(The House considered SB 5 by Fraser, the Senate companion bill, in lieu of HB 13, the identical House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 5.)

SUBJECT: Restructuring telecommunications and cable regulation

COMMITTEE: Regulated Industries — favorable, without amendment

VOTE: 4 ayes — P. King, Hunter, R. Cook, Crabb

0 nays

3 absent — Baxter, Hartnett, Turner

WITNESSES: No public testimony

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 PUC settles disputes between companies, enforces consumer protections, and administers programs to ensure telephone access service to low-income and rural consumers.

In 1995, the 74th 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, (Utilities Code, ch. 58). 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. A company also may elect into other categories of regulation, including ch. 59, which offers some pricing flexibility, provided the company meets certain infrastructure obligations.

In addition to regulation of ILECs and CLECs, the PUC oversees other entities that have emerged 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 inter-exchange telecommunications services that regulate this flow, to ensure that 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 reimburse companies that offer reduced rates for hearing- or speech-impaired persons who use special services.

47 U.S.C. ch. 5, subch. 5-A is the federal statute that regulates cable service providers. Sec. 47.541 authorizes a municipality to award a franchise to a cable provider authorizing construction of a cable system in the municipality's jurisdiction. It requires a provider to assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents. Under sec. 47.542, a municipality may require a provider to pay a fee for its franchise. A

municipality may regulate the services and fees of a franchised provider to the extent allowed under federal law.

Federal regulation C.F.R. 76.309(c) requires cable operators to maintain certain basic customer service standards, which govern office hours, 24-hour telephone availability, installation, service calls, outages, and billing.

DIGEST:

HB 13 would make numerous changes to the regulation of cable and telecommunications in Texas, including:

- deregulating the markets of certain ILECs;
- reducing intrastate switched access rates;
- establishing a statewide franchise authorizing a cable or video service provider to offer service in the state;
- establishing a framework for the operation of broadband over power lines (BPL) technology;
- allowing technologies other than traditional wire-line technology to qualify for subsidy from the Texas Universal Service Fund (TUSF);
- initiating a study of universal service subsidies in Texas; and
- establishing a wholesale code of conduct for telecommunications providers.

The bill would take effect September 1, 2005, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the second called session (November 18, 2005, if the special session lasts the full 30 days).

Deregulation of Certain ILEC Markets

HB 13 would deregulate the markets of all ILECs on January 1, 2006, unless the PUC determined that a market should remain regulated. The PUC could not prevent deregulation in any market in which the population was at least 100,000. The PUC also could not prevent deregulation in a market with a population between 30,000 and 100,000 that contained at least three competitors to the ILEC, of which:

- at least one provided residential local exchange service in the market;
- at least one provided service using its own facilities; and

- at least one provided commercial mobile service that was not affiliated with the ILEC.

Any ILEC could choose to remain regulated after January 1, 2006.

PUC review. If the PUC determined that one or more, but not all, of a company's markets should remain regulated, the commission would classify the company as a "transitioning company." If the PUC determined that all of a company's markets in which the population was at least 30,000 should remain regulated, the commission would classify the company as a "regulated company." A regulated company still could choose incentive regulation under Utilities Code ch. 58 or 59. By November 30, 2006, the PUC would determine whether an ILEC's market where the population was less than 30,000 should be regulated after January 1, 2007.

After July 1, 2007, a regulated company could petition to be deregulated. For a market with a population less than 100,000, the PUC could choose to re-regulate a market that previously had been regulated.

Deregulated companies. A deregulated company could relinquish the company's certificate of convenience and necessity and receive a certificate of operating authority if all of the company's markets had been deregulated. A deregulated company that held a certificate of operating authority would retain its provider of last resort obligations. Such a company would be subject to provisions governing the resale of its services, intraLATA toll services, limitations on the discontinuance of service, and competitive safeguards. A deregulated company that held a certificate of operating authority could not increase rates for stand-alone residential local exchange service until the PUC had revised the monthly per-line support under the Texas High Cost Universal Service Plan. A deregulated company would have to make available the same price, terms, and conditions to all customers uniformly throughout its market.

