

BILL ANALYSIS

Senate Research Center

H.B. 789
By: King, Phil (Fraser)
Business & Commerce
5/13/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Significant technological changes have occurred in the communications industry since 1995 when the current version of the Public Utilities Regulatory Act, with regard to telecommunications, was adopted. To encourage and accelerate the development of a competitive and advanced services environment and infrastructure, new rules, policies, and principles must be formulated consistent with the understanding that, as new technologies become available, all public policy must be driven by free market principles for the benefit of consumers in Texas consistent with the public interest.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 50 (Section 55.015, Utilities Code), SECTION 82 (Section 56.301, Utilities Code), SECTION 122 (Section 60.122, Utilities Code), SECTION 125 (Section 60.125, Utilities Code), SECTION 128 (Section 60.129, Utilities Code), SECTION 136 (Section 64.004, Utilities Code), SECTION 137 (Section 64.005, Utilities Code) of this bill.

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 50 (Section 55.015, Utilities Code), SECTION 56 (Section 55.087, Utilities Code), SECTION 65 (Section 56.021, Utilities Code), SECTION 67 (Section 56.025, Utilities Code), SECTION 120 (Section 60.082, Utilities Code), SECTION 124 (Section 60.124, Utilities Code), SECTION 136 (Section 64.004, Utilities Code), and SECTION 140 (Section 64.102, Utilities Code) of this bill.

Rulemaking authority previously granted to the Public Utility Commission of Texas is rescinded in SECTION 48 (Section 55.013, Utilities Code) and SECTION 63 (Section 55.203, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subtitle C, Title 2, Utilities Code, to read as follows:

SUBTITLE C. ADVANCED SERVICE INFRASTRUCTURE AND INTERMODAL COMPETITION

SECTION 2. Amends Sections 51.001(a)-(f), Utilities Code, as follows:

- (a) Provides that significant technological changes have occurred in telecommunications since the law from which this title is derived was originally adopted. Provides that, to encourage and accelerate the development of a competitive and advanced services, rather than telecommunications, environment and infrastructure, new rules, policies, and principles must be formulated consistent with the understanding that, as new technologies become available, all public policy must be driven by free market principles for the benefit of consumers in this state consistent with public interest. Deletes existing text pertaining to protecting the public interest and changes in technology and market structure.
- (b) Makes modification to the list of items detailing the policy of the state.

(c) Provides that the policy goals described by Subsection (b) are best achieved by legislation that modernizes the state's regulatory framework, rather than telecommunications regulation, by certain means.

(d) Provides that the technological advancements, deployment of broadband network, rather than advanced telecommunications, infrastructure, and increased customer choices for telecommunications and advanced services generated by a truly competitive market play a critical role in this state's, rather than Texas', economic future by raising living standards for Texans through certain methods.

(e) Provides that it is the policy of this state to require the Public Utility Commission of Texas (commission) to take action necessary to enhance competition by avoiding the imposition of unnecessary, rather than by adjusting, regulation in light of, rather than to match, the degree of intramodal and intermodal competition in the marketplace achieve certain goals. Makes nonsubstantive changes.

(f) Includes ensuring the availability of advanced services as a policy of this state.

SECTION 3. Amends Section 51.002, Utilities Code, to define "advanced service," "broadband network," "information service," "interexchange telecommunications service," "intraLATA interexchange," "intraLATA message toll," "network provider," "provider," "rural incumbent local exchange company," "service provider," and "telecommunications."

Redefines "basic local telecommunications service," "dominant carrier," "incumbent local exchange company," "local exchange company," "local exchange telephone service," "separation," and "telecommunications provider."

Deletes existing definitions of "long run incremental cost," "telecommunications utility," and "tier 1 local exchange company." Makes conforming changes.

SECTION 4. Amends Section 51.003, Utilities Code, as follows:

(a) Creates this subsection from existing text.

(b) Provides that a service provider or network provider is subject to the commission's jurisdiction except to the extent federal law specifically preempts the commission from exercising authority.

(c) Provides that a state agency, a state institution of higher education, or a service provided by a state agency or state institution of higher education is not a network provider, service provider, or telecommunications provider for purposes of this title.

SECTION 5. Amends Section 51.009, Utilities Code, as follows:

(a) Prohibits anything in this title from being construed as in any way limiting the right of a network provider or service provider, rather than public utility, to pass through a municipal fee the provider is required to pay, including an increase in a municipal fee. Requires a municipality to provide 30-day public notice of the fee and/or increase and requires the notice to include that the network provider or service provider is authorizes to pass through the fee to the customer.

(b) Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 52.002, Utilities Code, to delete existing text of Subsection (a) and redesignates the existing text of Subsection (b). Deletes existing text pertaining to a telecommunications utility other than a public utility.

SECTION 7. Amends Section 52.003, Utilities Code, to authorize the commission, in regulating the services of a provider of local exchange telephone service, rather than a telecommunications utility, providing service in a municipality located on the state line adjacent to a municipality in an adjoining state, to cooperate with the regulatory commission of the adjoining state or of the

federal government and to hold a joint hearing or make a joint investigation with that commission. Deletes existing text referring to rates and operations.

SECTION 8. Transfers Section 51.005, Utilities Code, to Subchapter A, Chapter 52, Utilities Code, redesignates it as Section 52.0041, and amends it as follows:

Sec. 52.0041. New heading: COOPERATION WITH MUNICIPALITIES. (a) Creates this subsection from existing text.

(b) Provides that a municipality has standing in each case before the commission that relates to a provider of local exchange telephone service providing retail service to the municipality. Provides that a municipality's standing is subject to certain rights of the commission.

(c) Authorizes the governing body of a municipality participating in a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to conduct and assist in certain activities.

(d) Prohibits a provider of local exchange telephone service in the ratemaking proceeding from being required to reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (c) except to the extent the commission determines is reasonable.

SECTION 9. Amends Section 52.006, Utilities Code, as follows:

(a) Makes modifications to the topics on which the commission is required to report to the legislature.

(b) Makes modifications to the list of information that the report is required to include.

(c) Makes a conforming change.

(d) Requires each network provider and service provider, rather than a telecommunications utility, to cooperate with the commission as reasonably necessary for the commission to satisfy the requirements of this section.

SECTION 10. Amends the heading to Subchapter C, Chapter 52, Utilities Code, to read as follows:

SUBCHAPTER C. PROVIDERS OF INTEREXCHANGE TELECOMMUNICATIONS SERVICES

SECTION 11. Amends Section 52.101, Utilities Code, to provide that this subchapter applies only to a provider of interexchange telecommunications services.

SECTION 12. Amends Section 52.102, Utilities Code, to provide that except as otherwise provided by this subchapter and Subchapter D, Chapter 55, the commission has jurisdiction over a provider of interexchange telecommunications services only to require compliance with this subchapter. Deletes existing text referring to specific jurisdiction of a telecommunications utility subject to this subchapter.

SECTION 13. Amends Section 52.103, Utilities Code, as follows:

(a) Requires a provider of interexchange telecommunications service to customers residing in this state, rather than a telecommunications utility, to register with the commission not later than the 30th day after the date the provider commences service to the public. Makes a conforming change.

(b) Deletes existing text referring to filing other regulation information. Makes a conforming change.

(c) Makes conforming changes.

SECTION 14. Amends Section 52.108, Utilities Code, to authorize the commission to enter any order necessary to protect the public interest if the commission finds after notice and hearing that a provider of interexchange telecommunications service has ceased providing certain services. Makes a conforming change. Deletes existing text pertaining to a telecommunications utility engaging in certain activities.

SECTION 15. Amends the heading to Subchapter F, Chapter 52, Utilities Code, to read as follows:

SUBCHAPTER F. REQUIRED FILINGS AND ACCESS RATE PROHIBITIONS

SECTION 16. Amends Section 52.251, Utilities Code, as follows:

(a) Requires an incumbent local exchange company, rather than a public utility, to file with the commission a tariff or price list showing certain rates.

(b) Requires the incumbent local exchange company, rather than public utility, to file as a part of the tariff required under Subsection (a) certain terms or conditions, rather than rules. Makes conforming changes.

(c) Requires a certificated provider of local exchange telephone service that is not an incumbent local exchange company to file a price list as provided by Subsection (a).

