILECs would be required to reduce these rates to 2.5 cents per minute of use, effective January 1, 2007. These rates would be reduced on January 1, 2008, to parity with interstate switched access rates. Beginning on this date, switched access rates would be capped and could not exceed interstate rates.

A local exchange service provider that was not an ILEC could not charge a higher amount for combined originating and terminating intrastate switched access than the prevailing rates charged by the ILEC in whose territory the call originated unless the commission approved the rate.

An ILEC governed by Chapter 58 would not be entitled to receive disbursements from the TUSF to compensate for reductions in access charges.

Definition of basic service. CSHB 789 would define basic network service as flat rate residential local exchange telephone service delivered by landline that is received independent of:

- a nonbasic network service;
- a package of services that includes nonbasic services; or
- another flat rate residential local exchange telephone service delivered by landline.

Basic network service no longer would include residential call waiting service. The PUC could not impose a mandatory extended calling plan not in existence before September 1, 2005 nor require a company to create a stand-alone basic net service in any exchange that did not have that service on January 1, 2005. If a company so elected, the price for basic service would include fees for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

Rural ILECs. CSHB 789 would require rural ILECs to price each new service at or above the service's long-run incremental cost. A rural ILEC would be defined as an ILEC that was a cooperative or had fewer than 31,000 access lines in service in Texas on September 1, 2005. OPUC, the PUC, or an affected person could file a complaint with the PUC challenging whether a service was priced at this level. Rural ILECs could exercise pricing flexibility for the packaging of basic local service or any other regulated service with any other service of an affiliate. Regulated services would have to be priced at either the service's tariffed rate or at a rate no lower than the service's long-run incremental cost. A rural ILEC could offer a promotion for regulated services for no more than 90 days in any 12-month period.

Broadband deployment. CSHB 789 would state that the goal of the state is to promote deployment of advanced broadband network infrastructure and that the primary means to achieve this goal is to encourage private investment and promote competition. "Broadband network" would be defined as a wireline network capable of a downstream speed of at least 200 kilobits per second and an upstream speed of at least 128 kilobits per second, including DSL, fiber-to-the-premises, and cable modem networks.

A provider that was not a local exchange carrier or a municipality or municipally owned utility would be prohibited from imposing on a broadband provider a fee for attachment of a line to a utility pole that was greater than a similar fee assessed to a network carrying voice, cable, video, or other services in the same political subdivision. Further, a provider or municipality could not impose multiple assessments for the carriage of multiple services over the same broadband network facility. Also, a provider or municipality could not impose on a broadband provider an obligation to provide ubiquitous network coverage throughout a political subdivision, except to the extent required by federal law.

Competitive protection and interconnection. Provider rates, terms, conditions, and practices could not be:

- preferential, prejudicial, or discriminatory;
- improperly subsidized; or
- predatory or anticompetitive.

However, the bill would not require unbundling to a greater extent than federal law and would not prohibit volume discount or flexible pricing that was based on reasonable business practices. Services priced at or above their long run incremental cost would by definition not be predatory. These requirements would not apply to video or data services. Providers would have to comply with a code of conduct developed by the PUC that ensured the integrity of carrier-to-carrier and marketing practices. Disputes regarding these provisions would be referred to binding arbitration at the election of both parties to the dispute.

The PUC could resolve disputes and allow providers with fewer than one million access lines to establish a service's long-run incremental cost. The PUC could impose a penalty of $10,000 a day for each violation of this section. A complaint would have to be resolved within 270 days of its filing. Appeals of commission rulings could go directly to the Third Court of Appeals in Austin.

To the extent not preempted by federal law, the PUC would have authority to determine the rates and terms of interconnection, which would be defined as "the linking of two networks for the mutual exchange of traffic." The commission would have authority to resolve disputes regarding breach of interconnection obligations. A network or service provider would be entitled to interconnect in an economically efficient manner.

Providers would be authorized to negotiate interconnectivity rates, and the PUC would approve successfully negotiated rates if the rates were in the public interest and nondiscriminatory. These providers could exchange traffic under a "bill and keep" basis, which means an accounting scheme that equally divides connection costs between two providers. The PUC could not require the parties to exchange traffic on a "bill and keep" basis. A party negotiating an interconnection agreement could request that the PUC resolve a disputed issue no earlier than the 135th day and no later than the 160th day after a party received a request for negotiation. The

PUC would have to resolve a disputed interconnection agreement within 270 days after a party received a request for interconnection negotiation.