Transitioning companies. A transitioning company could exercise pricing flexibility and introduce a new service under ch. 58 one day after providing informational notice. In a regulated market, a transitioning company would have to price services in accordance with provisions that governed the company immediately prior to its classification as a transitioning company.

In a deregulated market, a transitioning company would have to price all services other than basic local service at least at the service's long-run incremental cost. For basic local service, the company would have to price the service at any price greater than the lesser of the service's long-run incremental cost or the service's tariffed price on the date the service was deregulated. The company could not increase the rate for stand-alone basic service until the PUC had revised the monthly per-line support under the Texas High Cost Universal Service Plan. A transitioning company would have to make available the same price, terms, and conditions to all customers uniformly throughout its market. A company could not engage in discriminatory or predatory pricing or subsidize the rate for services in a deregulated market with services provided in a regulated market.

Reduction of switched access rates. On the date an ILEC's last market was deregulated, the company would have to reduce its switched access rates in each market to parity with the company's federal switched access rates. These rates would have to remain in parity with federal rates.

A transitioning company with at least 3 million access lines in service in the state on January 1, 2006, would have to reduce its rates:

- on July 1, 2006, by 33 percent of the difference between the state and federal switched access rates in effect on June 30, 2006;
- on July 1, 2007, by 33 percent of the difference in the rates in effect on June 30, 2006; and
- on July 1, 2008, to parity with the company's federal rates.

The company would have to maintain parity with federal rates after July 1, 2008.

A transitioning company as of January 1, 2006, with less than 3 million access lines in service in the state would have to reduce its switched access rates. On July 1, 2006, the company would have to reduce those rates to the lesser of:

- 25 percent of the difference in the rates in effect on June 30, 2006; or
- the difference in the rates in effect on June 30, 2006, multiplied by the number of the company's markets in the state that were not regulated as a percentage of the company's total number of markets in the state on December 30, 2005.

On July 1, 2007, the company would have to reduce those rates to the lesser of:

- 25 percent of the difference in the rates in effect on June 30, 2006; or
- the difference in the rates in effect on June 30, 2006, multiplied by the number of the company's markets in the state that were deregulated in the preceding 12 months as a percentage of the company's total number of markets in the state on December 30, 2005.

On July 1, 2008, the company would have to reduce those rates to the lesser of:

- 25 percent of the difference in the rates in effect on June 30, 2006; or
- the difference in the rates in effect on June 30, 2006, multiplied by the number of the company's markets in the state that were deregulated in the preceding 12 months as a percentage of the company's total number of markets in the state on December 30, 2005.

On July 1, 2009, and on July 1 of each succeeding year, the company would have to reduce those rates by the difference in the rates in effect on June 30, 2006, multiplied by the number of the company's markets in the state that were deregulated in the preceding 12 months as a percentage of the company's total number of markets in the state on December 30, 2005. If more than 75 percent of a company's markets were not regulated on July 1, 2009, or any succeeding year, the company would have to reduce its switched access rates to parity with federal rates and keep them at parity.

Any company classified as a transitioning company after January 1, 2006, would have to reduce its switched access rates. On the date it was classified as a transitioning company, the company would have to reduce those rates to the lesser of:

- 25 percent of the difference in the rates in effect on the day before it was classified; or
- the difference in the rates in effect on the day before it was classified multiplied by the number of the company's markets in

the state that were not regulated on the date the company was classified as a percentage of the company's total number of markets in the state on December 30, 2005.

On the first anniversary of the date the company was classified, the company would have to reduce those rates to the lesser of:

- 25 percent of the difference in the rates in effect on the day before it was classified; or
- the difference in the rates in effect on the day before it was classified multiplied by the number of the company's markets in the state that were not regulated in the prior 12 months as a percentage of the company's total number of markets in the state on December 30, 2005.

On the second anniversary of the date the company was classified, the company would have to reduce those rates to the lesser of:

- 25 percent of the difference in the rates in effect on the day before it was classified; or
- the difference in the rates in effect on the day before it was classified multiplied by the number of the company's markets in the state that were not regulated in the prior 12 months as a percentage of the company's total number of markets in the state on December 30, 2005.

