

## **BILL ANALYSIS**

Senate Research Center

S.B. 332  
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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under current law, much of the evolution by the telecommunications industry has not been addressed since statutory changes made in 1995 and 1996 to further competition in telecommunications markets. New technologies and new competitors are emerging which could reshape the delivery of telecommunications services to customers. As proposed, S.B. 332 provides that all telecommunications markets are open for competition on August 1, 2007, and provides a mechanism to transition to deregulated markets in areas of the state that are ready for competition. This bill permits the Public Utility Commission of Texas (commission) to determine when markets are deemed ready for competition and re-regulate a market, allows small telecommunications companies to opt-out of competition, and provides a threshold test to open markets that have been closed. This bill authorizes the commission upon notice and a hearing, to adjust disbursement from the Universal Service Fund. S.B. 332 further provides a wholesale code of conduct and allows the commission to enforce performance measures, and creates a telecommunications competitiveness legislative oversight committee.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Sections 65.110, 65.120 and 65.130) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the Utilities Code by adding Chapter 65, as follows:

#### **CHAPTER 65. DEREGULATION OF MARKETS IN INCUMBENT LOCAL EXCHANGE COMPANY TERRITORIES.**

##### **SUBCHAPTER A. GENERAL PROVISIONS.**

Sec. 65.001. STATEMENT OF POLICY. Provides that the state's policy is to provide for full rate and service competition in the telecommunications market of this state for the benefit of customers as specified.

Sec. 65.002. COMMISSION AUTHORITY. Authorizes the Public Utility Commission of Texas (commission) to implement and enforce this chapter, notwithstanding any other provisions of this title. Authorizes the commission to collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter. Requires the commission to maintain the confidentiality of confidential information collected for competitive purposes. Provides that confidential information is exempt from disclosure under Chapter 552 (Public Information), Government code.

Sec. 65.003. DEFINITIONS. Defines "deregulated company," "market," "regulated company," "small local exchange company," and "transitioning company."

##### **SUBCHAPTER B. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS DEREGULATED.**

Sec. 65.100. DEREGULATED MARKETS. Provides that markets of all incumbent local exchange companies are deregulated on August 1, 2007, except as provided in Subchapters C and K of this chapter.

SUBCHAPTER C. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS THAT SHOULD REMAIN REGULATED.

Sec. 65.110. DETERMINING WHETHER A MARKET OR MARKETS SHOULD REMAIN REGULATED. (a) Requires the commission to determine whether a market or markets of an incumbent local exchange company should remain regulated on or after August 1, 2007.

(b) Requires the commission to adopt rules and conduct proceedings necessary to make the determination whether a market or markets should remain regulated on or after August 1, 2007. Sets forth the requirements to be met by the commission's determination. Provides that the incumbent local exchange carrier has the burden of proving that a market should not remain regulated.

(c) Requires an incumbent local exchange company, for which the commission does not determine that a market or markets in its territory is to remain regulated on and after August 1, 2007, to be a deregulated company and subject to Subchapter G of this chapter.

(d) Requires an incumbent local exchange company, for which the commission determines that a market or markets in its territory remain regulated on or after August 1, 2007, and that a market or markets in its territory not remain regulated, to be a transitioning company and subject to Subchapter H of this chapter.

(e) Requires an incumbent local exchange company for which the commission determines that all markets in its territory are required to remain regulated on or after August 1, 2007, to continue to be a regulated company and subject to the provisions of this title applicable to it on January 1, 2005. Provides an exception.

(f) Requires the commission to issue final orders in proceedings held pursuant to this section no later than May 31, 2007.

Sec. 65.115. SMALL INCUMBENT LOCAL EXCHANGE COMPANY MARKETS. Authorizes a small incumbent local exchange company to elect for its market or markets to remain regulated on and after August 1, 2007, notwithstanding Section 65.110. Requires such a small incumbent local exchange company to file an affidavit with the commission as specified by January 1, 2006. Requires a small incumbent local exchange company who elects to remain regulated to continue to be a regulated company and subject to the provisions of this title applicable to it on January 1, 2005. Provides an exception.

SUBCHAPTER D. DEREGULATION OF MARKETS THAT REMAIN REGULATED ON AND AFTER AUGUST 1, 2007.

Sec. 65.120. PETITION FOR DEREGULATION. Authorizes an incumbent local exchange company to petition the commission for deregulation in a market that remains regulated, pursuant to this subchapter and after January 1, 2008. Requires the commission to adopt rules and conduct proceedings to make the determination whether a market or markets of an incumbent local exchange company that remain regulated on or after August 1, 2007 will be deregulated. Sets forth the requirements to be met by the commission's determination. Provides that the incumbent local exchange carrier has the burden of proving that a market should be deregulated.

SUBCHAPTER E. RE-REGULATION OF MARKETS.

