

BILL ANALYSIS

Senate Research Center

S.B. 560
By: Sibley
Technology & Business Growth
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As Filed

DIGEST

In 1995, H.B. 2128 was enacted by the 74th Legislature to change the telecommunications market from a highly regulated industry to a less regulated industry, and eventually to a competitive industry. Since 1995 the telecommunications industry market has changed considerably. With the development of alternative telecommunications providers, the growing marketplace for telecommunications, and the end of certain commitments made under H.B. 2128, the regulatory framework now requires some adjustment. S.B. 2128 would regulate the telecommunications utilities and the provision of telecommunication services.

PURPOSE

As proposed, S.B. 560 regulates the telecommunications utilities and the provision of telecommunications services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Public Utility Commission in SECTION 4 (Section 52.112(b), Chapter 52C, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 52.102, Utilities Code, to provide that a telecommunications utility subject to this subchapter has jurisdiction to require an interexchange telecommunications carrier to pass switched access rate reductions to customers under Chapter 56 or other law, as required under Section 52.112. Makes a conforming change.

SECTION 2. Amends Section 52.108, Utilities Code, to authorize the Public Utility Commission (commission) to enter any order necessary to protect the public interest if the commission finds after notice and hearing that a telecommunications utility has failed to pass switched access rate reductions to customers under Chapter 56 or other law, as required under Section 52.112.

SECTION 3. Amends Section 52.110, Utilities Code, to provide that in a proceeding before the commission in which it is alleged that a telecommunications utility engaged in conduct in violation of Section 52.107, 52.108, 52.109, or 52.112, the burden of proof is on a telecommunications utility complaining of conduct committed against it in violation of this subchapter, or except as provided by Subsection (b), the responding telecommunications utility if the proceedings are brought by a customer or initiated by the commission.

SECTION 4. Amends Chapter 52C, Utilities Code, by adding Section 52.112, as follows:

Sec. 52.112. REDUCTION PASS-THROUGH REQUIRED. Requires the commission to require that each interexchange telecommunications carrier doing business in this state pass reductions in intrastate access charges through to customers under Chapter 56 or other law. Authorizes the commission, in order to carry out the public policy stated in Subsection (a) and Section 52.001, notwithstanding any other provision of this title, to adopt rules and establish procedures applicable to interexchange telecommunications carriers to: require the pass-through of reductions in intrastate access charges to customers under Chapter 56 or other law; require documentation sufficient to demonstrate that the carrier has passed intrastate access charge reductions through to customers; and take any other reasonable and necessary action, consistent with public policy. Authorizes the commission, when evaluating the reasonableness of interexchange telecommunications carrier reduction pass-through plans, to consider certain

factors. Requires this subsection to expire two years after the date incumbent local exchange companies doing business in the state are no longer prohibited by federal law from offering interLATA and interstate long distance service.

SECTION 5. Amends Section 54.007, Utilities Code, to delete existing Subdivisions(b)(2) and (3) regarding certain instances in which a basic telecommunications service price may be increased. Makes a conforming change.

SECTION 6. Amends Chapter 54C, Utilities Code, as follows:

SUBCHAPTER C. CERTIFICATE OF OPERATING AUTHORITY

Sec. 54.101. DEFINITION. Makes no change.

Sec. 54.102. APPLICATION FOR CERTIFICATE. Authorizes the commission, notwithstanding the prohibition against one entity holding a certificate of convenience and necessity and a certificate of operating authority in the same territory, to grant a certificate of operating authority to the holder of a certificate of convenience and necessity for the same service through the holder's affiliate: to allow a carrier to provide advanced services through an affiliate if the Federal Communications Commission (FCC) has determined that a carrier may provide such service through an affiliate as an exception to the resale or unbundling requirements of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.); or to allow a carrier to provide advanced services through an affiliate if the commission determines that such services may be provided through an affiliate as an exception to the resale or unbundling requirements of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.). Authorizes an affiliate of a person holding a certificate of convenience and necessity to hold a certificate of operating authority if the holder of the certificate of convenience and necessity is in compliance with federal law and FCC rules governing affiliates and structural separation. Authorizes the commission to determine which services and related facilities pertain to an advanced service. Deletes existing subsection (b) regarding information required to be included in an application for a facilities-based certificate of operating authority.

Sec. 54.103. GRANT OR DENIAL OF CERTIFICATE. Deletes text regarding the adequacy of an applicant's build-out plan as one of the commissioner's required consideration factors in granting a certificate on a nondiscriminatory basis. Deletes existing Section 54.104 regarding build out plan requirements and existing Section 54.105 regarding six-year limitation on resale of services. Makes conforming changes.