On the third anniversary of the date the company was classified and on each anniversary thereafter, the company would have to reduce those rates by the difference in the rates in effect on the date before the company was classified multiplied by the number of the company's markets in the state that were deregulated in the preceding 12 months as a percentage of the company's total number of markets in the state on December 30, 2005. If more than 75 percent of a company's markets were not regulated on July 1, 2009, or any succeeding year, the company would have to reduce its switched access rates to parity with federal rates and keep them at parity.

No company could increase its rates above the level prescribed in the bill after they had been reduced. If a transitioning company's federal switched access rates were reduced, the company would have to reduce its rates to no more than the level prescribed in the bill. A company would be free to reduce its rates below the level prescribed in the bill.

Legislative oversight committee. The bill would establish a legislative oversight committee on telecommunications competitiveness consisting of:

- The chair of the Senate Business and Commerce Committee;
- The chair of the House Regulated Industries Committee;
- Three senators appointed by the lieutenant governor;
- Three representatives appointed by the speaker of the House; and
- The chief executive of the Office of Public Utility Counsel.

The committee would conduct at least one public hearing a year jointly with the PUC on competition of telecommunications services in the state. By November 15 of each even numbered year, the committee would submit a report to the governor, the lieutenant governor, and the speaker of the House that included an analysis of problems caused by deregulation and legislative recommendations to address those problems.

Statewide Cable Franchise

An entity seeking to provide cable or video service in the state would be required to file an application for a state franchise with the PUC. The application would include an affirmation that the entity had filed all required federal forms, an agreement to comply with all applicable state and federal regulations, an affirmation that the provider would comply with municipal right-of-way regulations including municipal police powers, a description of the geographic areas to be served, and the entity's principal place of business and executive officers.

The franchise certificate issued by the PUC would grant authority for the entity to provide cable or video service and to use public rights-of-way to deliver that service. This authority would be subject to a requirement that the applicant lawfully operate the service.

A cable or video service provider that currently held a cable franchise could not seek a statewide franchise until the expiration date of the current franchise. However, as of September 1, 2005 a cable provider that served less than 40 percent of all cable customers in the municipal franchise area could terminate its franchise and apply for a state-issued franchise. Such a provider would have to remit to the affected municipality any unpaid franchise fees before the 91st day after the franchise was terminated.

Municipal franchises. The holder of a state-issued franchise would have to pay each municipality a fee equal to 5 percent of the provider's gross revenues. The fee would be paid quarterly and would be accompanied by a summary explaining the calculation. A provider could recover this fee from its customers.

"Gross revenues" would be defined as:

- all considerations derived by a provider from its cable or video service system in the municipality;
- all fees charged to cable or video service subscribers;
- commissions paid to a provider for exhibition of products through "home shopping" programs; and
- a portion of advertising revenue, calculated by dividing the number of subscribers in the municipality by the subscribers related to the relevant regional or national advertising compensation arrangement.

Gross revenues would not include:

- revenue billed but not received;
- non-cable revenue received by an affiliate in exchange for goods or services used by the provider for cable or video service;
- discounts provided to subscribers, leasing providers, advertisers, or a municipality;
- revenues from services classified as non-cable or non-video under federal law, including telecommunications or Internet services;
- revenues paid by subscribers to home shopping producers;
- the sale of service for resale by another, provided that the other provider collected the 5 percent franchise fee from customers;
- the provision of cable services at no charge, including the provision of service to public institutions;
- any tax imposed upon the provider or its subscribers;
- service provided at no charge, as required by a municipality, including service to schools or government entities;
- revenue foregone through provision of reduced-cost service;

- sales of capital assets or equipment not used to receive cable services from a cable franchise holder;
- reimbursement by programmers for marketing costs incurred by the provider; or
- directory or Internet advertising revenue.

The PUC would be prohibited from preferring or discriminating against any cable or video service provider under a state franchise. A municipality could only:

- require a provider to register with the municipality and provide a point of contact;
- establish guidelines regarding the use of public access channels; and
- require a provider to submit a report addressing any failure by the provider to comply with applicable customer service standards.

If a provider did not submit customer service reports or if the reports verified noncompliance, the municipality could file a court proceeding.

A municipality could not require compensation for a provider's right or privilege to provide service or use a public right-of-way.