A network or service provider could not unreasonably discriminate against another provider in providing interconnection, traffic exchange terms and conditions, or facility use, rates, terms, and conditions to exchange traffic between and among providers. These new requirements would be in addition to current prohibitions against interference with interconnection. Providers would have to disclose information necessary to determine if they were complying with these requirements.

Consumer protection. The bill would require the PUC to adopt rules applying to all interconnecting entities to ensure that consumers have efficient and secure access to:

- E-911;
- number portability and other customer migration processes;
- directory assistance, listings, and publication; and
- other "consumer-friendly" services.

These rules would provide for payment of compensation to an ILEC for loading or storing customer information. The rules could not require unbundling of a provider's network elements.

PUC rules would have to be consistent with FCC rules regarding number portability and could not go beyond that required by federal law.

The bill would require that providers give customers clear information on rates, terms, services, and the customer's rights and would eliminate PUC discretion in determining whether any other information should be provided. Customer awareness efforts would have to be in English and Spanish but not any other languages, as required under current law. The bill would not require the PUC to coordinate enforcement efforts in the prosecution of anticompetitive business practices with the Attorney General's Office.

The PUC would have to adopt rules to provide automatic enrollment of eligible customers for Lifeline telephone service, available to low-income households. A provider of local exchange service would have to provide Lifeline service to a customer whose income was up to 150 percent of the applicable income level or who received Medicaid, food stamps,

Supplemental Security Income, federal public housing assistance, or Low Income Home Energy Assistance Program assistance. The commission would have to provide for full and concurrent reimbursement to providers for costs of programs providing low-income customers with telecommunications service. This would include reimbursement for the difference between affordable rates and rates otherwise applicable.

PUC rules regarding customer protection could not be more burdensome or stringent on a provider than federal rules.

The PUC would be prohibited from dictating the format or content of a telephone directory.

Municipalities. CSHB 789 would direct the PUC to study the issue of municipal compensation for use of public rights-of-way by voice and video service providers and to provide recommendations to the Legislature regarding a mechanism for providing such compensation. The commission's recommendation would have to be revenue neutral and replace current forms of compensation. The study would be submitted to the Legislature by January 5, 2007.

Under CSHB 789, a municipality's governing body could require a communications network provider to relocate a facility located in a public right-of-way at the provider's sole expense if such relocation were necessary to accommodate a public improvement project. A provider would have to relocate its facility if the municipality gave the provider 30 days written notice of a determination that the facility needed to be relocated, specified the new location for the facility along the right-of-way, and allowed the provider not less than 90 days to relocate the facility after the provider received the required information. These requirements would not apply to a facility that was found during construction if the provider gave the municipality inaccurate or insufficient information.

A municipality would have to design public improvement projects so as to minimize the relocation of communication facilities. If relocation was necessary, the municipality would have to give the network provider written notice of the project in sufficient time for the provider to offer alternatives and plans and drawings of the project so that the provider could develop such plans and determine relocation costs. A communications provider would have to provide a municipality with information on its network at the municipality's request.

The municipality would have to give the provider the opportunity to present alternatives that could avoid facility relocation. The municipality would have to make a good faith effort to secure third-party funding for the relocation, and federal funds would be used when possible.

Unless required by imminent threat to public health or safety, a municipality could not require a network provider to relocate a portion of a facility that had been moved within four years, unless the municipality paid for the relocation.

The PUC could not grant a network or service provider certificate to a municipality, and a municipality could not offer services for which a certificate was required.

Municipalities or municipally owned utilities would have to charge a provider either the attachment fee that would apply to voice networks or the fee applying to other services such as cable television, whichever was lower.

A municipality would have standing before the PUC in each case relating to a local exchange service provider in that municipality.