Sec. 54.104. New heading: TIME OF SERVICE REQUIREMENTS. Requires a certificate holder, notwithstanding Subsection(a), to serve a customer, rather than in the build out area, not later than the 30th day after the date the customer requests service. Redesignated from existing Section 54.106. Deletes existing Section 54.107 regarding requirements to certain facilities; Section 54.108 regarding build-out compliance; Section 54.109 regarding elimination of build-out requirements for certain providers; and Section 54.110 regarding hearing on build out and resale requirements.

Sec. 54.105. New heading: PENALTY FOR VIOLATION OF TITLE. Redesignated from existing Section 54.111.

SECTION 7. Amends Section 56.021, Utilities Code, to require the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist telecommunications providers, rather than local exchange companies, in providing basic local telecommunications service at reasonable rates in high cost or rural areas. Makes a conforming change.

SECTION 8. Amends Sections 56.023 and 56.024, Utilities Code, as follows:

Sec. 56.023. COMMISSION POWERS AND DUTIES. Makes conforming changes.

Sec. 56.024. REPORTS; CONFIDENTIALITY. Authorizes the commission to require a

telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund.

SECTION 9. Amends Section 56.026, Utilities Code, to make a conforming change.

SECTION 10. Amends Chapter 56B, Utilities Code, by adding Section 56.028, as follows:

Sec. 56.028. UNIVERSAL SERVICE FUND REIMBURSEMENT FOR CERTAIN INTRALATA SERVICE. Requires the commission to provide reimbursement through the universal service fund for reduced rates for intraLATA interexchange high capacity (1.544 Mps) service for entities described in Section 58.253(a) upon request of a local exchange company that is not an electing company under Chapters 58 and 59. Requires the amount of reimbursement to be the difference between the company's tariffed rate for such service as of January 1, 1999, and the lowest rate offered for such service by any local exchange company electing incentive regulation under Chapter 58.

SECTION 11. Amends Section 56.071, Utilities Code, to provide that in addition to local exchange companies, this subchapter applies to telecommunications providers that receive universal service fund support pursuant to the commission's universal service fund rules, and any reference to or requirement imposed on local exchange companies in this subchapter shall also apply to such telecommunications providers. Makes conforming changes.

SECTION 12. Amends Section 58.002, Utilities Code, as follows:

Sec. 58.002. New heading: DEFINITIONS. Defines "electing period" as the period from the date an incumbent local exchange company elects to be subject to incentive regulation until September 1, 2003. Makes conforming changes.

SECTION 13. Amends Section 58.021, Utilities Code, to require an election pursuant to this subchapter to expire at the conclusion of the electing period unless extended through subsequent action by the legislature. Provides that upon the expiration of the electing period, a company is no longer considered to be an electing company.

SECTION 14. Amends Section 58.028, Utilities Code, to require the commission to begin a review and evaluation of each company that elects under this chapter or Chapter 59 no later than January 1, 2002, rather than January 1, 2000. Requires the commission to file a report with the legislature no later than January 1, 2003, rather than January 1, 2001. Provides that this section expires on September 1, 2003, rather than September 1, 2001.

SECTION 15. Amends Sections 58.054 and 58.055, Utilities Code, as follows:

Sec. 58.054. RATES CAPPED. Requires an electing company to commit to not increasing a rate for a basic network service during the electing period, rather than on or before the fourth anniversary of its election date, as a condition of election under this chapter. Provides that for an election that took place during the electing period, rather than on or before that anniversary, are the rates charged by the company on June 1, 1995, without regard to a proceeding pending under Section 15.001, Subchapter D, Chapter 53; or Subchapter G, Chapter 2001, Government Code. Provides that for an election that takes place after the year 1995, the rates an electing company may charge during the electing period are the rates charged by the company on the date of election.

Sec. 58.055. RATE ADJUSTMENT BY COMPANY. Authorizes the commission, notwithstanding provisions restricting an electing company's access to pricing flexibility for basic network services, upon request by an electing company, to allow the company one or more forms of pricing flexibility for basic network services. Requires the commission to impose such conditions on pricing flexibility as it deems necessary to protect the public interest, rather than Suchapter F, Chapter 60, an electing company may, on its own initiative, decrease a rate for a basic network service during the four-year period. Requires the electing company, as part of an electing company's request pursuant to Subsection (b), to propose any potential restrictions it believes are necessary to adequately minimize any potential harm to the public interest. Deletes text regarding a company's ability to decrease the rate for switched access service to an amount

above the service's long run incremental cost. Makes a conforming change.