In-kind contributions and grandfathered services. Until the expiration of an incumbent cable provider's agreement, the holder of a state-issued franchise would have to pay a municipality in which it offered cable service the same cash payments on a per-subscriber basis as required by the provider's franchise agreement. Upon the expiration of the agreement, the holder of a state-issued franchise would have to pay a municipality 1 percent of the provider's gross revenues or the per subscriber fee that was paid under the expired agreement, in lieu of in-kind compensation and grants, whichever the municipality elected. These payments would not be credited against the statewide franchise fee.

Until the later of the date when a franchise was to expire or January 1, 2008, a provider would have to continue offering network capacity for noncommercial use by the municipality, provided that the municipality compensated the provider for the cost of the capacity. In addition, a provider would have to continue offering cable services to community buildings, such as municipal or public school buildings, until January 1,

2008. After that date, the provider could deduct from its franchise fee the cost of the services required by the municipality.

Quality of service. A cable or video provider could not deny access to service by a group of potential residential subscribers in an area because of the income of residents. A provider could satisfy this requirement by using an alternative technology, even if that alternative differed in terms of content or functionality. Neither the state nor a political subdivision could require a provider to build out a network, except as specifically required under federal law.

An affected person, including a municipality in which an affected person lived, could seek enforcement of this provision by initiating a proceeding with the PUC. Should a court find a provider in violation, the court would order compliance by the provider. Failure to comply would result in penalties that could include revocation of the provider's state franchise.

Federal customer service requirements under 47 C.F.R. 76.309(c) would apply until more than two providers were offering service (including direct-to-home satellite service) in an area.

Public access channels. Within 120 days after receiving a municipal request, a cable or video service provider would have to provide the municipality with capacity in its network to allow public, educational, and governmental access channels (PEGs), where technically capable. If a municipality did not have PEGs as of September 1, 2005, the provider would have to provide up to three PEGs for a municipality of at least 50,000 and up to two PEGs for a municipality of less than 50,000. If a municipality already had PEGs before September 1, 2005, the provider could not provide fewer PEGs than the number that a municipality had.

A provider could place any channel used by a municipality on any tier of service, except that the municipality could designate up to three PEGs (or two for a municipality less than 50,000) for the lowest service tier for which no equipment was required to receive the channel. If the service was provided only in digital format, the PEGs would be in that format.

If a municipality had not used the three PEGs (or two for a smaller municipality) within 120 days after it had requested the PEGs, access to the additional channel capacity would be provided only if, upon 90 days written notice, the municipality met the following standards:

- if the municipality had one active PEG and desired to activate an additional PEG, the initial channel would be considered actively utilized when at least 12 hours daily were programmed on that channel and at least 40 percent of this programming was nonrepeat programming on average over each calendar quarter;
- if the municipality had two active PEGs and desired to activate an additional PEG, the two would be considered actively utilized when at least 12 hours on each channel on each day were programmed and at least 50 percent of this programming was nonrepeat programming on average over three consecutive calendar quarters.

"Nonrepeat programming" would include the first three times a program was broadcast.

A municipality would have to pay for any construction required to establish a connection between the municipality's origin point and the provider's network. The operation of a PEG would be the municipality's responsibility. Any PEG that was not utilized for at least eight hours a day no longer would be made available to the municipality and could be programmed at the provider's discretion. The PEG could be restored, but the provider would have no obligation to carry the channel on a basic or analog tier. The municipality would be responsible for ensuring that all programming over a PEG was submitted in a format capable of being transmitted by the provider.

A municipality could not require a provider to pay any fee to support PEGs.

Municipal authority. A municipality could exercise police power-based regulations toward a franchise holder in a non-discriminatory manner in order to protect the health, safety, and welfare of the public. A municipality could not require the franchisee to:

- locate business offices in the municipality;
- file reports not otherwise required by state or federal law, except for records retained for the purpose of locating facilities in a right-of-way;

- allow inspection of business records, other than those related to calculation of a franchise fee;
- obtain approval of a transfer of ownership of the franchisee's business; or
- be self-insured or bonded, except that a bond could be required of a provider that lacked four years' history of work without a history of damage to a right-of-way.