Sec. 65.130. COMMISSION AUTHORITY TO RE-REGULATE. Authorizes the commission to subject a transitioning or deregulated company to re-regulation in that market pursuant to Section 52.206 of this title, in a market in which a transitioning company or a deregulated company is deregulated. Requires the commission to adopt rules and conduct proceedings necessary to make the determination whether a market or

markets of an incumbent local exchange company which are deregulated will be re-regulated. Sets forth the requirements to be met by the commission's determination. Provides that the incumbent local exchange carrier has the burden of proving that a market should not be re-regulated.

#### SUBCHAPTER F. MARKET TEST.

Sec. 65.140. MARKET TEST TO DETERMINE STATUS OF REGULATION. Sets forth the factors to be considered by the commission to determine whether a market of an incumbent local exchange should be regulated or deregulated.

#### SUBCHAPTER G. DEREGULATED COMPANY.

Sec. 65.150. REQUIREMENTS FOR A DEREGULATED COMPANY. Authorizes a deregulated company to petition the commission to relinquish its certificate of convenience and necessity and receive a certificate of operating authority. Requires the commission to issue a deregulated company a certificate of operating authority and rescind the deregulated company's certificate of convenience and necessity under specific circumstances. Requires a deregulated company holding a certificate of operating authority to be a non-dominant carrier governed in the same manner as any holder of a certificate of operating authority except that the deregulated company is required to meet specific criteria.

Sec. 65.151. SWITCHED ACCESS RATES FOR DEREGULATED COMPANY. (a) Requires a deregulated company to reduce its originating and terminating per minute of use switched access rates in all its markets to parity with its respective local reciprocal compensation rates, upon deregulation in the last market in its certificate of convenience and necessity territory.

(b) Requires a deregulated company to maintain parity with its local reciprocal compensation rates, after reducing its per minute of use switched access rates pursuant to Subsection (a). Requires a deregulated company to change its per minute of use switched access rates in all its markets to parity with its local reciprocal compensation rates, after a change in its local reciprocal compensation rates.

(c) Prohibits a deregulated company from increasing its per minute of use switch access rates above its applicable reciprocal compensation rates.

(d) Provides that the requirements of this section apply to a deregulated company holding a certificate of convenience and necessity or a certificate of operating authority pursuant to this subchapter.

#### SUBCHAPTER H. TRANSITIONING COMPANY.

Sec. 65.160. REQUIREMENTS FOR A TRANSITIONING COMPANY. Requires a transitioning company to remain subject to the provisions of this title applicable immediately prior to becoming a transitioning company and to the provisions of this subchapter. Provides that where the provisions are inconsistent, this subchapter controls.

Sec. 65.161. GENERAL REQUIREMENTS FOR A TRANSITIONING COMPANY. Sets forth general requirements of a transitioning company.

Sec. 65.162. RATE REQUIREMENTS FOR TRANSITIONING COMPANY. Requires a transitioning company to price its retail services in accordance with the provisions applicable to such company immediately prior to becoming a transitioning company, in a market not subject to deregulation. Requires a transitioning company to price its retail services in markets as specified, in a market subject to deregulation. Prohibits a transitioning company from specific action in all markets.

Sec. 65.163. SWITCHED ACCESS RATES FOR TRANSITIONING COMPANY. (a) Requires a transitioning company to reduce its originating and termination per minute use of switched access rates in all markets to parity with its respective federal originating and terminating per minute of use switched access rates, on August 1, 2007, notwithstanding any other provision of this title.

(b) Requires a transitioning company to maintain parity with its federal originating and terminating per minute of use switched access rates, after reducing its per minute of use switched access rates pursuant to Subsection (a). Requires a transitioning company to reduce its per minute of use switched access rates in all its markets to parity with its federal per minute of use switched access rates, upon reduction in its federal per minute of use switched access rates.

(c) Prohibits a transitioning company from increasing its per minute of use switched access rates above the lesser of the rate set in Subsection (a) of this section or the rate set in accordance with Subsection (b) of this section.

#### SUBCHAPTER I. CUSTOMER PROTECTION.

Sec. 65.170. CUSTOMER PROTECTION. Provides that this chapter do not alter a customer's right to complain to the commission.

#### SUBCHAPTER J. LEGISLATIVE OVERSIGHT COMMITTEE.

Sec. 65.180. OVERSIGHT COMMITTEE. Defines "committee." Sets forth the member composition of the committee. Provides that an appointed member of the committee serves at the pleasure of the appointing official.

Sec. 65.181. COMMITTEE DUTIES. (a) Requires the telecommunications competitiveness legislative oversight committee (committee) to conduct joint public hearings with the commission at least annually regarding the introduction of full competition to telecommunication services in the state. Sets forth actions required of the commission.

(b) Requires the committee to receive information about rules relating to telecommunications deregulation proposed by the commission. Authorizes the committee to submit comments to the commission on proposed rules.

(c) Requires the committee to monitor the effectiveness of telecommunications deregulations, including specific factors.

(d) Authorizes the committee to request reports and other information from the commission as necessary to carry out this subchapter.

(e) Requires the committee to report on the committee's activities under this subchapter to specified persons, not later than November 15 of each even-numbered year. Sets forth the required items to be included in the committee report.