The Texas Universal Service Fund. The PUC would have to contract with an independent individual to review whether the TUSF accomplishes the its purpose as specified in statute and by rule. The evaluation would assess the appropriate use of the money and the manner in which it was collected and disbursed. The study would be paid for from the TUSF and the contractor for the study chosen through a request-for-proposals process. By January 1, 2006, the contractor would require telecommunications providers that receive TUSF disbursements to provide information deemed necessary, including that necessary to evaluate how TUSF money is collected. This information would be confidential.

The contractor's report would have to be delivered to the Legislature no later than January 5, 2007. The report would include recommendations such as how TUSF money should be collected, how money should be disbursed, the purposes for which it should be used, and how to create accountability for its use.

Telecommunications providers would have to file an affidavit with the PUC by December 31, 2005, attesting that TUSF money was being used in

compliance with the purposes specified in statute and by rule. The PUC also would be required to determine whether the TUSF's funding mechanism adequately supported its purposes into the future and to submit to the Legislature a report on this topic by January 5, 2007.

Telecommunications Infrastructure Fund (TIF). CSHB 789 would authorize a certified telecommunications provider to recover from its customers assessments imposed under the Telecommunications Infrastructure Fund after the fund equaled $1.5 billion.

Federal preemption. Several sections of the bill would specify that federally preemptive regulations would have authority over state law when applicable.

Repealed. The bill would repeal several provisions in the Public Utilities Regulatory Act, including those concerning:

- several reports required of telecommunications providers by the PUC;
- municipal participation in ratemaking cases;
- prohibitions of discounts for services;
- PUC authority to create separate markets;
- PUC authority to require service in an exchange;
- PUC authority to establish service standards;
- billing guidelines;
- Caller ID provider requirements;
- various standards relating to the PUC's authority over phone providers;
- the limitation on what a hotel or motel can charge for a call;
- consumer protection against unauthorized changes in a customer's telecommunications provider, also known as "slamming";
- provisions governing distance learning;
- provisions relating to the Telecommunications Infrastructure Fund;
- PUC regulation of Chapter 58 rates and services;
- infrastructure commitments of Chapter 58 companies;
- unbundling requirements;
- various provisions governing interconnection, including pricing, rates, and expansion;
- broadcaster safeguards;

- prohibitions on an ILEC's ability to sell news, entertainment, or other services; and
- consumer protection against unauthorized charges, also known as "cramming."

The bill would take effect September 1, 2005.

SUPPORTERS SAY:

By making telecommunications law compatible with the technological and competitive innovations that have occurred since 1995, CSHB 789 would update Texas' outmoded telecommunications regulatory framework. CSHB 789 would open the Texas marketplace to true and extensive competition, providing a legal structure that would encourage technological innovation and improve service for customers.

Basic telephone rates. Texas should eliminate the artificial subsidy of basic telephone service because it does not take into account the options customers have for telecommunications service. The expansion of such technologies as wireless telephones, Voice Over Internet Protocol (VOIP), and satellite telephone service have provided Texas consumers with a range of choices they have never before enjoyed. Provided with intermodal competition among telecommunications technologies, consumers can abandon basic telephone service in favor of other technologies like wireless or VOIP that provide technological and economic advantages. However, current law enforces a policy preference toward outmoded landline services through an artificial subsidy of that service in the basic service rate cap. By eliminating that cap, the Legislature would align regulation with the important technological innovations of recent years.

Access rates. By lowering intrastate access rates to parity with interstate rates, Texas long-distance consumers would see significantly reduced prices for in-state long distance. Because of the current inflated intrastate access rates, it can cost more to call from Dallas to Houston than it does to call from Dallas to Albuquerque. These rates subsidize basic local service and amount to an unfair tax on in-state long distance calls. Stepping down intrastate rates to parity with interstate rates by 2008 would allow access charges more closely to resemble the actual cost of switching calls, facilitating more efficient competition in the long distance market.

Competition. CSHB 789 would foster competition and benefit consumers through free-market policies. Since Texas started down the road toward

deregulation in the mid-1990s, competition for telecommunications services have flourished throughout the state. For example, the number of certified competitive local exchange carriers grew from 70 in 1996 to 493 by 2004. CLEC market share has increased steadily in the last five years to such an extent that one out of every five lines is provided by a competitive carrier. The Texas market is sufficiently dynamic to absorb the reforms laid out under this bill. If an area served by an ILEC experienced higher rates for local service, such an increase would be a transparent signal for competitive providers to expand lower-cost service into the area, benefiting consumers and leading to a more economically efficient marketplace.