A municipality could require a cost-free construction permit for a franchisee that was locating facilities in a public right-of-way. A franchisee could repair facilities located in a right-of-way in the event of an emergency, provided that the franchisee notified the municipality as soon as possible and subsequently obtained approval from the municipality. A municipality would be held harmless against any claims for which damages were sought for actions caused by the franchisee's negligence while servicing facilities in a right-of-way.

Municipal authority otherwise would be limited to:

- requiring that the franchisee register with the municipality and maintain a point of contact;
- establishing guidelines governing the use of PEG channels; and
- submitting service quality complaints to the PUC.

The holder of a state franchise would not have to comply with mandatory build-out provisions.

Applicability of other laws. Nothing in the bill would prevent a municipality or voice, cable, or video service provider from seeking clarification of its obligations under federal law or exercising any right under federal or state law.

Study. The PUC would have to conduct a study and issue a report to the Legislature by December 1, 2006, with recommendations regarding municipal compensation from voice, video, and cable providers.

Broadband over Power Lines (BPL)

HB 13 would authorize an affiliate of an electric utility to operate a BPL system, defined as the provision of broadband services over electric power lines, and provide BPL services on an electric utility's electric delivery system.

A utility could install or operate a BPL system in any part of its certificated service area. BPL services would not be regulated by the state or any local government beyond regulations included in the bill. Neither the PUC nor a local government could prohibit an affiliate or unaffiliated entity from installing a BPL system or require that a utility install or allow others to install a BPL system.

Terms of a BPL agreement. Under the bill, an electric utility could allow an affiliate or an unaffiliated entity to own or operate a BPL system on the utility's electric delivery system or provide Internet service over a BPL system. A utility would have to charge the owner of a BPL system for the use of the utility's electric delivery system and could pay a BPL owner or BPL Internet service provider (ISP) for the use of the BPL system required to operate BPL utility applications. A utility could not charge an affiliate less than it would charge an unaffiliated entity or pay an affiliate more than the affiliate would charge an unaffiliated entity. A utility or an affiliate could not discriminate against an unaffiliated provider with regard to BPL services. If a BPL system were installed on a telecommunications structure, the BPL system owner would pay the telecommunications utility a fee consistent with customary charges for access to that space.

Reliability. A utility would have to ensure that operation of a BPL system on its electric delivery system did not interfere with the reliability of its delivery system. Broadband services would be secondary to reliable provision of electric services.

BPL regulation. The governing body of a municipality would not have jurisdiction over a BPL system, rates, or services. If a municipality or local government already was collecting a fee from a utility for use of a public way for delivery of electricity to retail electric customers, that governmental entity would be prohibited from requiring a franchise for provision of BPL services. No governmental entity could impose a charge on BPL services greater than the lowest charge imposed on other Internet services in the entity's jurisdiction. Installation of a BPL system on an electric delivery system would not require a utility or BPL system owner to obtain additional easements.

BPL operators would be required to comply with all applicable federal laws, including laws protecting licensed spectrum users from interference. The operator of a radio frequency device would have to cease operating the device upon notification by the Federal Communications Commission (FCC) or the PUC that the device caused harmful interference.

Cost recovery. An electric utility's investment in a BPL system that directly supported services used by the utility could be included in the utility's invested capital and be included under a rate proceeding under Utilities Code, ch. 36, which governs PUC authority to regulate electric utility rates. Such expenses would have to be directly allocated to customers receiving those services. Charges for use of a utility's electric delivery system would be limited to the usual cable television pole attachment charges. The revenues of an affiliated BPL operator or ISP would not be included as revenues of an electric utility under a rate proceeding. A utility could have an ownership interest in a BPL operator or ISP.

Texas Universal Service Fund

Intermodal competition. The bill would specify that the holder of a certificate of convenience and necessity or a certificate of operating authority would be allowed to meet its provider of last resort obligations using any available technology. The PUC could adjust disbursements from the TUSF to fund the use of technologies other than traditional wireline technologies to meet these obligations. A certificate holder would have to meet service standards, including 911 service, that were comparable to those for wireline technologies. Services would have to be offered at prices comparable to those for comparable services in that exchange or a nearby exchange.

Maintenance of rates. Provisions in current law authorizing the PUC to adopt a mechanism to maintain reasonable rates for local exchange service for companies with fewer than 5 million access lines would apply only to cooperatives and companies with fewer than 31,000 access lines.