SECTION 17. Transfers Section 52.155, Utilities Code, to Subchapter F, Chapter 52, Utilities Code, redesignates it as Section 52.2521, amends it as follows:

Sec. 52.2521. PROHIBITION OF EXCESSIVE ACCESS CHARGES. Prohibits a provider of local exchange telephone service that is not an incumbent local exchange company, rather than a telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority, from charging a higher amount for a combined originating and, rather than or, terminating intrastate switched access than the prevailing rates charged by the incumbent local exchange company in whose territory the call originated or terminated unless certain conditions are met. Makes conforming changes.

SECTION 18. Amends Section 52.255, Utilities Code, to authorize a provider of local exchange telephone service, rather than a public utility, to be removed from this state if the book, account, record, or memorandum is returned to this state for any commission inspection authorized by this title (Public Utility Regulatory Act).

SECTION 19. Amends Section 52.256(c), Utilities Code, to make modifications to the requirements of the annual report pertaining to workforce diversity. Makes conforming changes.

SECTION 20. Amends Subchapter A, Chapter 53, Utilities Code, by adding Section 53.0001, as follows:

Sec. 53.0001. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to an incumbent local exchange company that is not regulated under Chapter 58 or 59.

SECTION 21. Amends Section 53.056(c), Utilities Code, to require the rates and methods established under this section and the depreciation account required by the commission, rather than Section 52.252 (Depreciation Account), to be used uniformly and consistently throughout rate-setting and appeal proceedings.

SECTION 22. Amends Section 53.061(a), Utilities Code, to make modifications to the expenditures that the commission is prohibited from allowing as a cost or expense for ratemaking purposes.

SECTION 23. Amends Section 53.065(b), Utilities Code, to delete existing text referring to contracting for certain services under Section 52.057 (Customer-Specific Contracts).

SECTION 24. Amends Section 53.308, Utilities Code, to delete existing text referring to recovering costs for services provided under Section 55.004 (Local Exchange Company Rule or Practice Change).

SECTION 25. Amends Chapter 53, Utilities Code, by adding Subchapter I, as follows:

SUBCHAPTER I. SPECIAL PROVISIONS FOR RURAL INCUMBENT LOCAL
EXCHANGE COMPANIES

Sec. 53.401. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies only to a rural incumbent local exchange company.

Sec. 53.402. NEW SERVICES. (a) Requires a rural incumbent local exchange company to price each new service at or above the service's long run incremental cost. Requires the commission to allow the company to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(b) Authorizes an affected person, the office on behalf of residential or small commercial customers, or the commission to file a complaint at the commission challenging whether the pricing by a rural incumbent local exchange company of a new service is in compliance with Subsection (a).

(c) Provides that if a complaint is filed under Subsection (b), the rural incumbent local exchange company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. Sets forth certain guidelines for the company if the complaint is finally resolved in favor of the complainant.

Sec. 53.403. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER PROMOTIONAL OFFERINGS. (a) Authorizes, notwithstanding any other provision of this title, a rural incumbent local exchange company to exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. Defines "pricing flexibility."

(b) Requires a rural incumbent local exchange company, at the company's option, to price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. Requires the commission to allow the company to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) Authorizes an affected person, the office on behalf of residential or small commercial customers, or the commission to file a complaint alleging that a rural incumbent local exchange company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. Requires the complaint to be filed before the 31st day after the date the company implements the rate.

Sec. 53.404. CUSTOMER PROMOTIONAL OFFERINGS. (a) Authorizes a rural incumbent local exchange company to offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) Requires the company to file with the commission a promotional offering consisting of certain waivers and discounts.

(c) Provides that a rural incumbent local exchange company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) Authorizes a rural incumbent local exchange company to offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

SECTION 26. Amends Section 54.001, Utilities Code, as follows:

(a) Prohibits an entity from providing a telecommunications service or an advanced service or otherwise conducting business in this state as a network provider or service provider without first obtaining a certificate issued by the commission under this chapter, unless the entity qualifies for the exemption provided by Section 54.002. Deletes existing text referring to local exchange telephone service, basic local telecommunications service, or switched access service.

(b) Provides that effective October 1, 2005, an entity that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority is considered to hold a service provider certificate unless the certificate holder files certain information with the commission before that date.

(c) Authorizes an entity that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority on September 30, 2005, to present that certificate to the commission and requires the commission to immediately issue to that entity a network provider or service provider certificate, as appropriate. Provides that the new certificate is effective October 1, 2005.

SECTION 27. Amends Section 54.002, Utilities Code, as follows:

Sec. 54.002. New heading: EXCEPTIONS. Provides that a network provider or service provider, rather than a telecommunications utility, is not required to obtain a certificate if the Federal Communications Commission has exercised lawful preemptive authority precluding state certification requirements in relation to the provider. Deletes existing text referring to a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority. Deletes existing Subsection (b).

SECTION 28. Amends Section 54.005(a), Utilities Code, to require the commission to take certain steps when an application for a network provider or service provider certificate is filed by an entity that did not possess a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority on September 30, 2005, rather than when an application is filed.

SECTION 29. Amends Subchapter A, Chapter 54, Utilities Code, by adding Section 54.0055, as follows:

Sec. 54.0055. GRANT OR DENIAL OF CERTIFICATE. (a) Requires the commission to grant or deny an application for a certificate filed under Section 54.005 (Notice of Hearing on Application) not later than the 60th day after the date the application is filed.

(b) Requires the commission to grant each certificate on a nondiscriminatory basis after considering the technical and financial qualifications of the applicant. Prohibits an applicant from receiving a certificate if an officer or director of the applicant has ever been convicted of a felony.

SECTION 30. Amends Section 54.008, Utilities Code, to require, rather than authorize, the commission to revoke or amend a certificate after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area. Makes conforming changes. Deletes existing Subsection (b).

SECTION 31. Amends Section 54.201, Utilities Code, to make conforming changes.

SECTION 32. Amends Section 54.202, Utilities Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Prohibits a municipality or a municipally owned utility, rather than a municipal electric system, from offering certain services for sale to the public.

(c) Provides that Subsection (a) does not prevent a municipally owned utility from providing certain services.

(d) Prohibits this section from being construed as preventing a municipally owned utility from providing to its energy customers, either directly or indirectly, any energy related service involving the transfer or receipt of information or data concerning the use, measurement, monitoring, or management of energy utility services provided by the municipally owned utility, including services such as load management or automated meter reading.

SECTION 33. Amends Subchapter E, Chapter 54, Utilities Code, by adding Section 54.2022, as follows:

Sec. 54.2022. PROHIBITION ON MUNICIPAL CHARGES FOR WIRELESS BROADBAND SERVICES. (a) Prohibits, notwithstanding any other law, a municipality from charging for wireless broadband services, including wireless fidelity, or Wi-Fi, services, that the municipality may provide under this title, except as provided by Subsection (b).

(b) Authorizes a municipality that charged for services described by Subsection (a) on January 1, 2005, to continue to charge for those services.

SECTION 34. Amends Sections 54.203(a)-(c), Utilities Code, to make conforming and nonsubstantive changes.

SECTION 35. Amends Sections 54.204(a)-(c), Utilities Code, as follows:

(a) Makes conforming changes. Deletes existing text referring to federal law.

(b) Makes conforming changes.

(c) Prohibits a municipality or municipally owned utility from charging any entity, regardless of the nature of the services provided by that entity, a pole attachment rate or underground conduit rate that exceeds the fee the municipality or municipally owned utility would be permitted to charge under certain rules adopted by the Federal Communications Commission if the municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission. Requires, in addition, not later than September 1, 2006, a municipality or municipally owned utility to charge a single, uniform pole attachment or underground conduit rate to all entities that are not affiliated with the municipality or municipally owned utility regardless of the services carried over the networks attached to the poles or underground conduit. Deletes existing text referring to Subsection (b)(1).

SECTION 36. Amends Section 54.206(a), Utilities Code, to make conforming changes and to delete existing text referring to a fee imposed under Section 54.205 (Municipality's Right to Control Access).

