

BILL ANALYSIS

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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 9 (Section 55.015, Utilities Code), SECTION 16 (Section 56.301, Utilities Code), and SECTION 26 (Sections 65.003, 65.052, and 65.055, Utilities Code) of this bill.

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 9 (Section 55.015, Utilities Code), SECTION 12 (Section 56.025, Utilities Code), and SECTION 11 (Section 56.021, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 33.001, Utilities Code, as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) Creates this subsection from existing text. Provides that the governing body of a municipality, to provide fair, just, and reasonable rates and adequate and efficient services, has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by this title.

(b) Prohibits the governing body of a municipality, notwithstanding Subsection (a), from having jurisdiction over the BPL (broadband over power lines) system, BPL services, telecommunications using BPL services, or the rates, operations, or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, wholly or partly, to the construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

SECTION 2. Amends Subtitle B, Title 2, Utilities Code, by adding Chapter 43, as follows:

CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR ACCESS TO BROADBAND AND OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) Provides that the legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. Sets forth that BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) Provides that the legislature finds that access to quality, high speed broadband services is important to this state; that BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services; and that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

(c) Provides that the legislature, consistent with the goal of increasing options for telecommunications in this state, finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities, to own or operate all or a portion of such BPL systems. Sets forth that the purpose of this chapter is to provide the appropriate framework to support the deployment of BPL.

(d) Provides that the legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this section, but is not required to do so. Requires the electric utility to have the right to decide, in its sole discretion, whether to implement BPL and prohibits the electric utility from being penalized for deciding to implement or not to implement BPL.

Sec. 43.002. **APPLICABILITY.** (a) Provides that this chapter applies to an electric utility whether or not the electric utility is offering customer choice under Chapter 39.

(b) Provides that if there is a conflict between the specific provisions of this chapter and any other provisions of this title, the provisions of this chapter control.

(c) Provides that no provision of this title shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.

Sec. 43.003. **DEFINITIONS.** Defines "BPL," "broadband over power lines," "BPL services," "BPL access," "BPL operator," "BPL Internet service provider," "BPL ISP," "BPL system," "BPL electric utility applications," "electric delivery system," and "electric utility."

[Reserves Sections 43.004-43.050 for expansion.]

SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. **AUTHORIZATION FOR BPL SYSTEM.** Authorizes an affiliate of an electric utility or a person unaffiliated with an electric utility to own, construct, maintain, and operate a BPL system and provide BPL services on an electric utility's electric delivery system consistent with the requirements of this chapter. Provides that nothing in this chapter shall prohibit an entity defined in Section 11.003(9) from providing BPL service or owning and operating a BPL system and that nothing in this chapter shall prohibit an electric utility from providing construction or maintenance services to a BPL operator or BPL ISP provided that the costs of these services are properly accounted for between the electric utility and the BPL operator or BPL ISP.

Sec. 43.052. **OWNERSHIP AND OPERATION OF BPL SYSTEM.** (a) Authorizes an electric utility to elect to allow an affiliate to own or operate a BPL system on the utility's electric delivery system; allow an unaffiliated entity to own or operate a BPL system on the electric utility's electric delivery system; or allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

(b) Requires the BPL operator and the electric utility to determine what BPL Internet service providers may have access to broadband capacity on the BPL system.

Sec. 43.053. FEES AND CHARGES. (a) Requires an electric utility that allows an affiliate or an unaffiliated entity to own a BPL system on the electric utility's electric delivery system to charge the owner of the BPL system for the use of the electric utility's electric delivery system.

(b) Authorizes an electric utility may pay a BPL owner, a BPL operator, or a BPL ISP for the use of the BPL system required to operate BPL utility applications.

(c) Requires the owner of the BPL system, if all or part of a BPL system is installed on poles or other structures of a telecommunications utility as that term is defined in Section 51.002, to be required to pay the telecommunications utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the BPL system so installed.

(d) Prohibits an electric utility, notwithstanding Subsections (a)-(c), from charging an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items; paying an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items; and discriminating against a retail electric provider that is not affiliated with the utility in the terms or availability of BPL services.

Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. Prohibits the installation of a BPL system on an electric delivery system, because BPL systems provide benefits to electric delivery systems, from requiring the electric utility or the owner of the BPL system or an entity defined in Section 11.003(9) to obtain or expand easements or other rights-of-way for the BPL system or to give additional consideration as a result of the installation or the operation of a BPL system. Provides that for purposes of this section, installation of a BPL system shall be deemed to be consistent with installation of an electric delivery system.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. Requires an electric utility that allows the installation and operation of a BPL system on its electric delivery system to employ all reasonable measures to ensure that the operation of the BPL system does not interfere with or diminish the reliability of the utility's electric delivery system. Requires an electric utility, should a disruption in the provision of electric service occur, to be governed by the terms and conditions of the retail electric delivery service tariff. Requires the provision of broadband services, at all times, to be secondary to the reliable provision of electric delivery services.

[Reserves Sections 43.056-43.100 for expansion.]

SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) Authorizes an electric utility through an affiliate, or through an unaffiliated entity, to elect to install and operate a BPL system on some or all of its electric delivery system in any part or all of its certificated service area.

(b) Prohibits the installation, operation, and use of a BPL system and the provision of BPL services from being regulated by the state, a municipality, or local government other than as provided for in this chapter.

(c) Prohibits the Public Utility Commission (commission) or a state or local government or a regulatory or quasi-governmental or a quasi-regulatory authority from requiring an electric utility, either through an affiliate or an unaffiliated

entity, to take certain actions, or prohibiting an electric utility from taking certain actions.

(d) Prohibits the municipality or local government, if it is already collecting a charge or fee from the electric utility for the use of the public rights-of-way for the delivery of electricity to retail electric customers, from requiring a franchise or an amendment to a franchise or from requiring a charge, fee, or tax from any entity for use of the public rights-of-way for a BPL system.

(e) Authorizes the state or a municipality to impose a charge on the provision of BPL services, but prohibits the charge from being greater than the lowest charge that the state or municipality imposes on other providers of broadband services for use of the public rights-of-way in its respective jurisdiction.

Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Requires the electric utility's investment in a BPL system to directly support the BPL electric utility applications and other BPL services consumed by the electric utility that are used and useful in providing electric utility service, where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a), to be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary to be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. Requires the invested capital and expenses described in this section to be allocated to the customer classes directly receiving the services.

(b) Requires just and reasonable charges for the use of the electric utility's electric delivery system by a BPL owner or operator, in any proceeding under Chapter 36, to be limited to the usual and customary pole attachment charges paid to the electric utility for comparable space by cable television operators.

(c) Requires the revenues of an affiliated BPL operator or an affiliated BPL ISP to not be deemed the revenues of an electric utility for purposes of setting rates under Chapter 36 (Rates).

[Reserves Sections 43.103-43.150 for expansion.]

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. AFFILIATES OF ELECTRIC UTILITY. (a) Authorizes an electric utility, subject to the limitations of this chapter, to have a full or partial ownership interest in a BPL operator or a BPL ISP. Requires whether a BPL operator or a BPL ISP is an affiliate of the electric utility to be determined under Section 11.003(2) or Section 11.006.

(b) Provides that neither a BPL operator nor a BPL ISP shall be considered a "competitive affiliate" of an electric utility as that term is defined in Section 39.157.

Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. Requires BPL operators to comply with all applicable federal laws, including those protecting licensed spectrum users from interference by BPL systems. Requires the operator of a radio frequency device to be required to cease operating the device upon notification by a Federal Communications Commission representative that the device is causing harmful interference. Prohibits operation from being resumed until the condition causing the harmful interference has been corrected.

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

(a) Prohibits a telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority from charging a higher amount for originating or terminating intrastate switched access than the

prevailing rates charged by the holder of the certificate of convenience and necessity or the holder of a certificate of operating authority issued under Chapter 65 in whose territory the call originated or terminated unless certain conditions are met.

(c) Provides that notwithstanding Subsection (a), Chapter 65 governs the switched access rates of a company that holds a certificate of operating authority issued under Chapter 65.

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

Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS. Prohibits a telecommunications utility from establishing a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory, or engaging in predatory pricing or attempt to engage in predatory pricing.

SECTION 5. Amends Section 54.202, Utilities Code, by adding new Subsection (c), as follows:

(c) Provides that this section may not be construed to prevent 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 6. Amends Sections 54.204(a), (b), and (c), Utilities Code, as follows:

(a) Prohibits a municipality or a municipally owned utility, notwithstanding Section 14.008 (Municipal Franchises), from discriminating against a certificated telecommunications provider, rather than a telecommunications utility, regarding certain issues.

(b) Deletes existing text relating to the holding of a certificate of convenience and necessity by a telecommunications utility. Makes conforming changes.

(c) Prohibits a municipality or a 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 a certain amount, if the municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission. Requires a municipality or municipally owned utility, not later than September 1, 2006, 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 reference to Subsection (b)(1).

SECTION 7. Amends Section 54.251, Utilities Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that except as specifically determined otherwise by the commission under this subchapter or Subchapter G, the holder of a certificate of convenience and necessity, or the holder of a certificate of operating authority issued under Chapter 65, for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area.

(c) Authorizes a certificate holder to meet the holder's provider of last resort obligations using any available technology. Authorizes the commission, notwithstanding any provision of Chapter 56, to adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations. Requires the certificate holder, as determined by

the commission, to meet minimum quality of service standards, including standards for 911 service, comparable to those established for traditional wireline or landline technologies and to offer services at a price comparable to the monthly service charge for comparable services in that exchange or the provider's nearest exchange.

SECTION 8. Amends Subchapter G, Chapter 54, Utilities Code, by adding Section 54.3015, as follows:

Sec. 54.3015. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies to a holder of a certificate of operating authority issued under Chapter 65 in the same manner and to the same extent this subchapter applies to a holder of a certificate of convenience and necessity.

SECTION 9. 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 certified provider of local exchange telephone service, rather than a telecommunications provider, from discontinuing basic network services listed in Section 58.051 (Services Included) to a consumer who receives lifeline services for specific reasons, including interexchange telecommunications service, rather than long distance service.

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

(c) and (d) Make conforming changes.

(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 a specific amount or has a child who participates in certain federal or state programs.

(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 certain custom calling features, at the same price as to other consumers. Requires lifeline discounts to only apply to that portion of the bill that is for basic network service.

SECTION 10. 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 that 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 11. Amends Section 56.021, Utilities Code, as follows:

Sec. 56.021. **UNIVERSAL SERVICE FUND ESTABLISHED.** Requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund to perform certain tasks, including financing the program established under Subchapter H.

SECTION 12. Amends Section 56.025(a), Utilities Code, to require the commission, in addition to the authority provided by Section 56.021 (Universal Service Fund Established), for each local exchange company that serves fewer than 31,000, rather than five million, access lines and each

cooperative, to adopt rules to expand the universal service fund in the circumstances provided by this section and authorizes the commission to adopt a mechanism necessary to maintain reasonable rates for local exchange telephone service.

SECTION 13. Amends Section 56.026, Utilities Code, by adding Subsection (e), to provide that this subsection and Subsections (c) and (d) (governing certain disbursements from the Universal Service Fund) expire August 31, 2007.

SECTION 14. Amends Subchapter B, Chapter 56, Utilities Code, by adding Sections 56.029, 56.030, and 56.031, as follows:

Sec. 56.029. UNIVERSAL SERVICE FUND STUDY; ATTESTATION REQUIREMENT. (a) Requires the commission to conduct a review and evaluation of whether the universal service fund (fund) accomplishes certain purposes. Sets forth requirements for the evaluation.

(b) Requires the commission, not later than January 1, 2006, to require telecommunications providers receiving disbursements under the fund to provide information determined necessary to discharge the commission's duties under this section, including certain specific information.

(c) Provides that information provided under Subsection (b) is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(d) Authorizes the commission to classify telecommunications providers as it considers appropriate for efficiency and to permit providers to share certain costs as determined necessary to discharge the commission's responsibilities under this section.