Sec. 65.182. EFFECT OF SUNSET PROVISION. Provides that the committee is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides a Sunset date of 2011.

#### SUBCHAPTER K. BASIC LOCAL TELECOMMUNICATIONS SERVICES CAPPED.

Sec. 65.190. RATES CAPPED. Prohibits all incumbent local exchange companies subject to this chapter from increasing any rate for basic local telecommunications services, with exceptions. Provides that the rates of an incumbent local exchange carrier capped by this section are the rates charged by the company on August 31, 2005.

SECTION 2. Amends Section 51.002(3), Utilities Code, to redefine "incumbent local exchange company."

SECTION 3. Amends Section 52.155, Utilities Code, by amending Subsection (a) and adding Subsection (c), as follows:

Sec. 52.155. PROHIBITION OF EXCESSIVE ACCESS CHARGES. (a) Makes a conforming change.

(c) Requires a company that holds a certificate of operating authority received pursuant to Chapter 65 of this title to have its switched access charge rates governed by Chapter 65 of this title, notwithstanding Subsection (a) of this section.

SECTION 4. Amends Subchapter D, Chapter 52, Utilities Code, by adding Section 52.156, as follows:

Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS ESTABLISHED BY HOLDERS OF COA OR SPCOA. Prohibits a holder of a certificate of operating authority or service provider certificate of operating authority from performing certain actions.

SECTION 5. Amends Section 54.251(b), Utilities Code, to make a conforming change.

SECTION 6. Amends Section 54.301, Utilities Code, to add the definition of "holder of certificate of convenience and necessity." Redesignates Subsections (2)-(3) as Subsections (3)-(4).

SECTION 7. Amends Section 56.026(c), Utilities Code, as follows:

(c) Authorizes the commission to determine the appropriate universal service fund disbursement amounts, notwithstanding any other provision of this title. Requires that telecommunications providers receive universal service fund disbursements only for providing lifeline service pursuant to Section 56.021(5) of this chapter, under certain circumstances. Deletes existing text.

SECTION 8. Amends Subchapter G, Chapter 58, Utilities Code, by adding Section 58.268, as follows:

Sec. 58.268. CONTINUATION OF THIS SUBCHAPTER. Sets forth specific companies required to continue complying with the provisions of this subchapter until January 1, 2012, notwithstanding any other provision of this title.

SECTION 9. Amends Subchapter D, Chapter 59, Utilities Code, by adding Section 59.083, as follows:

Sec. 59.083. CONTINUATION OF THIS SUBCHAPTER. Sets forth specific companies required to continue complying with the provisions of this subchapter until January 1, 2012, notwithstanding any other provision of this title.

SECTION 10. Amends Chapter 60, Utilities Code, by adding Subchapter J, as follows:

#### SUBCHAPTER J. WHOLESALE CODE OF CONDUCT.

Sec. 60.175. STATEMENT OF POLICY. Provides that it is the state's policy that providers of telecommunication services operate consistent with the minimum standards to provide customers with continued competitive choice for providers.

Sec. 60.176. MINIMUM SERVICE PROVIDER REQUIREMENTS. Sets forth unreasonable actions in which telecommunications providers may not engage.

Sec. 60.177. INTERCONNECTION. Requires all telecommunications providers to provide interconnection with other telecommunications providers' networks under specific circumstances.

Sec. 60.178. NUMBER PORTABILITY. Requires all telecommunications providers to provide number portability in accordance with federal requirements.

Sec. 60.179. DUTY TO NEGOTIATE. Requires all telecommunications providers to negotiate the terms and conditions of any agreements in good faith.

Sec. 60.180. DIALING PARITY. Requires all telecommunications providers to provide dialing parity to competing telecommunications providers of telephone exchange service and telephone toll service. Requires all telecommunications providers to provide nondiscriminatory access to telephone numbers, operator service, directory assistance, and directory listing with no unreasonable delays.

Sec. 60.181. ACCESS TO RIGHTS OF WAY. Requires all telecommunications providers to provide access to poles ducts, conduits and rights-of-way to competing providers of telecommunications service on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Sec. 60.182. RECIPROCAL COMPENSATION. Requires all telecommunications providers to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 60.183. ACCESS TO SERVICES. Sets forth services to which a telecommunications provider is required to provide access.

SECTION 11. Amends Chapter 60, Utilities Code, by adding Subchapter K, as follows:

**SUBCHAPTER K. WHOLESALE COMPLIANCE AND ENFORCEMENT.**

Sec. 60.200. MONITOR AND ENFORCE COMPLIANCE WITH CHAPTER 60 OF THIS TITLE AND 47 U.S.C. 251 AND 252. Provides that the commission has jurisdiction to monitor and enforce an incumbent local exchange company's compliance with the requirements of Chapter 60 of this title and 47 U.S.C. Sections 251 and 252, notwithstanding any other law. Sets forth the actions covered under the jurisdiction granted to the commission.

SECTION 12. Effective date: September 1, 2005.