SECTION 37. Amends Section 54.251, Utilities Code, to provide that except as provided by this subchapter and Subchapter G, an incumbent local exchange company has the obligation of a provider of last resort. Authorizes the company to meet that obligation using any available technology. Makes conforming changes. Deletes existing Subsection (b).

SECTION 38. Amends Section 54.252, Utilities Code, as follows:

Sec. 54.252. New heading: **GROUND FOR REDUCTION OF SERVICE BY PREVIOUS HOLDER OF CERTIFICATE OF CONVENIENCE AND NECESSITY.** Prohibits the holder of a certificate of convenience and necessity before October 1, 2005, from discontinuing, reducing, or impairing local exchange telephone service to any part of the holder's certificated service area except for certain reasons and except to the extent otherwise ordered by the commission in accordance with this subchapter (Regulation of Services, Areas, and Facilities).

SECTION 39. Amends Section 54.254, Utilities Code, to make conforming changes.

SECTION 40. Amends Section 54.259(a), Utilities Code, to make conforming changes.

SECTION 41. Amends Section 54.260(a), Utilities Code, to make conforming changes.

SECTION 42. Amends Section 54.301, Utilities Code, to define "exiting provider" and "successor provider." Redefines "provider of last resort." Deletes existing definitions to "exiting utility" and "successor utility."

SECTION 43. Amends Sections 54.302(a) and (b), Utilities Code, as follows:

(a) Authorizes the previously designated provider of last resort to petition the commission for an order relieving the previously designated provider, if a certificated provider of local exchange telephone service installs facilities to serve customers located in a defined geographic area to provide telecommunications services, including local exchange telephone service, before the previously designated provider of last resort installs facilities to serve customers located in that defined geographic area. Deletes existing text pertaining to a holder of the certificate of convenience and necessity. Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

SECTION 44. Amends Section 54.303, Utilities Code, as follows:

Sec. 54.303. New heading: **SUCCESSOR TELECOMMUNICATIONS PROVIDER WHEN NO SUFFICIENT FACILITIES EXIST.** Requires the commission, if applicable, to make certain provisions to the successor provider, rather than utility, on designation of, rather than as, the successor provider under this section. Makes conforming changes.

SECTION 45. Amends Section 54.304, Utilities Code, to make modifications to the list of findings allowing the commission, on its own motion or on the petition of an interested party, to institute an expedited proceeding under this section. Makes conforming changes.

SECTION 46. Amends Section 54.305(a), Utilities Code, to make a conforming change.

SECTION 47. Amends Subchapter A, Chapter 55, Utilities Code, by adding Section 55.0011, as follows:

Sec. 55.0011. **EMERGENCY SERVICE.** Requires a certificated provider to provide access to 911 service provided by a local authority or dual party relay service.

SECTION 48. Amends Section 55.013, Utilities Code, as follows:

Sec. 55.013. New heading: **LIMITATIONS ON DISCONTINUANCE OF BASIC NETWORK SERVICE.** (a) Defines "basic network service."

(b) Redesignated from existing Subsection (a). Prohibits a provider of basic network, rather than local telecommunications, service from discontinuing that service because of nonpayment by a residential customer of charges for

interexchange telecommunications, rather than long distance, service. Requires payment first be allocated to basic network service, rather than basic local telecommunications service. Deletes text of existing Subsections (b) and (c).

(c) Redesignated from existing Subsection (d). Provides that, notwithstanding any other provision of this title, the commission has all jurisdiction necessary to establish a maximum price that a local exchange company is authorized to charge a provider of interexchange telecommunications service to initiate the toll blocking capability required to be offered under commission rules. Requires the maximum price established under this subsection to be observed by all providers of basic network, rather than local telecommunications, service in the local exchange company's certificated service area. Provides that the commission has all jurisdiction necessary to enforce this section. Deletes existing text referring to an incumbent local exchange company and Sections 52.102 (Limited Regulatory Authority) and 52.152 (Limited Regulatory Authority). Makes conforming changes. Deletes text of existing Subsection (e).

SECTION 49. Amends Section 55.014(b), Utilities Code, to provide that this section applies to a certificated provider of local exchange telephone service that is not an incumbent local exchange company, rather than a company that holds a certificate of operating authority or service provider certificate of operating authority.

SECTION 50. Amends Section 55.015, Utilities Code, by amending Subsections (a), (c), and (d) and adding Subsections (b-1), (d-1), and (d-2), as follows:

(a) Requires the commission to adopt rules prohibiting a certificated provider of local exchange telephone service, rather than telecommunications provider, from discontinuing basic network, rather than local exchange telephone, service, to a consumer who receives lifeline service because of nonpayment by the consumer of charges for other services billed by the provider, including interexchange telecommunications service. Makes a conforming change.

(b-1) Requires the commission to adopt rules requiring certificated providers to implement procedures to ensure that all consumers are clearly informed both orally and in writing of the existence of the telephone lifeline service program when they request or initiate service or change service locations or providers. Requires the commission to enter into a memorandum of understanding with the Health and Human Services Commission by June 1, 2006, and to the maximum extent feasible, housing authorities in the principal cities of each metropolitan statistical area, to improve enrollment rates in the telephone lifeline service program.

(c) Makes conforming changes.

(d) Makes a conforming change.

(d-1) Requires a certificated provider of local exchange telephone service to provide access to lifeline service to a customer whose income is not more than 150 percent of the applicable income level established by the federal poverty guidelines or in whose household resides a person who receives or has a child that receives certain government assistance.

(d-2) Requires a certificated provider of local exchange telephone service to provide consumers who apply for or receive lifeline service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Requires lifeline discounts to only apply to that portion of the bill that is for basic network service.

SECTION 51. Amends Section 55.021, Utilities Code, to authorize, after notice and a hearing, the commission to order one or more incumbent local exchange companies to provide certain services. Deletes existing text referring to dominant carriers.

SECTION 52. Amends Section 55.048, Utilities Code, as follows:

(a) Authorizes the incumbent local exchange company to impose a monthly fee against each residential and business customer in the petitioning exchange. Deletes existing text referring to recovery of costs incurred and loss of revenue.

(b) Redesignated from existing Subsection (c). Deletes existing text of Subsection (b) and (d).

SECTION 53. Amends Section 55.084(c), Utilities Code, to make modifications to the requirements for information displayed on public use telephones.

SECTION 54. Amends Section 55.085, Utilities Code, to make modifications to information that an operator service provider is required to state prior to connecting a call.

SECTION 55. Amends the heading to Section 55.087, Utilities Code, to read as follows:

Sec. 55.087. ACCESS TO LOCAL EXCHANGE COMPANY.

SECTION 56. Amends Section 55.087(a), Utilities Code, to delete the requirement that an operator service provider include certain contract provisions allowing access to other telecommunications utilities through telephones subscribed to its service.

SECTION 57. Amends Section 55.088(a), Utilities Code, to require any entity, rather than a dominant or nondominant telecommunications utility, that provides operator service to ensure that a caller has access to a live operator at the beginning of the call, rather than a live or mechanized operator-assisted call, through a method designed to be easily and clearly understandable and accessible to the caller.

SECTION 58. Amends Section 55.089(a), Utilities Code, to delete existing text pertaining to an operator service provider that is about to violate this subchapter.

SECTION 59. Amends Section 55.173(b), Utilities Code, to provide that this section does not apply to a provider who holds a certificate as a network provider or service provider, rather than of convenience and necessity.

SECTION 60. Amends Subchapter H, Chapter 55, Utilities Code, by adding Section 55.1735, as follows:

Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. Prohibits the charge or surcharge a local exchange company imposes for an access line used to provide pay telephone service in an exchange from exceeding the amount of the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

SECTION 61. Amends Section 55.178(d), Utilities Code, to make a conforming change.

SECTION 62. Amends Sections 55.201(a) and (b), Utilities Code, as follows:

(a) Requires each certificated provider of, rather than company that provides, local exchange telephone service that provides service in overlapping certificated areas to negotiate the terms of printed directory listings and directory assistance in those areas.

(b) Authorizes the commission to take certain steps on complaint by a certificated provider of local exchange service, rather than the incumbent local exchange company or the holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

SECTION 63. Amends Section 55.203(c), Utilities Code, to prohibit the commission from adopting a rule that dictates the format or content of a telephone directory or otherwise prescribes in relation to a directory a requirement that is in addition to or exceeds a requirement

prescribed by this subchapter. Deletes existing text authorizing the board by rule to make certain specifications.