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

(f) Sets forth requirements for the evaluation.

(g) Requires each telecommunications provider receiving universal service fund money, not later than December 31, 2005, to file an affidavit attesting that the money from the fund has been used in a certain manner.

(h) Sets forth requirements for the commission to compile specific information, in addition to the study required by this section.

(i) Provides that this section expires September 1, 2007.

Sec. 56.030. AFFIDAVITS OF COMPLIANCE. Requires a telecommunications provider that receives disbursements from the universal service fund, on or before September 1 of each year, to file with the commission an affidavit certifying that the telecommunications provider is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each universal service fund program for which the telecommunications provider receives disbursements.

Sec. 56.031. ADJUSTMENTS. Authorizes the commission to revise the monthly per line support amounts to be made available from specific service plans at any time after September 1, 2007, after notice and an opportunity for hearing. Requires the commission to consider the adequacy of basic rates to support universal service in determining appropriate monthly per line support amounts.

SECTION 15. Amends Subchapter B, Chapter 56, Utilities Code, by adding Section 56.032, as follows:

Sec. 56.032. COMMISSION REVIEW AND EVALUATION OF DISTANCE LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN ENTITIES. (a) Sets forth requirements for the commission regarding the initiation of a study for the purpose of evaluating a new funding mechanism.

(b) Sets forth requirements for the study.

(c) Sets forth requirements for the commission regarding necessary evaluation proceedings.

(d) Sets forth requirements for the commission regarding the dissemination of a report based on the findings of the study.

(e) Provides that this section expires September 1, 2007.

SECTION 16. 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 17. Amends Section 58.051, Utilities Code, by amending Subsection (a) and adding Subsections (a-1), (c), and (d), as follows:

(a) Deletes residential call waiting service as a basic network service.

(a-1) Provides that notwithstanding Subsection (a) and Section 58.151 (Services Included), basic network services includes residential caller identifications services, if the customer to whom the service is billed is at least 65 years of age.

(c) Requires the price for basic network service, at the election of the affected incumbent local exchange, to also include certain fees and charges.

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

SECTION 18. Amends Section 58.151, Utilities Code, to set forth a date on which residential call waiting service ceases to be classified as a basic network service and a date on which certain directory assistance inquiries cease to be provided at no charge.

SECTION 19. Amends Section 58.258(a), Utilities Code, to prohibit an electing company's rates for private network services, notwithstanding the pricing flexibility authorized by this subtitle, from being increased before January 1, 2012, rather than on or before the sixth anniversary of the company's date of election, except that an electing company is authorized to increase a rate in accordance with the provisions of a customer specific contract.

SECTION 20. Amends Subchapter G, Chapter 58, Utilities Code, by adding Section 58.268, as follows:

Sec. 58.268. CONTINUATION OF OBLIGATION. Requires an electing company, notwithstanding any other provision of this title, to continue to comply with this subchapter until January 1, 2012, regardless of the date the company elected under this chapter or any action taken in relation to that company under Chapter 65.

SECTION 21. Amends Section 59.077(a), Utilities Code, to prohibit an electing company's rates

for private network services, notwithstanding the pricing flexibility authorized by this subtitle, from being increased before January 1, 2012, rather than on or before the sixth anniversary of the company's election date.

SECTION 22. Amends Subchapter D, Chapter 59, Utilities Code, by adding Section 59.083, as follows:

Sec. 59.083. CONTINUATION OF OBLIGATION. Requires an electing company, notwithstanding any other provision of this title, to continue to comply with this subchapter until January 1, 2012, regardless of the date the company elected under this chapter, or any action taken in relation to that company under Chapter 65.

SECTION 23. Amends Chapter 60, Utilities Code, by adding Subchapter J, as follows:

SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

Sec. 60.201. STATEMENT OF POLICY. Provides that it is the policy of this state that providers of telecommunications services operate in a manner that is consistent with minimum standards to provide customers with continued competitive choices.

Sec. 60.202. APPLICABILITY OF SUBCHAPTER. Provides that a provision of this subchapter applies only to the extent the provision has not been preempted by federal law or a rule, regulation, or order of the Federal Communications Commission.

Sec. 60.203. MINIMUM SERVICE REQUIREMENTS. Prohibits a telecommunications provider from unreasonably taking certain actions.

Sec. 60.204. INTERCONNECTION. (a) Requires a telecommunications provider to provide interconnection with other telecommunications providers' networks for the transmission and routing of telephone exchange service and exchange access.

(b) Requires a telecommunications provider to provide the interconnection at any technically feasible point within the provider's network and at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Requires the quality of the interconnection to be at least equal to the quality of the interconnection provided to itself, a subsidiary or affiliate of the provider, or any other party to which the provider provides interconnection.

Sec. 60.205. NUMBER PORTABILITY. Requires a telecommunications provider to provide number portability in accordance with federal requirements.

Sec. 60.206. DUTY TO NEGOTIATE. Requires a telecommunications provider to negotiate in good faith the terms and conditions of any agreement.

Sec. 60.207. DIALING PARITY. (a) Requires a telecommunications provider to provide dialing parity to competing telecommunications providers of telephone exchange service and telephone toll service.

(b) Requires a telecommunications provider to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings and prohibits a provider from delaying that access unreasonably.

Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. Requires a telecommunications provider 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. 60.209. RECIPROCAL COMPENSATION. Requires a telecommunications provider to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 60.210. ACCESS TO SERVICES. Requires a telecommunications provider to provide access to certain services.

SECTION 24. Amends Subchapter A, Chapter 62, Utilities Code, by adding Section 62.003, as follows:

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO PROGRAMMING. (a) Provides that this section applies only to a provider of advanced services or local exchange telephone service that has more than 500,000 access lines in service in this state and that delivers audio programming with localized content or video programming to its subscribers.