TUSF study. The PUC would have to review whether the TUSF accomplished its purpose as specified in statute and by rule. The evaluation would assess whether the fund's purposes had been achieved, whether it should be phased out, and the manner in which money was collected and disbursed. By January 1, 2006, the PUC 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 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 ensure 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.

The PUC would be able to revise the amounts made available from the High Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan any time after September 1, 2007, after providing an opportunity for hearing.

Study of discounts for educational and other entities. Prior to October 1, 2005, the PUC would begin a study on establishing a funding mechanism to provide support to telecommunications utilities providing discounts or private network services to entities under programs designed to benefit distance learning, educational institutions, libraries, and telemedicine centers. The study would evaluate alternative funding sources that would make financial support available to utilities on a nondiscriminatory basis, in a technologically neutral fashion. The PUC would issue a report to the Legislature before November 15, 2006, regarding the viability of establishing such a new funding source.

Audio newspaper assistance program. The bill would establish a program to provide financial assistance from the TUSF for a free audio newspaper assistance service that would offer the text of newspapers over the telephone to visually impaired individuals.

Basic Service Revisions

After July 1, 2006, residential call waiting service no longer would be part of basic service under Utilities Code ch. 58. For customers age 65 or older, however, basic service would include caller identification service. At the election of a chapter 58 ILEC, the price for basic network service would include fees and charges for mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service. A non-permanent expanded toll-free local calling service surcharge established by the PUC to recover the costs of mandatory expanded toll-free calling service would be considered part of basic network service and could not be aggregated.

The bill would require local exchange providers to ensure that customers were informed of the Lifeline program upon the initiation of service. The PUC would enter into an agreement with the Health and Human Services Commission and with housing authorities to increase enrollment in the Lifeline program. Lifeline service would be available to a customer whose income was up to 150 percent of the federal poverty level or who had in their household a person who received:

- Medicaid;
- food stamps;
- Supplemental Security Income;
- federal housing assistance;
- low income home energy assistance; or
- the Children's Health Insurance Program.

Discounts would apply only to basic network service, but recipients would have access to custom calling features.

Wholesale Code of Conduct

The bill would establish a code of conduct to ensure that telecommunications providers "operate in a manner that is consistent with minimum standards to provide customers with continued competitive choices." The code would apply only to the extent it was not preempted by federal law.

A provider would have to allow interconnection with other providers' networks for the routing of exchange service. A provider could not:

- discriminate against another provider by refusing access to an exchange;
- refuse interconnection to another provider;
- degrade the quality of access to another provider;
- fail to disclose information necessary to enable interconnection; or
- refuse access by a person to another provider.

A provider would have to:

- provide number portability in accordance with federal law;
- negotiate in good faith;
- provide dialing parity to competing providers;
- provide reasonable right-of-way access to competing providers;
- establish reciprocal compensation arrangements for the transport of telecommunications; and
- provide access to 911 service, directory assistance, and operator service.

Audio and Video Services

HB 13 would establish certain requirements for a provider of advanced services and local exchange telephone service with more than 500,000 access lines in service in the state that delivered audio programming with localized content or video programming to its subscribers. Such a provider would have to provide its subscribers with access to the signals of local television and radio stations. The provider would not have to give valuable consideration to a station in exchange for carrying the station. Transmissions from local stations would have to be of comparable quality to other stations. All programming providers would have to be included in a programming guide that listed program schedules.

Other Provisions

Mobile service billing. A mobile service provider could include in a user's bill only charges for service and options requested by the user and taxes imposed on the user. The bill could not contain a charge unless a contract, tariff, or law required the user to pay the fee or authorized a provider to include the fee in the bill. A violation of this provision would be a deceptive act that would be actionable only by the attorney general.

Study. The PUC would be directed to study whether the Public Utilities Regulatory Act adequately preserves consumer choice in Internet-enabled applications employed in association with broadband service. The results of the study would be presented to the Legislature by January 1, 2007, and would have to include consultation from all interested parties.

Repealed. The bill also would repeal provisions of current law governing:

- broadcaster safeguards;
- electronic publishing; and
- information technology services.