SECTION 64. Amends Section 55.252, Utilities Code, to make conforming changes.

SECTION 65. Amends Section 56.021, Utilities Code, to require the commission to adopt and enforce rules requiring telecommunications providers, rather than local exchange companies, to establish a universal service fund to meet certain needs.

SECTION 66. Amends Sections 56.023(a), (b), (c), and (e), Utilities Code, as follows:

- (a) Makes modifications to certain requirements of the commission.
- (b) Sets forth certain requirements of the eligibility criteria for local exchange companies, rather than a telecommunications provider in compliance with the commission's quality of service requirements.
- (c) and (e) Makes conforming changes.

SECTION 67. Amends Section 56.025, Utilities Code, by amending Subsections (a) and (c) and adding Subsection (a-1) as follows:

- (a) Provides that this section applies only to a rural incumbent local exchange company.
- (a-1) Redesignated from existing Subsection (a). Sets forth certain authorities for the commission in relation to maintaining reasonable rates and expanding the universal service fund for each company. Deletes existing text referring to a local exchange company that serves fewer than five million access lines.
- (c) Makes a conforming change.

SECTION 68. Amends Section 56.026, Utilities Code by adding Subsection (c-1), as follows:

- (c-1) Provides that an incumbent local exchange company governed under Chapter 58 (Incentive Regulation) is not entitled to receive disbursements from the universal service fund (fund) to compensate for reductions in access charges made after August 31, 2005.

SECTION 69. Amends Section 56.028, Utilities Code, as follows:

- (a) Creates this subsection from existing text and makes modifications to the list of reimbursable entities. Makes a conforming change.
- (b) Creates this subsection from existing text.

SECTION 70. Amends Subchapter B, Chapter 56, Utilities Code, by adding Section 56.0285, as follows:

Sec. 56.0285. REIMBURSEMENT OF FEDERALLY QUALIFIED HEALTH CENTERS. Entitles certain health centers to receive from the fund the equivalent of a rebate equal to the difference between the company's tariffed rate for interexchange high capacity service (at or in excess of 1.544 Mbps) as of January 1, 1998, and the lowest rate offered for that service by any local exchange company electing incentive rate regulation under Chapter 58.

- (b) Requires this section to govern to the extent there is a conflict with any other provision of the Utilities Code.

SECTION 71. Amends Subchapter B, Chapter 56, Utilities Code, by adding Section 56.029, as follows:

Sec. 56.029. TEXAS UNIVERSAL SERVICE FUND STUDY; ATTESTATION REQUIREMENT. (a) Requires the commission to contract with an independent person to conduct a review and evaluation of whether the fund accomplishes the fund's purposes as prescribed by Section 56.021 (Universal Service Fund Established) and the commission's final orders issued in Docket No. 18515 and Docket No. 18516. Sets forth certain requirements of the evaluation. Requires the commission to pay for the review and evaluation from the fund.

(b) Requires the commission to adopt a process to accomplish certain goals not later than January 1, 2006.

(c) Requires, not later than January 1, 2006, the contractor to require telecommunications providers receiving disbursements under the fund to provide to the contractor the information that the contractor determines is necessary to discharge the contractor's duties under this section, including information necessary to review and evaluate how money is collected for the fund and expended.

(d) Provides that information provided under Subsection (c) is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code. Provides that the provisions of this title relating to failure by a telecommunications provider to comply with a commission order apply to the failure by a telecommunications provider to comply with a requirement from the contractor to provide information under this section.

(e) Authorizes the contractor to classify telecommunications providers as the contractor considers appropriate for efficiency and to permit providers to share the cost of developing information the contractor determines is necessary to discharge the contractor's responsibilities under this section.

(f) Requires the contractor to deliver to the legislature a report for the legislature's revision and approval on the results of the review and evaluation not later than January 5, 2007. Sets forth certain requirements for the report.

(f-1) Requires the valuation to determine whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether those receiving said funds are expending the dollars for their intended purposes.

(g) Requires each telecommunications provider receiving universal service funds to file with the commission an affidavit attesting that the money from the fund has been used in a manner that is consistent with the purposes provided by Section 56.021 and the commission's final orders not later than December 31, 2005.

(h) Requires, in addition to the study required by this section, the commission to compile information necessary to determine whether the current funding mechanism for the fund will be adequate in the future to sustain the purposes for which the fund was created considering the development of new technologies that are not subject to the existing funding mechanism and the shift in jurisdictional control from this state to the federal government. Requires the commission to deliver to the legislature a report on this issue not later than January 5, 2007. Requires the commission to include recommendations for alternative funding methods that will be adequate and are consistent with a policy of technology and competitive neutrality in the assessment of fees and other state-imposed economic burdens if the commission determines that the existing funding mechanism is not adequate.

SECTION 72. Amends Section 56.106(a), Utilities Code, to make a conforming change.

SECTION 73. Amends Section 56.107, Utilities Code, to make conforming changes.

SECTION 74. Amends Section 56.110(a), Utilities Code, to make conforming and nonsubstantive changes.

SECTION 75. Amends Section 56.155, Utilities Code, to make conforming changes.

SECTION 76. Amends Section 56.202(a), Utilities Code, to make conforming changes.

SECTION 77. Amends Section 56.203, Utilities Code, to make a conforming change.

SECTION 78. Amends Section 56.251, Utilities Code, to make a conforming change.

SECTION 79. Amends Section 56.252, Utilities Code, to make conforming changes.

SECTION 80. Amends Section 56.253, Utilities Code, to make conforming changes.

SECTION 81. Amends Section 56.254, Utilities Code, to make conforming changes.

SECTION 82. Amends Chapter 56, Utilities Code, by adding Subchapter H, as follows:

SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. Requires the commission by rule to establish a program to provide from the universal service fund financial assistance for a free telephone service for blind and visually impaired persons that offers the text of newspapers using synthetic speech. Authorizes the commission to adopt rules to implement the program.

SECTION 83. Amends the heading to Chapter 57, Utilities Code, to read as follows:

CHAPTER 57. DEPLOYMENT INCENTIVES

SECTION 84. Amends the heading to Subchapter A, Chapter 57, Utilities Code, to read as follows:

SUBCHAPTER A. BROADBAND DEPLOYMENT

SECTION 85. Amends Subchapter A, Chapter 57, Utilities Code, by adding Section 57.002, as follows:

Sec. 57.002. STATEMENT OF STATE GOAL. (a) Provides that it is the goal of this state to facilitate and promote the deployment of an advanced broadband network infrastructure to spur economic development throughout this state, including rural areas of this state.

(b) Provides that this state should be among the leaders in achieving the goal described by Subsection (a). Provides that the primary means of achieving this goal is through encouraging private investment in this state's broadband network infrastructure by creating incentives for that investment and promoting the development of competition.

(c) Provides that the most effective way to bring the benefits of an advanced broadband network infrastructure to communities in this state, including rural communities, is through innovation and competition among all communications providers in this state. Sets forth that competition will provide residents of this state with a choice of providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms try to satisfy customer needs.

SECTION 86. Amends the heading to Chapter 58, Utilities Code, to read as follows:

CHAPTER 58. INCENTIVE REGULATION FOR INCUMBENT LOCAL EXCHANGE COMPANIES

SECTION 87. Amends Section 58.001, Utilities Code, as follows:

Sec. 58.001. POLICY. Provides that it is the policy of this state to regulate the telecommunications industry in a technology-neutral manner through adherence to free market principles. Deletes existing text relating to the policy of this state towards the telecommunications industry.

SECTION 88. Amends Section 58.002, Utilities Code, as follows:

Sec. 58.002. New heading: ELECTION. (a) Defines "good cause."

(b) Authorizes an incumbent local exchange company to elect to be subject to this chapter by notifying the commission in writing of its election.

(c) Authorizes the commission to allow an electing company to withdraw the company's election under this chapter in a certain manner. Deletes existing definition of "electing company."