(b) Requires a provider of advanced services or local exchange telephone service, notwithstanding any other provision of this title, to provide subscribers access to the signals of the local broadcast television and radio stations licensed by the Federal Communications Commission to serve those subscribers over the air; provided that with respect to low power television stations, this section shall only apply to those low power television stations that are "qualified low power stations" as defined in 47 U.S.C. §534(h)(2).

(c) Requires a station either to be granted mandatory carriage or authorized to request retransmission consent with the provider to facilitate access by subscribers of a provider of advanced services or local exchange telephone service to the signals of local broadcast stations.

(d) Provides that this title does not require a provider of advanced services or local exchange telephone service to provide a television or radio station valuable consideration in exchange for carriage.

(e) Requires a provider of advanced services or local exchange telephone service to transmit without degradation the signals a local broadcast station delivers to the provider. Prohibits the transmission quality offered a broadcast station from being lower than the quality made available to another broadcast station or video or audio programming source.

(f) Prohibits a provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers from discriminating among broadcast stations or between broadcast stations on the one hand and programming providers on the other with respect to transmission of their signals, taking into account any consideration afforded a provider of advanced services or local exchange telephone service by any such programming provider or broadcast station; or deleting, changing, or altering a copyright identification transmitted as part of a broadcast station's signal.

(g) Requires a provider of advanced services or local exchange telephone service that delivers audio or video programming to be subject to any applicable network non-duplication or syndicated exclusivity rules promulgated by the Federal Communications Commission to the extent applicable to cable systems as defined by the commission.

(h) Requires a provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers to include all programming providers in a subscriber programming guide, if any, that lists program schedules.

SECTION 25. Amends Chapter 64, Utilities Code, by adding Subchapter F, as follows:

SUBCHAPTER F. TRUTH IN TELECOMMUNICATIONS BILLING

Sec. 64.251. DEFINITION. Defines "commercial mobile service provider."

Sec. 64.252. BILLING STATEMENT. (a) Sets forth charges that a commercial mobile service provider or a provider of voice service as defined in Section 283.002 (Definitions) are authorized to be included in an end-user customer's bill.

(b) Prohibits an end-user customer's bill from containing a fee, charge, or tax unless a contract provision, tariff, state, or federal law includes certain provisions.

(c) Requires this section to not apply to a billing utility, as defined in Section 64.002 (Definitions), that bills for goods or services provided by another entity.

(d) Provides that a violation of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46 (Deceptive Trade Practices Unlawful), Business & Commerce Code, but is only required to be actionable by the Attorney General.

SECTION 26. (a) Amends Chapter 64, Utilities Code, by adding Subchapter E, as follows:

SUBCHAPTER E. PROTECTIONS RELATED TO BROADBAND NETWORKS AND ADVANCED SERVICES

Sec. 64.201. POLICY. Establishes that it is the policy of this state to foster free market intermodal communications competition, including providing incentives to invest in advanced communications infrastructure, while still maintaining the "end to end" concept that facilitated the creation and growth of the Internet and still preserving customer choice in the Internet-enabled applications customers employ in association with broadband service.

Sec. 64.202. PROHIBITION ON PREVENTION OR INHIBITION. Prohibits a network provider that deploys broadband networks and provides advanced services from preventing or inhibiting the use of any application or product by customers in association with the use of an advanced service by blocking transmission and delivery of traffic to and from a particular port, Internet address, or Internet site, by limiting the speed available for use by any particular application, or by instituting technical limitations on the use of any Internet-enabled application. Authorizes a network provider to take reasonable and necessary actions to protect the network from harm and to prevent degradation of service to its general body of customers. Provides that this section does not prohibit a network provider from offering or supporting a service or application, including adware, spyware, malware, antivirus, antispam, content filtering, or parental controls or protections, if the customer has a choice between the network provider's service or application and those of an unaffiliated vendor.

Sec. 64.203. PROHIBITION ON BLOCKING AND REDIRECTING. Prohibits a network provider that deploys broadband networks and provides advanced services or an Internet service from knowingly or intentionally blocking or redirecting a customer's attempt to access an Internet application or advanced service without notice to the customer unless certain circumstances exist.

Sec. 64.204. JURISDICTION. Provides that the commission has jurisdiction to enforce this subchapter.

(b) Requires the commission to conduct a study to determine whether Title 2, Utilities Code, adequately preserves customer choice in the Internet-enabled applications employed in association with broadband service and report its conclusions and recommendations to the legislature not later than January 1, 2007. Requires the study to include consultation with and comment from all interested parties.

SECTION 26. Amends Subtitle C, Title 2, Utilities Code, by adding Chapter 65, as follows:

CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE COMPANY MARKETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. STATEMENT OF POLICY. Sets forth that it is the policy of this state to provide for full rate and service competition in the telecommunications market of this state so that customers may benefit from innovations in service quality and market-based pricing.

Sec. 65.002. DEFINITIONS. Defines for purposes of this chapter "deregulated company," "market," "regulated company," "stand-alone residential local exchange voice service," and "transitioning company."

Sec. 65.003. COMMISSION AUTHORITY. (a) Provides that notwithstanding any other provisions of this title, the commission has authority to implement and enforce this chapter.

(b) Authorizes the commission to adopt rules and conduct proceedings necessary to administer and enforce this chapter, including rules to determine whether a market should remain regulated, should be deregulated, or should be reregulated.

Sec. 65.004. INFORMATION. (a) Authorizes the commission to collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter.

(b) Requires the commission to maintain the confidentiality of information collected under this chapter that is claimed to be confidential for competitive purposes. Provides that information that is claimed to be confidential is exempt from disclosure under Chapter 552, Government Code.

Sec. 65.005. CUSTOMER PROTECTION. Provides that this chapter does not affect a customer's right to complain to the commission regarding a telecommunications provider.

[Reserves Sections 65.006-65.050 for expansion.]

SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

Sec. 65.051. MARKETS DEREGULATED. (a) Provides that except as provided by Subsection (b), all markets of all incumbent local exchange companies are deregulated on January 1, 2006, unless the commission determines under Section 65.052(a) that a market or markets should remain regulated.