It is important to state in law that all providers have equal rights to access competitors' networks, a key provision for telecommunications competition in the state. The federal law upon which interconnection rights are based is subject to review and could be changed at any time. Market participants need certainty to make business decisions, and CSHB 789 would provide that.

CSHB 789 would maintain and strengthen protections for telecommunications competition in the state. It would specify that companies could not engage in predatory, below-cost pricing of services. Without these protections, large providers could price services below their long-range incremental cost at rates smaller competitors would be unable to match, potentially driving other companies out of business.

CSHB 789 would appropriately repeal the requirement that ILECs provide services to hospitals and schools at rates near cost, an anti-competitive provision of current law. Currently, if a school requests proposals for network services, competitive providers are unable to meet the service demands at the required cost. As a result, large companies enjoy a monopoly on serving those institutions. Even if a competitor could provide better services for a slightly higher cost, that competitor effectively is prevented from participating in those contracts.

Texas Universal Service Fund. It would be wise to study how the Texas Universal Service Fund is managed to ensure that grants from the fund adequately serve the purpose of providing ubiquitous access to telephone service in the state.

Slamming and cramming. CSHB 789 would eliminate Texas' superfluous prohibitions against slamming and cramming. The FCC already provides protection against these unfair practices, and Texas consumers have the ability to file complaints at the federal level.

Provider of last resort. Companies with provider-of-last-resort obligations should be allowed to use any available technology to satisfy those obligations. It can be extremely expensive to run a basic landline to a remote rural location that otherwise could be served effectively by a mobile phone or other technology. There is no practical reason to discriminate against new technologies, as occurs under current law.

Right-of-way compensation. The bill would address right-of-way compensation in a fair and balanced manner. Municipal compensation for use of rights-of-way is a complicated and controversial issue, and it would be prudent to study it first before embarking on an unproven new program. Right-of-way compensation funds are a key component of municipal budgets and an equally important issue for service providers.

Telecommunications Infrastructure Fund. Given that the telecommunications utilities have met their obligations up to the original revenue cap of $1.5 billion, it would be reasonable to allow those incumbent local exchange carriers (ILECs) that have not been passing the 1.25 percent assessment on to consumers to do so now. During negotiations in 1995 when the Legislature was considering creation of TIF, the ILECs agreed to absorb the assessments on their receipts without passing those charges on to customers. The ILECs have fulfilled this obligation every year since TIF was created. After TIF exceeds its original cap of $1.5 billion, it is only fair that ILECs statutorily be authorized to pass additional TIF charges on to their customers, as the competitive carriers have been doing since 1995.

OPPONENTS SAY:

CSHB 789 would allow major local telephone companies like SBC and Verizon to raise the price of basic local service virtually without restriction, effective January 1, 2008. In doing so, this bill would run counter to historic state policy ensuring that all Texans have affordable access to basic local service. By granting Chapter 58 companies pricing flexibility for basic telephone service, this bill virtually would ensure that Texas consumers would face higher prices for local phone service.

Basic telephone rates. The minimal level of competition that now exists in the state would not be an effective bulwark against higher prices for telephone service. According to the PUC's 2005 Scope of Competition Report, competitive local exchange carriers control less than 21 percent of the market share statewide and only 9 percent of the market share in rural markets. In regions without effective competition, ILECs would be able to charge excessive rates for service without fear of losing customers. When the Legislature has allowed phone companies pricing flexibility for nonbasic services, the cost of these services has gone up, often dramatically. Consumers could expect similar increases in local phone service under this bill.

The bill should not tie higher local telephone prices to lower intrastate long distance prices. In effect, this provision would force consumers of basic local service to subsidize lower rates for high-volume, long-distance customers. Companies could be expected to more than make up for the cost of reduced access charges with higher rates, and local phone service consumers would bear this burden.