SECTION 89. Amend Subchapter A, Chapter 58, Utilities Code, by adding Section 58.005, as follows:

Sec. 58.005. RATES FOR BASIC NETWORK SERVICES; APPLICABILITY OF PROVISIONS OF SUBTITLE. (a) Prohibits an incumbent local exchange company, notwithstanding any other provision of this title, from raising the company's retail price for basic network service to a price that is above the price the company charged on January 1, 2005, for basic network service that included the same components before January 1, 2008.

(b) Provides that, except as provided by Subsection (a), on the date the incumbent local exchange company reduces the company's intrastate switched access rates on a combined originating and terminating basis to parity with interstate switched access rates, as required by Section 58.301(3), and certifies to the commission that the company has made that reduction, the company is subject to only certain provisions of this subtitle.

SECTION 90. Amends Section 58.023, Utilities Code, as follows:

Sec. 58.023. New heading: APPLICABILITY OF CHAPTER; SERVICE CLASSIFICATION. (a) Provides that this chapter applies only to an incumbent local exchange company that is subject to this chapter.

(b) Provides that the services provided by an incumbent local exchange company are classified into two categories. Makes conforming changes.

SECTION 91. Amends Section 58.025, Utilities Code, as follows:

Sec. 58.025. COMPLAINT OR HEARING. Provides that, except as otherwise specifically provided by this title, an incumbent local exchange company that is not regulated under Chapter 53 is not subject to a traditional rate of return complaint, hearing, or determination regarding the reasonableness of certain financial aspects of the company. Makes conforming changes.

SECTION 92. Amends Section 58.026, Utilities Code, to make conforming and nonsubstantive changes.

SECTION 93. Amends Section 58.027, Utilities Code, as follows:

Section 58.027. New heading: CONSUMER COMPLAINTS REGARDING SERVICES. Makes no further changes to this section.

SECTION 94. Amends Section 58.051, Utilities Code, as follows:

Sec. 58.051. SERVICES INCLUDED. (a) Redefines "basic network service."

(b) Redefines "basic network service." Deletes text of existing Subsection (b).

(c) Prohibits the commission from taking certain actions relating to an incumbent local exchange company.

(d) Requires, at the election of the affected incumbent local exchange company, the price for basic network service to also include the fees and charges for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other services included in the definition of basic network service.

(e) Sets forth certain aspects of a non-permanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service.

SECTION 95. Amends Section 58.061, Utilities Code, as follows:

Sec. 58.061.EFFECT ON CERTAIN CHARGES. Deletes existing text relating to a charge permitted under Section 55.024 (Charge for Extended Area Service), Utilities Code.

SECTION 96. Amends Section 58.063, Utilities Code, as follows:

Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a) Provides that pricing flexibility includes all pricing arrangements included in the "pricing flexibility" prescribed by Section 51.002 and includes the packaging of any regulated service with any unregulated service or any service of an affiliate. Deletes existing text authorizing the company to exercise pricing flexibility.

(b) Makes conforming changes.

SECTION 97. Amends the heading to Subchapter E, Chapter 58, Utilities Code, to read as follows:

SUBCHAPTER E. NONBASIC NETWORK SERVICES

SECTION 98. Amends Section 58.151, Utilities Code, as follows:

Sec. 58.151. SERVICES INCLUDED. Provides that basic network service when ordered and received with another basic network service or with a nonbasic network service is classified as nonbasic network services. Deletes existing text relating to price caps and makes conforming changes.

SECTION 99. Amends Section 58.152, Utilities Code, to make conforming changes. Deletes existing text relating to the price set by an electing company.

SECTION 100. Amends Section 58.153, Utilities Code, to make conforming changes. Deletes existing text relating to an electing company.

SECTION 101. Amends Section 58.155, Utilities Code, to provide that an incumbent local exchange company is subject to the interconnection obligations prescribed by Subchapter G, Chapter 60. Deletes existing text relating to interconnection to competitive providers and interconnection for commercial mobile service providers.

SECTION 102. Reenacts and amends Section 58.253(a), Utilities Code, as amended by Chapters 959, 1220, 1255, and 1350, Acts of the 77th Legislature, Regular Session, 2001, to make conforming changes.

SECTION 103. Amends Subchapter G, Chapter 58, Utilities Code, by adding Section 58.2535, as follows:

Sec. 58.2535. **FEDERALLY QUALIFIED HEALTH CENTERS.** (a) Requires the company, in addition to the entities to which an incumbent local exchange company is required to provide private network services under this subchapter, to provide those services to a federally qualified health center, as defined by 42 U.S.C. Section 1396d(1)(2)(B) and to an organization that receives a grant under 42 U.S.C. Section 254b.

(b) Provides that, for purposes of this subchapter, a reference to an entity described by Section 58.253(a) includes an entity described by Subsection (a).

SECTION 104. Amends Section 58.301, Utilities Code, as follows:

Sec. 58.301. **SWITCHED ACCESS RATE REDUCTION.** Requires an incumbent local exchange company to reduce its switched access rates on a combined originating and terminating basis in a certain amended manner.

SECTION 105. Amends Section 58.302, Utilities Code, to make conforming changes.

SECTION 106. Amends Section 59.002(1), Utilities Code, to redefine "electing company."

SECTION 107. Amends Subchapter A, Chapter 59, Utilities Code, by adding Section 59.003, as follows:

Sec. 59.003. **APPLICABILITY OF CHAPTER.** Provides that this chapter applies only to an incumbent local exchange company that is subject to this chapter.

SECTION 108. Amends Section 59.021(a), Utilities Code, to make conforming changes.

SECTION 109. Amends Section 59.024(a), Utilities Code, to make a conforming change.

SECTION 110. Amends Section 59.029(b), Utilities Code, to delete existing text relating to investments required by Section 59.052 (Infrastructure Goals), Utilities Code.

SECTION 111. Amends Section 59.030(a), Utilities Code, to delete existing text referring to an electing company providing certain informational notice.

SECTION 112. Amends Section 59.031(a), Utilities Code, to delete existing text referring to an electing company providing certain informational notice regarding pricing flexibility.

SECTION 113. Amends Section 59.055, Utilities Code, as follows:

Sec. 59.055. **IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS.** Prohibits the commission from considering the cost of implementing the infrastructure goals prescribed by former Section 59.052, as enacted by Section 49, Chapter 231, Acts of the 74th Legislature, Regular Session, 1995, and as codified by Section 1, Chapter 166, Acts of the 75th Legislature, Regular Session, 1997, in determining certain entitlements for an electing company.

SECTION 114. Amends Sections 59.071(1) and (2), Utilities Code, to redefine "educational institution" and "library."

SECTION 115. Amends the heading to Chapter 60, Utilities Code, to read as follows:

CHAPTER 60. FAIR COMPETITION AND COMPETITIVE SAFEGUARDS

SECTION 116. Amends Section 60.001, Utilities Code, as follows:

Sec. 60.001. FAIR COMPETITION. (a) Prohibits a rate, term, condition, or practice of a provider from serving certain functions.

(b) Prohibits this chapter from being construed to required unbundling to an extent greater than is required by federal law.

(c) Provides that this title does not prohibit a volume discount, other discount, or pricing flexibility that is based on a reasonable business purpose. Provides that a price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(d) Provides that this title allows an offer that is based on a reasonable business purpose, including an offer made at any time to a selected customer or group of customers in response to a competitor's offer, if the price of the offer meets the requirements of this section.

(e) Prohibits this title from being construed as conferring jurisdiction on the commission to regulate video or data services in this state. Deletes existing text requiring the commission to take certain actions regarding the rates and rules of an incumbent local exchange company.

SECTION 117. Amends Subchapter A, Chapter 60, Utilities Code, by adding Sections 60.0013 and 60.0016, as follows:

Sec. 60.0013. CODE OF CONDUCT. (a) Requires the commission to adopt and enforce a code of conduct to ensure integrity of business practices in carrier-to-carrier, marketing, and advertising practices. Requires the code of conduct to apply to all providers on an equal and nondiscriminatory basis and prohibits it from addressing any matter that is contained in or relates to an agreement for interconnection.

(b) Requires a provider to comply with the code of conduct.

Sec. 60.0016. ARBITRATION OF COMPLAINTS. (a) Defines "dispute resolution organization."