(b) Provides that a market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 is deregulated on January 1, 2007, unless the commission determines under Section 65.052(f) that the market should remain regulated.

Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD REMAIN REGULATED. (a) Requires the commission, except as provided by Subsection (f), to determine whether each market of an incumbent local exchange company should remain regulated on and after January 1, 2006, and issue a final order classifying the company in accordance with this section effective January 1, 2006.

(b) Prohibits the commission, in making a determination under Subsection (a), from determining that a market should remain regulated if certain population characteristics in the area included in the market exist.

(c) Requires the commission to issue an order classifying an incumbent local exchange company as a deregulated company that is subject to Subchapter C if the company does not have any markets in which the population in the area included in the market is less than 30,000 and the commission does not determine

that a market of the company should remain regulated on and after January 1, 2006.

(d) Requires the commission, regardless of the population in the area included in an incumbent local exchange company's markets, to issue an order classifying the company as a transitioning company that is subject to Subchapter D if the commission determines that one or more, but not all, of the markets of the company should remain regulated on and after January 1, 2006.

(e) Requires the commission to issue an order classifying the company as a regulated company that is subject to the provisions of this title that applied to the company on September 1, 2005, if the commission determines that all of the markets of the company in which the population in each area included in the markets is at least 30,000 should remain regulated on and after January 1, 2006. Provides that this subsection does not affect the authority of a regulated company to elect under Chapter 58 or 59 after January 1, 2005, and to be regulated under the chapter under which the company elected.

(f) Requires the commission, not later than November 30, 2006, to determine whether a market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 should remain regulated on or after January 1, 2007. Requires the commission by rule to determine the market test to be applied in determining whether the market should remain regulated. Requires the commission, if it does not determine that the market should remain regulated on or after January 1, 2007, and the deregulation of that market results in a transitioning or regulated company no longer meeting the definition of a transitioning or regulated company, as appropriate, to issue an order reclassifying the company appropriately.

Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS. (a) Authorizes an incumbent local exchange company, notwithstanding Section 65.052, to elect to have all of the company's markets remain regulated on and after January 1, 2006.

(b) Requires an incumbent local exchange company, to make an election under Subsection (a), to file an affidavit with the commission making that election not later than December 1, 2005.

(c) Requires the commission, if an incumbent local exchange company makes an election under this section, to issue an order classifying the company as a regulated company that is subject to the provisions of this title that applied to the company on September 1, 2005. Provides that this subsection does not affect the authority of a regulated company to elect under Chapter 58 or 59 after January 1, 2005, and to be regulated under the chapter under which the company elected.

Sec. 65.054. PETITION FOR DEREGULATION. (a) Authorizes a transitioning or regulated company, after July 1, 2007, to petition the commission to deregulate a market that the commission previously determined should remain regulated.

(b) Requires the commission, if it deregulates a market under this section and the deregulation results in the transitioning or regulated company no longer meeting the definition of a transitioning or regulated company, as appropriate, to issue an order reclassifying the company appropriately.

Sec. 65.055. COMMISSION AUTHORITY TO REREGULATE CERTAIN MARKETS. (a) Provides that this section applies only to a market of an incumbent local exchange company in which the population in the area included in the market is less than 100,000.

(b) Authorizes the commission, on its own motion or on a complaint that it considers to have merit, to determine that a market that was previously deregulated should again be subject to regulation.

(c) Requires the commission by rule to prescribe the procedures and standards applicable to a determination under this section.

[Reserves Sections 65.056-65.100 for expansion.]

SUBCHAPTER C. DEREGULATED COMPANY

Sec. 65.101. ISSUANCE OF CERTIFICATE OF OPERATING AUTHORITY. (a) Authorizes a deregulated company to petition the commission to relinquish the company's certificate of convenience and necessity and receive a certificate of operating authority.

(b) Requires the commission to issue the deregulated company a certificate of operating authority and rescind the deregulated company's certificate of convenience and necessity if the commission finds that all of the company's markets have been deregulated under Subchapter B.

Sec. 65.102. REQUIREMENTS. (a) Provides that a deregulated company that holds a certificate of operating authority issued under this subchapter is a nondominant carrier governed in the same manner as a holder of a certificate of operating authority issued under Chapter 54, except that the deregulated company retains the obligations of a provider of last resort under Chapter 54; is subject to certain provisions in the same manner as an incumbent local exchange company that is not deregulated; and may not increase the company's rates for stand-alone residential local exchange voice service before the date the commission order issued under Section 56.029(c) takes effect, regardless of whether the company is an electing company under Chapter 58.

(b) Requires a deregulated company, in each market, to make available to all customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services and products, consistent with any pricing flexibility available to such company on or before August 31, 2005.

[Reserves Sections 65.103-65.150 for expansion.]

SUBCHAPTER D. TRANSITIONING COMPANY

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY. Provides that a transitioning company is governed by this subchapter and the provisions of this title that applied to the company immediately before the date the company was classified as a transitioning company. Provides that if there is a conflict between this chapter and the other applicable provisions of this title, this chapter controls.

Sec. 65.152. GENERAL REQUIREMENTS. (a) Authorizes a transitioning company to take certain actions.

(b) Prohibits a transitioning company from being required to comply with exchange-specific retail quality of service standards or reporting requirements in a market that is deregulated.

Sec. 65.153. RATE REQUIREMENTS. (a) Requires a transitioning company, in a market that remains regulated, to price the company's retail services in accordance with the provisions that applied to that company immediately before the date the company was classified as a transitioning company.

(b) Requires a transitioning company, in a market that is deregulated, to price the company's retail services in a certain manner.

(c) Requires a transitioning company, in each deregulated market, to make available to all customers uniformly throughout that market the same price, terms,

and conditions for all basic and non-basic services and products, consistent with any pricing flexibility available to such company on or before August 31, 2005.

(d) Prohibits a transitioning company, in any market, regardless of whether regulated or deregulated, from taking certain actions.

(e) Requires a rate that meets the pricing requirements in Subsection (b) to be deemed compliant with Subsection (d)(2).

[Reserves Sections 65.154-65.200 for expansion.]

SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY DEREGULATED COMPANY. (a) Requires the company, on the date the last market of an incumbent local exchange company is deregulated, to reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) Requires a deregulated company, after reducing the rates under Subsection (a), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES. (a) Requires a transitioning company that has more than three million access lines in service in this state on January 1, 2006, notwithstanding any other provision of this title, to take certain actions relating to both the company's originating and terminating per minute of use switched access rates in each market, and the company's respective federal originating and terminating per minute of use switched access rates.

(b) Requires a transitioning company, after reducing the rates under Subsection (a), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN TRANSITIONING COMPANIES WITH NOT MORE THAN THREE MILLION ACCESS LINES. (a) Requires a company that is classified as a transitioning company effective January 1, 2006, and that has not more than three million access lines in service in this state on that date, notwithstanding any other provision of this title, to reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) Requires the transitioning company on July 1, 2006, to reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of certain amounts.

(c) Requires the transitioning company, on July 1, 2007, to reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of certain amounts.

(d) Requires the transitioning company, on July 1, 2008, to reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of certain amounts.

(e) Requires the transitioning company, on July 1, 2009, and each succeeding year thereafter on July 1, to reduce both the company's originating and terminating per minute of use switched access rates in each market by a certain amount, except that a transitioning company is required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges, if more than 75 percent of the transitioning company's market's are not regulated on July 1, 2009, or any succeeding year.

(f) Requires a transitioning company, after reducing the rates under Subsection (e), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY DESIGNATED TRANSITIONING COMPANY. (a) Requires a company that is classified as a transitioning company after January 1, 2006, notwithstanding any other provision of this title, to reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) Requires the company, on the date the company is classified as a transitioning company, to reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of certain amounts.

(c) Requires the company, on the first anniversary of the date the company is classified as a transitioning company, to reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of certain amounts.

(d) Requires the company, on the second anniversary of the date the company is classified as a transitioning company, to reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of certain amounts.

(e) Requires the company, on the third anniversary of the date the company is classified as a transitioning company, to reduce both the company's originating and terminating per minute of use switched access rates in each market by a certain amount, except that a transitioning company is required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges, if more than 75 percent of the transitioning company's market's are not regulated on July 1, 2009, or any succeeding year.

(f) Requires a transitioning company, after reducing the rates under Subsection (e), to maintain parity with the company's federal originating and terminating per minute of use switched access rates. Requires the company, if the company's federal originating and terminating per minute of use switched access rates are changed, to change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY. (a) Prohibits a company, after a deregulated or transitioning company reduces the company's rates under this subchapter, from increasing those rates above the applicable rates prescribed by this subchapter.

(b) Requires a company, if the transitioning company's federal per minute of use switched access rates are reduced, to reduce the company's per minute of use switched access rates to not more than the applicable rates prescribed by this subchapter.

(c) Authorizes a deregulated or transitioning company, notwithstanding Subsections (a) and (b), to decrease the company's per minute of use switched access rates to amounts that are less than the applicable rates prescribed by this subchapter.

[Reserves Sections 65.206-65.250 for expansion.]

SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 65.251. OVERSIGHT COMMITTEE. (a) Defines "committee."

(b) Sets forth the composition of the telecommunications competitiveness legislative oversight committee (committee).

(c) Provides that an appointed member of the committee serves at the pleasure of the appointing official.

Sec. 65.252. COMMITTEE DUTIES. (a) Requires the committee to conduct joint public hearings with the commission at least annually regarding the introduction of full competition to telecommunications services in this state.

(b) Requires the commission to collect and compile information from all telecommunications providers as necessary to conduct a hearing under this section; and maintain the confidentiality of information collected under this section that is claimed to be confidential for competitive purposes.

(c) Provides that information that is claimed to be confidential under Subsection (b) is exempt from disclosure under Chapter 552, Government Code.

(d) Requires the commission to provide to the committee information regarding rules relating to telecommunications deregulation proposed by the commission. Authorizes the committee to submit comments to the commission on those proposed rules.

(e) Requires the committee to monitor the effectiveness of telecommunications deregulation, including the fairness of rates, the quality of service, and the effect of regulation on the normal forces of competition.

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

(g) Requires the committee, not later than November 15 of each even-numbered year, to report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities under this subchapter. Sets forth information that must be included in the report.

SECTION 27. Amends Subtitle C, Title 2, Utilities Code, by adding Chapter 66, as follows:

CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

Sec. 66.001. FRANCHISING AUTHORITY. Requires the commission to be designated as the franchising authority for a state-issued franchise for the provision of cable service or video service.

Sec. 66.002. DEFINITIONS. Defines "actual incremental cost," "cable service," "cable service provider," "communications network," "franchise," "gross revenues," "incumbent cable service provider," "public right-of-way," "video programming," "video service," and "video service provider."

Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE. (a) Requires an entity or person seeking to provide cable service or video service in this state after September 1, 2005, to file an application for a state-issued certificate of franchise authority with the commission as required by this section. Provides that an entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement expires, except as provided by Section 66.004.

(a-1) Requires the commission to notify an applicant for a state-issued certificate of franchise authority whether the applicant's affidavit described by Subsection (b) is complete before the 15th business day after the applicant submits the affidavit.

(b) Requires the commission to issue a certificate of franchise authority to offer cable service or video service before the 17th business day after receipt of a completed affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming certain information.

(c) Requires the certificate of franchise authority issued by the commission to contain certain information.

(d) Provides that the certificate of franchise authority issued by the commission is fully transferable to any successor in interest to the applicant to which it is initially granted. Requires a notice of the transfer to be filed with the commission and the relevant municipality within 14 business days of the completion of such transfer.

(e) Authorizes the certificate of franchise authority issued by the commission to be terminated by the cable service provider or video service provider by submitting notice to the commission.

Sec. 66.004. ELIGIBILITY FOR COMMISSION-ISSUED FRANCHISE. (a) Provides that a cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter as to those municipalities until the expiration date of the existing franchise agreement, except as provided by Subsections (b) and (c).