SECTION 16. Amends Section 58.060, Utilities Code, to authorize an electing company to increase a rate for a basic network service only with the commission's approval subject to this title and to the extent consistent with achieving universal affordable service, after the electing, rather than four-year, period expires. Deletes text regarding a period prescribed by Section 58.054.

SECTION 17. Amends Chapter 58C, Utilities Code, by amending Section 58.062 and adding Sections 58.063 and 58.064 as follows:

Sec. 58.062. SWITCHED ACCESS RATES. Prohibits the commission, notwithstanding any other provision of this title, and except as provided in this section, from reducing an electing company's rates for switched access services before the expiration of the cap on basic network services. Requires switched access rates to be transitioned to six cents per minute on a combined originating and terminating basis for an electing company with greater than five million access lines. Requires, for the purposes of this section, the difference between the tariffed intrastate switched access rates on a combined originating and terminating basis on September 1, 1999, and six cents per minute on a combined originating and terminating basis to be known as the "transition amount." Requires the proportional relationship between the levels of originating and terminating intrastate access charges to remain the same as the proportional relationship in effect on September 1, 1999. Requires the certain switched access rate reduction plans to be followed for an electing company with greater than five million access lines. Requires a rebuttable presumption that a switched access rate reduction is not required for an electing company with less than five million access lines. Authorizes the rebuttable presumption to be overcome only upon showing in a contested case that the electing company's switched access rates were not more than 20 percent above the cost of switched access service on September 1, 1999. Requires the commission, in determining the September 1, 1999 cost, to include the long run incremental cost associated with providing switched access service and may attribute a portion of the cost of the local loop to the cost of providing switched access service.

Sec. 58.063. FLEXIBLE PACKAGING ACROSS SERVICE CLASSIFICATIONS. Authorizes an electing company, notwithstanding any other provisions of this title, serving less than five million access lines to package basic network services with discretionary services or competitive services if the company notifies the commission of its binding commitment to make certain infrastructure improvements by September 1, 2001. Requires the price for a package of services containing basic network and discretionary or competitive services to be no higher than the sum of the tariffed rates of the basic network services and the competitive services and the price ceilings of the discretionary services. Requires the price for a package of services containing basic network services and discretionary or competitive services to be set at a level above the sum of certain costs. Authorizes an electing company to flexibly price a package that includes a basic network service in any manner listed in Section 51.002(7), except that such a package is prohibited from being offered in a manner that results in a customer-specific contract.

Sec. 58.064. ZONE-DENSITY PRICING OF BASIC LOCAL TELECOMMUNICATIONS SERVICE. Provides that the only form of pricing flexibility allowed for basic local telecommunications service is zone-density pricing until an electing company is authorized to engage in pricing flexibility pursuant to Section 58.063.

SECTION 18. Amends Section 59.002, Utilities Code, by adding Subdivision (3), to define "electing period."

SECTION 19. Amends Section 59.021, Utilities Code, by adding Subsection (c), to authorize an electing company, on its own motion, to decrease a rate during the electing period described in Subsection (a). Provides that Section 58.059 does not apply to a rate decrease under this subsection.

SECTION 20. Amends Section 59.024(a), Utilities Code, to prohibit an electing company, during the election period, rather than on or before the sixth anniversary of its election date, from increasing a rate previously established for that company.

SECTION 21. Amends Section 59.025, Utilities Code, to make a conforming change.

SECTION 22. Amends Section 59.026(a), Utilities Code, to provide that an electing company is not, under any circumstances, subject to certain complaints. Deletes text regarding the sixth anniversary of the company's election date.

SECTION 23. Amends Section 60.124, Utilities Code, to require the commission to require each telecommunications provider to maintain interoperable networks and to require that interconnection agreements between incumbent local exchange companies and competitive local exchange companies contain self-executing performance penalties for incumbent noncompliance with contract provisions that impair a competitor's ability to provide service to its customers.

SECTION 24. Amends Chapter 60I, Utilities Code, by adding Sections 60.164 and 60.165, as follows:

Sec. 60.164. PERMISSIBLE JOINT MARKETING. Prohibits the commission from adopting any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal law or applicable rules of the FCC, except as prescribed in Chapters 61 and 63.

Sec. 60.165. AFFILIATE RULE. Prohibits the commission from adopting any rule or order that would prescribe for any local exchange company any affiliate rule, including any accounting rule, that is more burdensome than federal law or applicable rules of the FCC, except as prescribed in Chapters 61 and 63. Prohibits the commission, notwithstanding any other provision in this title, from attributing or imputing to a local exchange company a price discount offered by an affiliate of the local exchange company to the affiliate's customers.

SECTION 2. Emergency clause.
Effective date: upon passage.