(b) Requires a complaint that a provider has violated this subchapter to be referred to binding arbitration at the mutual election of both parties to the dispute, but only if the election for arbitration occurs before a filing is made to the commission in relation to that dispute. Requires the dispute, if the parties elect arbitration, to be expeditiously adjudicated by binding arbitration before a panel of three independent arbitrators. Requires each party to select one member of the panel, and requires the two selected members to select the third member. Requires, if the first two arbitrators cannot agree on the third member, the two arbitrators to request a list of candidates from an independent dispute resolution organization, and requires the third member to be elected in accordance with the published procedures of that organization.

(c) Requires the arbitration to be conducted in accordance with the rules of an independent dispute resolution organization unless the parties mutually agree to conduct the arbitration in a different manner.

(d) Requires the panel to issue the panel's final decision not later than the 180th day after the date arbitration panel is final. Authorizes a party to file an application with a district court in Travis County for confirmation of the decision. Entitles the award to confirmation unless the court determines the decision should be vacated or modified. Requires the court to conduct a review de novo based on the record developed before the arbitrators.

(e) Requires the panel to allocate between the parties the fees and expenses of the parties and panel in a manner consistent with the decision and relief granted.

SECTION 118. Amends Section 60.003, Utilities Code, as follows:

Sec. 60.003. COMMISSION AUTHORITY. (a) Provides that the commission has all the authority to take certain actions relating to disputes arising under this chapter and regulating the actions of providers.

(b) Authorizes the commission, notwithstanding Section 15.023(b), to impose an administrative penalty of not more than \$10,000 a day for each violation of this subchapter. Authorizes the commission to impose the penalty for each day the violation continues. Provides that the administrative penalty is in addition to any other remedy provided by law. Deletes existing text providing procedural guidelines for the commission.

(c) Requires the commission to resolve a complaint filed with the commission under this chapter not later than the 270th day after the date the complaint is filed. Deletes existing text providing procedural guidelines for the commission.

(d) Authorizes an appeal from a commission order issued under this chapter, other than an order issued in relation to interconnection under Subchapter G, to be appealed directly to the court of appeals for the Third Court of Appeals District. Deletes existing text prohibiting the commission from implementing a certain requirement.

SECTION 119. Amends Subchapter A, Chapter 60, Utilities Code, by adding Section 60.0035, as follows:

Sec. 60.0035. APPLICABILITY TO CERTAIN PROVIDERS. Prohibits this chapter from being construed to impose under state law any obligation described by 47 U.S.C. Section 251(c) on an entity that is not subject to that obligation under federal law.

SECTION 120. Amends Section 60.082(b), Utilities Code, to require the commission rules to be consistent, rather than being prohibited from being inconsistent, with the rules and regulations of the Federal Communications Commission regarding telecommunications number portability and are prohibited from imposing any obligations beyond the obligations required by federal law.

SECTION 121. Amends Section 60.121, Utilities Code, to redefine "interconnection" and define "interoperable."

SECTION 122. Amends Section 60.122, Utilities Code, as follows:

Sec. 60.122. EXCLUSIVE JURISDICTION. (a) Creates this subsection from existing text. Provides that, to the extent not preempted by federal law, the commission has exclusive jurisdiction to determine interconnection rates and terms and conditions for interconnection in accordance with this title.

(b) Provides that the commission has all necessary authority to adopt rules and conduct proceedings to implement this subchapter.

(c) Provides that the commission has all necessary jurisdiction to resolve disputes regarding breach of interconnection obligations and that the commission's jurisdiction under this subsection is not exclusive. Deletes existing text relating to fees for holders of certain certificates.

SECTION 123. Amends Section 60.123, Utilities Code, as follows:

Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. Provides that this subchapter does not apply to a rate for the existing termination of commercial mobile radio service (CMRS), rather than cellular, or interexchange traffic. Prohibits this chapter from being construed to impose an obligation on a provider if the provider is exempt from that requirement under federal law.

SECTION 124. Amends Section 60.124, Utilities Code, as follows:

Sec. 60.124. INTEROPERABLE NETWORKS REQUIRED. (a) Requires the commission to require each network provider and service provider, rather than telecommunications provider, to maintain interoperable networks.

(b) Entitles a network provider or service provider to interconnect in a manner that is efficient for the mutual exchange of traffic, from a network and economic standpoint.

(c) Redesignated from existing Subsection (b). Requires, rather than authorizes, the commission to adopt rules, including generic rules that are responsive to changes in federal law or a development in the market, rather than the local exchange market, and set policies consistent with federal law governing interconnection arrangements.

SECTION 125. Amends Section 60.125, Utilities Code, as follows:

Sec. 60.125. DETERMINATION OF INTERCONNECTION RATES. (a) Requires the rates for traffic exchanged under an interconnection agreement to be just, reasonable, and nondiscriminatory, unless the parties have agreed on rates in an interconnection agreement under Subsection (b) and the agreement is approved by the commission under Subsection (c). Authorizes the parties to agree to exchange traffic under an interconnection agreement on a bill and keep basis, but prohibits the commission from requiring the parties to exchange traffic on that basis. Provides that this section does not preclude any right to interconnection under federal law at rates or on terms or conditions granted by federal law.

(b) Redesignated from existing Subsection (a). Requires providers to negotiate network interconnectivity and terms and conditions of interconnectivity. Authorizes the providers to negotiate network interconnectivity rates.

(c) Redesignated from existing Subsection (b). Requires the commission, if interconnectivity and terms and conditions or rates of interconnectivity are successfully negotiated, to approve the interconnection agreement if the commission finds the agreement is in the public interest and is nondiscriminatory.

(d) Provides that the commission has all necessary authority to adopt rules and conduct proceedings as necessary to implement and enforce this section. Deletes existing text relating to mutually agreed compensation rates and reciprocal interconnection rates.

SECTION 126. Amends Section 60.126, Utilities Code, as follows:

Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE RESOLUTION. Authorizes a party negotiating an interconnection agreement under Section 60.125(b) to file a request for the commission to resolve a disputed issue not earlier than the 135th day or later than the 160th day after the date a party receives a request for negotiation. Requires, rather than authorizes, the commission to resolve the dispute not later than the 270th day after the date the request for negotiation was received by a party, rather than filed by a party to a negotiation under Section 60.125(a).

SECTION 127. Amends Section 60.127, Utilities Code, as follows:

Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES. Authorizes a provider to adopt in its entirety any interconnection agreement reached by another provider and approved by the commission under this chapter. Deletes existing text relating to an incumbent local exchange company adopting interconnection rates.

SECTION 128. Amends Subchapter G, Chapter 60, Utilities Code, by adding Section 60.129, as follows:

Sec. 60.129. CONSUMER-ORIENTED STANDARDS. (a) Requires the commission to adopt rules applicable to all interconnecting entities that ensure that certain services are efficient and secure for consumers.

(b) Requires rules adopted under Subsection (a) to provide for the payment of compensation to an incumbent local exchange company for loading or storing customer information, except that the rules are prohibited from providing for the payment of compensation for the preparation and transfer of files from a service order system to be used in the creation of 911 call routing data and 911 automatic location identification data. Prohibits the rules from requiring unbundling of a provider's network elements.

SECTION 129. Amends the heading to Subchapter I, Chapter 60, Utilities Code, to read as follows:

SUBCHAPTER I. NETWORK PROVIDER AND SERVICE PROVIDER REQUIREMENTS

SECTION 130. Amends Section 60.161, Utilities Code, as follows:

Sec. 60.161. New heading: NETWORK PROVIDER AND SERVICE PROVIDER REQUIREMENTS. Sets forth modified prohibitions for a network provider or service provider, rather than an incumbent local exchange company.

SECTION 131. Amends Section 60.164, Utilities Code, to make a conforming change.

SECTION 132. Amends Section 60.165, Utilities Code, to make a conforming change.

SECTION 133. Amends Section 64.001(b), Utilities Code, to provide that the purpose of this chapter is to establish retail customer, rather than customer, protection standards and confer on the commission authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices. Provides that the commission has authority governing those matters only as expressly provided by this chapter.

SECTION 134. Amends Sections 64.002(1), (2), and (4), Utilities Code, to redefine "billing agent" and "customer." Defines "billing provider" rather than "billing utility."

SECTION 135. Amends Section 64.003, Utilities Code, to make conforming and nonsubstantive changes.