SUPPORTERS SAY:

By making telecommunications law compatible with the technological and competitive innovations that have occurred since 1995, HB 13 would update Texas' outmoded regulatory framework for telecommunications and cable technologies. HB 13 would open the Texas marketplace to true and extensive competition, providing a legal structure that would encourage technological innovation and improve service for customers.

Deregulation. 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, such as 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.

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 would allow access charges to resemble more closely the actual cost of switching calls, facilitating more efficient competition in the long-distance market.

HB 13 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 has 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.

Cable franchise. By establishing a level playing field for competition and choice in cable and video services, HB 13 would put Texas at the forefront of regulatory modernization in this rapidly innovating industry. New technologies, such as high-speed fiber to the home and broadband, provide for the convergence of voice, data, video, and other services, maximizing the benefits the consumer could receive from information technology. This bill is necessary to allow deployment of integrated technologies and to encourage private investment that would benefit Texas consumers.

HB 13 would streamline state and municipal regulation of cable service providers. Currently, before a cable provider enters a market, that provider must negotiate a franchise agreement with a municipality, an expensive and inefficient process. The result is a maze of regulations that presents a barrier to entry for cable competitors. By establishing a statewide franchise, the bill would eliminate the need to negotiate individual agreements while establishing a system of stable, predictable franchise fees that have become a vital component of city budgets.

HB 13 would allow Texas customers to enjoy the benefits of competition in cable service that they have enjoyed in telecommunications service since the mid-1990s. Currently, incumbent cable companies generally operate as monopolies under local franchise agreements, limiting the amount of competition and consumer choice in most communities. The bill would tear down barriers to market entry and competition by ensuring that all video service providers operated under a single set of clear, equitable rules.

Current safeguards that benefit cities, schools, and consumers would be affirmed under HB 13. The bill would provide for a base number of public access channels that many cities use for educational and civic purposes. It would incorporate federal requirements prohibiting discriminatory treatment of low-income citizens but would allow companies to meet this obligation through new technologies rather than archaic network build-out mandates. Federal customer service requirements would remain in place until adequate competition existed in an area.

BPL. HB 13 would establish a framework for deployment of BPL technology across Texas. BPL is a revolutionary technology that could expand broadband services to underserved rural areas and provide enhanced electric services to customers throughout the state. Because electric service is ubiquitous, the potential exists for equally expansive broadband service, provided the state establishes a framework for deploying BPL technology. BPL also could facilitate technologies to benefit electric utility customers that could help manage peak demand for electricity or prevent power outages.

Recognizing that the FCC has exclusive jurisdiction over radio frequencies, HB 13 would establish appropriate measures to prevent interference of BPL services with amateur radio services. The bill would require BPL providers to comply with all applicable federal laws, including the BPL regulations promulgated by the FCC in October 2004, which established technical guidelines to curtail harmful interference with licensed broadcasters. The bill would require a BPL service to be halted if the FCC found evidence of interference. It thus would be in a provider's interest to ensure that BPL did not cause interference.

The bill would not subject all utility customers to fees to subsidize deployment of BPL, and ratepayers would not be at risk for BPL investments. Cost recovery by utilities would be allowed only for services that directly benefited utility customers, such as enhanced metering capabilities or grid reliability provided through BPL technology.

Texas Universal Service Fund. 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.

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

An audio newspaper assistance program would provide an important service to visually impaired Texans by allowing them to listen to newspaper articles read over the telephone. The TUSF has sufficient resources to pay for this program, and this assistance program would be an appropriate use of money from this fund.

Code of conduct. 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, which HB 13 would provide.

HB 13 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.

OPPONENTS SAY:

Deregulation. HB 13 would allow major local telephone companies, such as SBC and Verizon, to raise the price of basic local service virtually without restriction in markets of at least 100,000 on January 1, 2006, and in most other markets shortly thereafter. In doing so, this bill would run counter to historic state policy ensuring that all Texans have affordable access to basic local service. By deregulating basic telephone service, this bill virtually would ensure that Texas consumers faced higher prices for local phone service.

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. The market test established for smaller markets would not sufficiently protect competitors or ensure low phone rates. In many areas of the state, ILECs would be able to charge excessive rates for service without fear of losing customers. When the Legislature has deregulated 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.