(b) Authorizes, beginning September 1, 2005, a cable service provider or video service provider that is not the incumbent cable service provider and serves fewer than 40 percent of the total cable customers in a particular municipal franchise area to elect to terminate that municipal franchise and seek a state-issued certificate of franchise authority by providing written notice to the commission and the affected municipality before January 1, 2006. Provides that the municipal franchise is terminated on the date the commission issues the state-issued certificate of franchise authority.

(c) Provides that a cable service provider that serves fewer than 40 percent of the total cable customers in a municipal franchise area and that elects under Subsection (b) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under

the terminated franchise. Authorizes, if the cable service provider has credit remaining from prepaid franchise fees, the provider to deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

(d) Provides that, for purposes of this section, a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality.

(e) Defines "affiliates or successor entity."

(f) Provides that, except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the enactment of this chapter, and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. Requires all liens, security interests, royalties, and other contracts, rights, and interests in effect on September 1, 2005, to continue in full force and effect, without the necessity for renewal, extension, or continuance, and to be paid and performed by the holder of a state-issued certificate of franchise authority, and to apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. Requires it to be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Authorizes any person, firm, partnership, corporation, or other entity holding or claiming rights herein, reserved to enforce same by an action brought in a court of competent jurisdiction.

Sec. 66.005. FRANCHISE FEE. (a) Requires the holder of a state-issued certificate of franchise authority to pay each municipality in which it provides cable service or video service a franchise fee of five percent based upon the definition of gross revenues as set forth in this chapter. Requires that same franchise fee structure to apply to any unincorporated areas that are annexed by a municipality after the effective date of the state-issued certificate of franchise authority.

(b) Provides that the franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Requires each payment to be accompanied by a summary explaining the basis for the calculation of the fee. Authorizes a municipality to review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a). Requires each party to bear the party's own costs of the examination. Authorizes a municipality, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(c) Authorizes the holder of a state-issued certificate of franchise authority to recover from the provider's customers any fee imposed by this chapter.

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Requires the holder of a state-issued certificate of franchise, until the expiration of the incumbent cable

service provider's agreement, to pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. Requires the holder of a state-issued certificate of franchise authority to report quarterly to the municipality the total number of subscribers served within the municipality. Requires the amount paid by the holder of a state-issued certificate of franchise authority to be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Provides that such pro rata payments are to be paid quarterly to the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

(b) Requires the holder of a state-issued certificate of franchise authority, on the expiration of the incumbent cable service provider's agreement, to pay a municipality in which it is offering cable service or video service one percent of the provider's gross revenues, as defined by this chapter, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired incumbent cable service provider's agreement, in lieu of in-kind compensation and grants. Requires payments under this subsection to be paid in the same manner as outlined in Section 66.005(b).

(c) Provides that all fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and authorizes them to be used by the municipality as allowed by federal law; provides that further, these payments are not chargeable as a credit against the franchise fee payments authorized under this chapter.

(d) Requires certain services to continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until January 1, 2008, or until the term of the franchise was to expire, whichever is later.

Sec. 66.007. BUILD-OUT. Prohibits the holder of a state-issued certificate of franchise authority from being required to comply with mandatory build-out provisions.

Sec. 66.008. CUSTOMER SERVICE STANDARDS. Requires the holder of a state-issued certificate of franchise authority to comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) until there are two or more providers offering service, excluding the direct-to-home satellite service, in the relevant municipality.

Sec. 66.009. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CHANNELS. (a) Requires the holder of a state-issued certificate of franchise authority, not later than 120 days after a request by a municipality, to provide the municipality with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming.

(b) Requires the holder of a state-issued certificate of franchise authority to provide no fewer than the number of PEG access channels a municipality has activated under the incumbent cable service provider's franchise agreement as of September 1, 2005.

(c) Requires the cable service provider or video service provider to furnish a certain amount of PEG channels if a municipality did not have PEG access channels as of September 1, 2005.

(d) Requires any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day to no longer be made available to the municipality, but authorizes it to be programmed at the cable service provider's or video service provider's discretion. Provides that at such time as the municipality can certify to the cable service provider or video service provider a schedule for at least eight hours of daily programming, the cable

service provider or video service provider is required to restore the previously lost channel but is required to be under no obligation to carry that channel on a basic or analog tier.

(e) Requires access, in the event a municipality has not utilized the minimum number of access channels as permitted by Subsection (c), to be provided upon 90 days' written notice if the municipality meets certain standards.

(f) Requires the operation of any PEG access channel provided pursuant to this section to be the responsibility of the municipality receiving the benefit of such channel, and provides that the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of such channel. Requires the holder of a state-issued certificate of franchise authority to be responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

(g) Requires the municipality to ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued certificate of franchise authority are provided or submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the cable service provider or video service provider, which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver services.

(h) Requires the holder of a state-issued certificate of franchise authority and an incumbent cable service provider, where technically feasible, to use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Authorizes interconnection to be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Requires holders of a state-issued certificate of franchise authority and incumbent cable service providers to negotiate in good faith and incumbent cable service provider are prohibited from withholding interconnection of PEG channels.

(i) Requires a court of competent jurisdiction to have exclusive jurisdiction to enforce any requirement under this section.

Sec. 66.010. NONDISCRIMINATION BY MUNICIPALITY. (a) Requires a municipality to allow the holder of a state-issued certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and to provide the holder of a state-issued certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. Provides that all use of a public right-of-way by the holder of a state-issued certificate of franchise authority is nonexclusive and subject to Section 66.011.

(b) Prohibits a municipality from discriminating against the holder of a state-issued certificate of franchise authority regarding certain matters.

Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY. (a) Authorizes a municipality to enforce police power-based regulations in the management of a public right-of-way that apply to the holder of a state-issued certificate of franchise authority within the municipality. Authorizes a municipality to enforce police power-based regulations in the management of the activities of the holder of a state-issued certificate of franchise authority to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Requires police power-based regulation of the holder of a state-issued certificate of franchise authority's use of the public right-of-way to be competitively neutral and prohibits it from being unreasonable or discriminatory. Prohibits a municipality from imposing certain requirements on activities of the holder of a state-issued certificate of franchise authority.