SECTION 136. Amends Section 64.004, Utilities Code, by amending Subsections (a), (b), and (d), and adding Subsections (f)-(h), as follows:

(a) Sets forth modified rights to which all buyers of services from network providers and service providers subject to this subtitle are entitled. Makes conforming changes.

(b) Deletes existing text relating to rules for minimum service standards for a certified telecommunications utility. Makes conforming changes.

(d) Deletes existing text requiring the commission to coordinate its enforcement efforts regarding the prosecution of anticompetitive business practices.

(f) Requires the commission to adopt rules to provide automatic enrollment of eligible customers for lifeline telephone service available to low-income households. Requires each state agency, on the request of the commission, to assist in the adoption and implementation of those rules.

(g) Requires the rules adopted under Subsection (b), notwithstanding any other provision of this title, to provide for full and concurrent reimbursement to network providers and service providers for the costs of any programs provided under Subsection (a)(11) and for reimbursement to providers for the difference between any affordable rate package provided under Subsection (a)(11) and any rates otherwise applicable.

(h) Requires the commission's rules, if federal rules or requirements exist in relation to issues governed by this chapter, to be identical to those federal rules or requirements. Prohibits the commission's rules from being in any manner more burdensome or stringent on a provider of services than the federal rules or requirements.

SECTION 137. Amends Subchapter A, Chapter 64, Utilities Code, by adding Section 64.005, as follows:

Sec. 64.005. ELIGIBILITY PROCESS FOR CUSTOMER SERVICE DISCOUNTS. Requires the commission, by rule, to provide for an integrated eligibility process for customer service discounts.

SECTION 138. (a) Amends Subchapter A, Chapter 64, Utilities Code, by adding Section 64.006, as follows:

Sec. 64.006. NOTICE REGARDING ACCESS TO EMERGENCY SERVICES. (a) Defines "VoIP service," "VoIP provider," and "E-911."

(b) Prohibits a VoIP provider from entering into a contract to provide VoIP service unless the entity provides clear and conspicuous notice to customers disclosing whether or not the service provides access to E-911.

(c) Prohibits a VoIP provider which does not provide access to E-911 or which requires a customer to take steps to activate access to E-911 from entering into a contract to provide VoIP service unless the VoIP provider provides clear and conspicuous notice of certain information.

(d) Sets forth requirements for the notice required by Subsection (c).

(e) Requires a VoIP provider, at least annually, to send to each customer to whom it provides VoIP service a notice that includes the information required by Subsection (c). Requires the entity to provide the notice as a separate document.

(f) Provides that, except as specifically preempted by federal law, the commission has all jurisdiction necessary to enforce this section. Provides that, in addition, a violation of this chapter is a false, misleading, or deceptive act or practice and is actionable by the attorney general under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code.

(b) Makes application of this section prospective.

(c) Provides that this section does not affect litigation pending on the effective date of this section.

SECTION 139. Amends Section 64.101, Utilities Code, to make a conforming change.

SECTION 140. Amends Section 64.102, Utilities Code, by deleting existing text requiring the commission to adopt rules denying a certificated telecommunications utility the right to provide service in this state. Makes a conforming change.

SECTION 141. Amends Chapter 240, Local Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. COMMUNICATIONS FACILITIES

Sec. 240.081. DEFINITIONS. Defines "communication facility structure" and "residential subdivision."

Sec. 240.082. APPLICABILITY. (a) Provides that this subchapter applies only to real property that is located in the unincorporated area of a county with a population of 1.4 million or more and located within one-quarter mile of a residential subdivision.

(b) Sets forth certain communication facility structures and certain communication antenna, antenna facilities, or antenna towers to which this subchapter does not apply.

Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) Authorizes the commissioners court of a county subject to this subchapter, by order, to regulate the location of a communication facility structure.

(b) Authorizes the regulations to include a requirement for a permit for the construction or expansion of the communication facility structure and to impose fees on regulated persons to recover the cost of administering the regulations.

Sec. 240.084. COUNTY PERMIT. (a) Provides that this section applies only to the issuance of a permit to construct or improve a communication facility structure under a regulation adopted under this subchapter.

(b) Requires the commissioners court, not later than the 45th day after the date the application for the permit is filed, to take certain actions regarding a permit application.

(c) Requires the commissioners court, if the commissioners court provides notice to the applicant under Subsection (b)(2), to grant or deny the permit application not later than the 30th day after the date the applicant received the notice.

(d) Provides that if the commissioners court fails to act on a permit application within the 30-day period prescribed by Subsection (c) or under the terms of an agreement under Subsection (b)(3), the commissioners court is prohibited from collecting any permit fees associated with the permit application and is required to refund to the applicant any permit fees associated with the application that have been previously collected.

Sec. 240.085. NOTICE BY SIGN. (a) Requires the applicant for a permit for a location not previously licensed or permitted, not later than the 60th day before the date a permit application is filed under Section 240.084, to prominently post an outdoor sign at the proposed location stating that a communication facility structure is proposed for the location and providing the name and business address of the applicant.

(b) Requires the sign to be at least 24 by 36 inches in size and to be published in lettering at least two inches in size. Authorizes the county in which the proposed communication facility structure is to be located to require the sign to be published in English and in a language other than English if it is likely that a substantial number of residents in the area speak a language other than English as their familiar language.

Sec. 240.086. VARIANCES. (a) Authorizes a person who proposes to construct or increase the height of a communication facility structure in violation of a regulation adopted by order by a county subject to this subchapter to apply to the commissioners court for a variance from the regulation.

(b) Requires the commissioners court to hold a public hearing on the proposed variance. Authorizes the commissioners court to authorize a variance from a regulation if the commissioners court makes certain findings.

(c) Authorizes the commissioners court to impose any reasonable conditions on the variance that the commissioners court considers necessary to accomplish the purposes of this subchapter.

(d) Requires written notice of the public hearing to be provided to each owner of property located within one-quarter mile of the proposed location of the communication facility structure, before the 10th day before the date the commissioners court holds a public hearing on the variance request. Requires the notice to include certain information.

Sec. 240.087. **ADDITIONAL FILING REQUIREMENTS REGARDING CONSTRUCTION.** Requires a person proposing to construct a communication facility structure in the unincorporated area of a county subject to this subchapter that is taller than 60 feet to file certain documents and information with the county official designated by the commissioners court before the 90th day before the date construction begins.

Sec. 240.088. **OFFENSE.** (a) Provides that a person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) Provides that an offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) Provides that an offense under this section is a Class C misdemeanor.

Sec. 240.089. **INJUNCTION.** Authorizes the county attorney or an attorney representing the county to file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. Authorizes the court to grant appropriate relief.

SECTION 142. CONFORMING AMENDMENTS. (a) Amends Section 37.02(a), Business & Commerce Code, to make a conforming change.

(b) Amends Section 46.011(a), Business & Commerce Code, to redefine "telecommunications utility."

(c) Amends Section 246.001(a), Business & Commerce Code, to redefine "telecommunications utility."

(d) Amends Section 1(10), Article 18.21, Code of Criminal Procedure, to redefine "trap and trace device."

SECTION 143. (a) Requires the Public Utility Commission of Texas to conduct a study for presentation to the 80th Legislature on issues regarding the provision of wireless broadband communications services by municipalities, including wireless fidelity, or Wi-Fi, services.

(b) Prohibits a municipality from offering to the public, directly or indirectly, wireless broadband communications services, including wireless fidelity, or Wi-Fi, services, unless the municipality was providing the service on or before September 1, 2006, or unless the municipality has filed with the commission before June 15, 2006, a statement of intent to provide the services that meets the requirements of Subsection (c) of this section.

(c) Requires a statement of intent described by Subsection (b) of this section to be presented to the commission for approval as a part of the study conducted under this section and must include information sufficient for the commission to determine that the municipality has a plan for providing the services and has the fiscal and managerial capacity to provide the intended services.

(d) Requires the commission to present the report and approved statements of intent to the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee of the house of representatives and senate that has jurisdiction over matters related to communications services and municipal government. Requires the report to be presented not later than September 1, 2006.