CSHB 789 would mark a major step back for telecommunications competition in Texas. Under this bill, large ILECs would be able to raise rates on consumers who have no option of a competing service provider while they lower rates in areas of competition. This would make it very difficult for CLECs to compete with SBC and other large companies and could drive many out of business. This would undermine competition, the only check on prices that would exist under this new framework.

Texas Universal Service Fund. Companies that reap the benefits of pricing flexibility should not be able to keep public subsidies from the Texas Universal Service Fund. It would be unfair for taxpayers to continue subsidizing companies that receive a huge profit windfall from price deregulation under the bill. If the Legislature is going to commission an expansive study on the Texas Universal Service Fund but withhold substantial changes to the Fund until the study is complete, the same approach should be taken to competition and price deregulation.

Intermodal competition. With its overemphasis on "intermodal competition," CSHB 789 would ignore the significant competitive differences between basic phone service and newer telecommunications technologies. The cost of a basic line in very affordable – currently around $10 to $15. On the other hand, the most basic monthly wireless plan can

cost more than $40. VOIP is even more expensive, as it includes the cost for broadband service and the cost of Internet phone service. Several parts of the state are not reached by wireless signals, and more than 70 percent of households lack high-speed Internet access. The Legislature should not count these other services as providing sufficient competitive pressure to maintain affordable rates for basic service.

Basic service is robust and reliable, while technologies such as wireless and VOIP are less so. While basic phone service runs on an independent network isolated from problems caused by electricity blackouts, other platforms, such as wireless, could be affected by disruptions in electrical distribution. Basic service also ensures that individuals have access to E-911, which is vital in case of emergency. These are compelling reasons to continue the official preference for basic phone service over newer alternatives.

Infrastructure requirements. The requirement that Chapter 58 companies provide reduced-rate infrastructure and network services to hospitals, schools, and libraries should not be repealed. This requirement has ensured that these non-profit institutions receive state-of-the-art telecommunications services at an affordable rate. Repealing this provision could lead to higher costs to these institutions and, ultimately, to the state and to local governments.

Slamming and cramming. The prohibitions against slamming and cramming should not be repealed. These protections have served the public interest by ensuring that consumers have control over their service providers. Texas consumers deserve to have complaints about unfair trade practices heard in Austin in front of the PUC. Forcing victims of these industry abuses to plead their cases in Washington, D.C. would condemn innocent victims to weakened protection in the face of a massive, unfamiliar, and far-away federal bureaucracy.

Telecommunications Infrastructure Fund. Allowing ILECs to pass on their 1.25 percent assessment to customers would amount to a new tax that millions of consumers would have to pay each month. Telecommunications companies benefited greatly from the 1995 Public Utilities Regulatory Act, and in return ILECs pledged to assume the cost of the 1.25 percent TIF assessment. It would be unfair to shift this charge to telephone customers. Texas consumers already shoulder one of the

highest rates of taxation for telecommunications services in the nation, and the pass-through provision only would increase this burden.

OTHER OPPONENTS SAY:

CSHB 789 should prohibit municipalities from providing broadband and other advanced services. It would be contrary to free market principles to allow municipalities with taxing capacity, bonding authority, condemnation rights, and other advantages to compete directly with telecommunications service providers. Such a ban would encourage private companies to extend service to parts of the state that now go unserved.

The bill's competitive pricing requirements should be strengthened to require that all services are offered at a rate no lower than the service's long-run incremental cost. The ability of a provider to price at a tariffed rate still would allow pricing below cost and could hamper competition in those services.

NOTES:

Among other provisions, HB 789 as introduced would have required a company electing into pricing flexibility for basic local service to:

- reduce intrastate switched access charges to parity with interstate rates by January 1, 2007;
- relinquish Texas Universal Service Fund disbursements; and
- build out broadband networks to rural parts of the state served by the company.

Among other changes, the committee substitute removed a provision that would have prohibited a municipality from providing any telecommunications or information service.

A related bill, HB 3179 by P. King, which would impose an assessment of 3.95 percent on each sale of a telecommunications service in the state that would go to fund municipal compensation for provider access to rights-of-way, was referred to the Regulated Industries Committee.

Another related bill, SB 332 by Fraser, which would deregulate certain markets in the state where it was determined that effective competition for telecommunications services existed, is pending in the Senate Business and Commerce Committee.