(b) Authorizes a municipality to require the issuance of a construction permit, without cost, to the holder of a state-issued certificate of franchise authority that is locating facilities in or on a public right-of-way in the municipality, notwithstanding any other law. Requires the terms of the permit to be consistent with construction permits issued to other persons excavating in a public right-of-way.

(c) Requires a municipality, in the exercise of its lawful regulatory authority, to promptly process all valid and administratively complete applications of the holder of a state-issued certificate of franchise authority for a permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or obtain zoning or subdivision regulation approvals or other similar approvals. Requires a municipality to make every reasonable effort not to delay or unduly burden the provider in the timely conduct of the provider's business.

(d) Authorizes the holder of a state-issued certificate of franchise authority, if there is an emergency necessitating response work or repair, to begin the repair or emergency response work or take any action required under the circumstances without prior approval from the affected municipality, if the holder of a state-issued certificate of franchise authority notifies the municipality as promptly as possible after beginning the work and later obtains any approval required by a municipal ordinance applicable to emergency response work.

(e) Requires that the commission have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY; NOTICE LIABILITY. (a) Requires the holder of a state-issued certificate of franchise authority to indemnify and hold a municipality and its officers and employees harmless against certain actions and certain suits that is found by a court of competent jurisdiction to be caused solely by the negligent acts, error, or omission of the holder of a state-issued certificate of franchise authority or certain persons of the holder of a state-issued certificate of franchise authority or their certain respective personnel, while installing, repairing, or maintaining facilities in a public right-of-way. Provides an exception to the indemnity provided by this subsection. Requires liability, if the holder of a state-issued certificate of franchise authority and the municipality are found jointly liable by a court of competent jurisdiction, to be apportioned comparatively in accordance with the laws of this state without, however waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. Provides that this subsection is solely for the benefit of the municipality and the holder of a state-issued certificate of franchise authority and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

(b) Requires the holder of a state-issued certificate of franchise authority and a municipality to promptly advise the other in writing of any known claim or demand against the holder of a state-issued certificate of franchise authority or the municipality related to or arising out of the holder of a state-issued certificate of franchise authority's activities in a public right-of-way.

(c) Requires that the commission have no jurisdiction to review such police power-based regulations and ordinances adopted by municipality to manage the public rights -of-way.

Sec. 66.013. MUNICIPAL AUTHORITY. Provides that in addition to a municipality's authority to exercise its nondiscriminatory police power with respect to public rights-of-way under current law, a municipality's authority to regulate the holder of a state-issued certificate of franchise authority is limited to certain procedures.

Sec. 66.014. DISCRIMINATION PROHIBITED. (a) Provides that the purpose of this section is to prevent discrimination among potential residential subscribers.

(b) Prohibits a cable service provider or video service provider that has been granted a state-issued certificate of franchise authority from denying access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(c) Authorizes a affected person to seek enforcement of the requirements described subsection (b) by initiating a proceeding with the commission. Authorizes a municipality within which the potential residential cable service or video service subscribers referenced in Subsection (b) to be considered an affected person for purposes of this section.

(d) Requires the holder of a state-issued certificate of franchise authority to have a reasonable period of time to become capable of providing cable service or video service to all households within the designated franchise area as defined in Section 66.003(b)(4) and authorizes the certificate holder to satisfy the requirements of this section through the use of an alternative technology that provides comparable content, service, and functionality.

(e) Provides that the commission has the authority to make the determination regarding the comparability of the technology and the service provided, notwithstanding any provision of this chapter. Provides that the commission has the authority to monitor the deployment of cable services, video services, or alternative technology, notwithstanding any provision of this chapter.

Sec. 66.015. COMPLIANCE. (a) Requires the court, should the holder of a state-issued certificate of franchise authority be found by a court of competent jurisdiction to be in noncompliance with the requirements of this chapter, to order the holder a state-issued certificate of franchise authority, within a specified reasonable period of time, to cure such noncompliance. Requires failure to comply to subject the holder of the state-issued franchise of franchise authority to penalties as the court is required to reasonably impose, up to and including revocation of the state-issued certificate of franchise authority granted under this chapter.

(b) Requires a municipality within which the provider offers cable service or video service to be an appropriate party in any such litigation.

Sec. 66.016. APPLICABILITY OF OTHER LAWS. (a) Requires nothing in this chapter to be interpreted to prevent certain service providers or a municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

(b) Requires that nothing in this chapter limit the ability of a municipality under existing law to receive compensation for use of the public rights-of-way from entities determined not to be subject to all or part of this chapter, including but not limited to provider of Internet protocol cable or video services, unless such payments are expressly prohibited by federal law.

Sec. 66.017. STUDY. Requires the telecommunications competitiveness legislative oversight committee to conduct a joint interim study with the commission regarding certain issues. Requires the committee to report its findings to the certain state elected officials, no later than December 31, 2006. Provides that this section expires January 1, 2007.

SECTION 28. Amends Section 283.002, Local Government Code, by amending Subdivision (2) and adding Subdivision (7), to redefine "certificated telecommunications provider" and define "voice service."

SECTION 29. Repealer: Subchapter B (Customer Proprietary Network Information), Subchapter C (Advertising), Subchapter D (Audio and Video Programming), Subchapter E (Video Carriage), Subchapter F (Audio Carriage), Chapter 62 (Broadcaster Safeguards) and Chapters 61 (Information Technology Services) and 63 (Electronic Publishing), Utilities Code.

SECTION 30. Requires the PUC to conduct a study to determine whether Title 2 (Public Utility Regulatory Act), Utilities Code, adequately preserves customer choice in the Internet-enabled applications employed in association with broadband service and to report its conclusions and recommendations to the legislature not later than January 1, 2007. Requires the study to include consultation with and comment from all interested parties.

SECTION 31. Provides that if any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 32. Effective date: September 1, 2005, or the 91st day after adjournment.