(e) Authorizes the report to include discussion on any issue related to the provision of wireless broadband communications services by municipalities, including wireless fidelity, or Wi-Fi, services, that the commission considers important for consideration by the legislature. Requires the report to include the commission's recommendations for legislation and commentary on issues the commission considers important for the legislature's consideration.

SECTION 144. (a) Repealer:

- (1) Section 51.001(g) (regarding the state's policy to ensure all customers have access to telecommunications and information services);
- (2) Section 51.004 (Pricing Flexibility);
- (3) Sections 51.006 (Municipal Participation in Ratemaking Proceedings), 51.007 (Municipal Standing in Certain Cases), and 51.008 (Judicial Review);
- (4) Section 51.010 (Commission Investigation of Sale, Merger, or Certain Other Actions);
- (5) Section 52.001 (Policy);
- (6) Sections 52.004 (Commission May Establish Separate Markets) and 52.005 (Minimum Requirements for Dominant Carriers);
- (7) Subchapter B (Incumbent Local Exchange Companies), Chapter 52;
- (8) Sections 52.104 (Commission May Investigate), 52.105 (Access to Certain Services Required), 52.106 (Quality of Service Required), and 52.107 (Predatory Pricing);
- (9) Sections 52.109 (Availability of Service), 52.110 (Burden of Proof), 52.111 (Commission May Exempt), and 52.112 (Reduction Pass-Through Required);
- (10) Sections 52.151 (Applicability), 52.152 (Limited Regulatory Authority), 52.153 (Books and Records), and 52.154 (Commission May Not Overburden);
- (11) Subchapter E (Deregulation of Service), Chapter 52;
- (12) Sections 52.252 (Depreciation Account), 52.253 (Accounts of Profits and Losses), and 52.254 (Report of Certain Expenses);
- (13) Section 52.256(b) (relating to a telecommunications utility's plan to enhance diversity of its workforce and for increasing opportunities for small, underutilized businesses);
- (14) Sections 54.003 (Exceptions to Certificate Requirement for Certain Services) and 54.004 (Relinquishment Plan);
- (15) Sections 54.006 (Request for Preliminary Order) and 54.007 (Flexibility Plan);
- (16) Subchapters B (Certificate of Convenience and Necessity), C (Certificate of Operating Authority), and D (Service Provider Certificate of Operating Authority), Chapter 54;
- (17) Section 54.2025 (Lease of Fiber Optic Cable Facilities);
- (18) Section 54.253 (Discontinuation of Service by Certain Certificate Holders);

- (19) Sections 54.255 (Transfer of Certain Certificates), 54.256 (Application of Contracts), 54.257 (Interference With Another Telecommunications Utility), and 54.258 (Maps);
- (20) Section 54.261 (Shared Tenant Services Contract);
- (21) Section 55.001 (General Standard);
- (22) Sections 55.002 (Commission Authority Concerning Standards), 55.003 (Rule or Standard), 55.004 (Local Exchange Company Rule or Practice Change), 55.005 (Unreasonable Preference or Prejudice Concerning Service Prohibited), 55.006 (Discrimination and Restriction on Competition), 55.007 (Minimum Services), 55.008 (Improvements in Service; Interconnecting Service), 55.009 (Intralata Calls), 55.010 (Billing for Service to the State), 55.011 (Notice of Identity of Interexchange Carrier), and 55.012 (Limitations on Discontinuance of Basic Local Telecommunications Service);
- (23) Section 55.016 (Telecommunications Billing);
- (24) Sections 55.024 (Charge for Extended Area Service) and 55.025 (Hunting Service);
- (25) Sections 55.082 (Applicability) and 55.083 (Rules and Procedures);
- (26) Sections 55.088(b) and (c) (relating to required access to a live operator);
- (27) Sections 55.101(3) and (4) (definitions of "per-call blocking" and "per-line blocking");
- (28) Sections 55.102 (Applicability) and 55.103 (Provision of Service);
- (29) Sections 55.105 (Per-Call Blocking), 55.106 (Per-Line Blocking), 55.107 (Limitation on Commission Authority), 55.108 (Other Prohibited Practices), 55.109 (Implementation of Panel Recommendations), and 55.110 (Report of Blocking Failure);
- (30) Subchapter F (Automatic Redial Announcing Devices), Chapter 55;
- (31) Section 55.172 (Limitation);
- (32) Sections 55.175 (Charge for Local Calls), 55.176 (Charge for 800-Time Calls), and 55.177 (Charge for Credit Card, Calling Card, or Operator-Assisted Calls);
- (33) Section 55.179 (Information Requests);
- (34) Section 55.201(c) (relating to terms of directory listings and assistance of an incumbent local exchange company);
- (35) Section 55.202 (Directory Published by Telecommunications);
- (36) Sections 55.203 (d)-(g) (relating to directory published by private publishers);
- (37) Section 55.251 (Charge for Hotel or Motel Call);
- (38) Subchapter K (Selection of Telecommunications Utilities), Chapter 55;
- (39) Sections 56.026(a) and (d) (relating to universal service fund disbursements);

- (40) Section 56.204(b) (relating to the number of signatures required to be on a petition);
- (41) Section 57.001 (Conflict of Provisions);
- (42) Subchapter D (Interactive Multimedia Communications), Chapter 57;
- (43) Sections 58.003 (Customer-Specific Contracts), 58.004 (Packaging, Term and Volume Discounts, and Promotional Offerings), 58.021 (Election), and 58.022 (Chapter Controls);
- (44) Section 58.024 (Service Reclassification);
- (45) Section 58.028 (Review and Report of Effects of Election);
- (46) Sections 58.052 (Regulation of Services), 58.053 (Investment Limitation on Service Standards), 58.054 (Rates Capped), 58.055 (Rate Adjustment by Company), 58.056 (Rate Adjustment for Changes in FCC Separations), 58.057 (Rate Adjustment for Certain Companies), 58.058 (Rate Group Reclassification), 58.059 (Commission Rate Adjustment), and 58.060 (Rate Adjustment After Cap Expiration);
- (47) Subchapter F (General Infrastructure Commitment), Chapter 58;
- (48) Section 59.023(b) (relating to an election made under Chapter 58);
- (49) Section 59.024(e) (relating to rate changes effected by Section 58.059);
- (50) Sections 59.051 (Infrastructure Commitment), 59.052 (Infrastructure Goals), 59.053 (Waiver of Infrastructure Requirements), and 59.054 (Progress Report);
- (51) Section 59.076 (Election of Rate Treatment);
- (52) Section 59.078(b) (relating to a private line of special access rates);
- (53) Section 60.002 (Exclusive Jurisdiction; Enforcement);
- (54) Sections 60.004 (Applicability to Certain Smaller Incumbent Local exchange Companies; Rules), 60.005 (Applicability to Certain Larger Incumbent Local Exchange Companies; Rules), and 60.006 (Bulletin Board Systems Unaffected);
- (55) Subchapters B (Unbundling), C (Resale), and D (Imputation), Chapter 60;
- (56) Sections 60.083 (Interim Retention of Consumer Numbers) and 60.084 (Rates for Interim Portability Measures);
- (57) Subchapter F (Pricing), Chapter 60;
- (58) Section 60.128 (Use of Rates Restricted);
- (59) Subchapter H (Expanded Interconnection), Chapter 60;
- (60) Sections 60.162 (Expanded Interconnection) and 60.163 (Infrastructure Sharing);
- (61) Chapter 61 (Information Technology Services);
- (62) Chapter 62 (Broadcaster Safeguards);
- (63) Chapter 63 (Electronic Publishing);

(64) Sections 64.002(3) (defining "certificated telecommunications utility"), (5) (defining "service provider"), and (6) (defining "telecommunications utility"); and

(65) Subchapter B (Certification, Registration, and Reporting Requirements), Chapter 64, Utilities Code.

(b) Repealer: Section 56.026(c) (relating to a reduction in rates based on a disbursement from a universal service fund), Utilities Code, on September 1, 2007.

(c) Repealer: Subchapter C (Telecommunications Infrastructure Fund), Chapter 57, Utilities Code.

SECTION 145. Prohibits the repeal of Section 54.2025 (Lease of Fiber Optic Cable Facilities), Utilities Code, by this Act, from taking effect until September 30, 2006.

SECTION 146. Effective date: September 1, 2005.