HB 13 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 lowered 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.

With its overemphasis on "intermodal competition," HB 13 would ignore the significant competitive differences between basic phone service and newer telecommunications technologies. The cost of a basic line is 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 because it allows emergency responders quickly and accurately to locate the caller. These are compelling reasons to continue the official preference for basic phone service over newer alternatives.

Cable franchise. HB 13 would discriminate against existing cable providers that are subject to extensive federal, state, and local regulations governing network build-out, quality of service, and public access channels, among other requirements. Cable companies that have built networks throughout entire cities would be at a disadvantage compared to new entrants that could build only in neighborhoods with the most profit potential. SBC and other major telecommunications providers that receive public TUSF subsidies would be able to corner the most lucrative sections of the market, harming consumers and providing only the illusion of true competition.

Under the guise of "intermodal competition," HB 13 would open the door to abusive redlining practices by new entrants in the cable market. The bill would purport to allow "alternative technologies" to satisfy nondiscrimination mandates. However, the availability of ubiquitous yet expensive direct-to-home satellite technology likely would satisfy nondiscrimination requirements while remaining an unrealistic option for low- or middle-income consumers. New providers would be free to build video networks in higher income areas while denying the cost and service benefits of new technologies to low-income Texans.

HB 13 would undermine local control for cities that currently can negotiate cable franchise agreements that are appropriate to the diverse needs of cities across the state. The bill would allow cable providers to opt out of negotiated agreements that often provide cities with the ability to enforce customer service standards and ensure universal service.

BPL. BPL is an unproven technology that has been shown to cause substantial interference with radio services, particularly amateur radio services. Because power lines are not designed to prevent radiation of radio frequency energy, interference with certain licensed broadcasters is likely. Studies by the U.S. National Telecommunications and Information

Administration have demonstrated interference from BPL systems and have suggested that the recently adopted FCC regulations are insufficient.

Encouraging large-scale BPL deployment would be premature, particularly when other broadband technologies that do not cause interference already are available. Amateur radio operators provide important public safety services such as monitoring weather patterns in conjunction with the National Weather Service, and the Legislature should ensure that services provided by these volunteers were not harmed by BPL.

Texas Universal Service Fund. Companies that reap the benefits of deregulation should not be able to keep the millions of dollars in public subsidy from the TUSF. It would be unfair for taxpayers to continue subsidizing companies that receive a huge profit windfall from price deregulation under the bill, particularly as the Legislature is making it easier for those companies to enter the cable market at the same time. If the Legislature is going to require an expansive study on the TUSF but withhold substantial changes to the fund until the study is complete, the same approach should be taken to competition and price deregulation.

OTHER OPPONENTS SAY:

By initiating vast policy changes while also requiring the PUC to study the issue of municipal fees from communications service providers and the TUSF, HB 13 effectively would "put the cart before the horse." While municipal right-of-way compensation, cable franchising, and the TUSF clearly are in need of reform, the Legislature should allow the PUC to study the issue first and then provide recommendations. The Legislature should initiate dramatic policy changes such as those in HB 13 only after it has a better sense of what the impact of these proposals might be.

HB 13 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.

NOTES:

According to the Legislative Budget Board, HB 13 would cost $1.3 million in general revenue in fiscal 2006-07 to pay for 16.0 FTEs at the PUC necessary to implement provisions related to telecommunications restructuring, BPL regulation, statewide cable franchise, and the TUSF study.

The companion bill, SB 5 by Fraser, was reported favorably, without amendment, by the Senate Business and Commerce Committee on July 21 and is identical to HB 13.

HB 13 is very similar to SB 21 by Fraser, which passed the House as amended on July 17 during the first called session, except that HB 13 specifies that the attorney general would address complaints related to mobile phone billing.

HB 13 contains provisions similar to several bills that were considered during the regular session of the 79th Legislature. SB 1748 by Fraser, which would have established a framework for the operation of BPL technology in the state, was placed on the House calendar for May 24, but was never considered. HB 789 by P. King, which would have reduced intrastate access rates and deregulated basic local telephone rates, among other provisions, died in conference committee. HB 3179 by P. King, which would have established a statewide cable franchise, was placed on the House calendar for May 12, but was never considered.