SUBJECT: Providing broadband Internet access statewide

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Wolens, Counts, Craddick, Danburg, Hunter, Longoria, McCall, McClendon, Merritt

1 nay — Brimer

5 absent — S. Turner, Bailey, Hilbert, D. Jones, Marchant

SENATE VOTE: On final passage, April 17 — voice vote

WITNESSES: For — Monte Akers, Texas Municipal League; W.D. Arnold, Texas Cable and Telecommunications Association; Jose A. Camacho, Valor Telecom; Bruce D. Cohen, Verizon; Weldon R. Gray, Eastex Telephone Cooperative, Texas Statewide Telephone Cooperative, and Texas Telephone Association; Tom Jones, Sprint Corp.; Dave Lopez, Southwestern Bell Telephone; D.L. "Dally" Willis, Communications Workers of America

Against — Brook Brown and Mark Wyatt, Texas Telephone Association

On — Darrell J. Guthrie and Brett Perlman, Public Utility Commission of Texas; *Registered but did not testify:* Terri Wegner, Comptroller's Office; Robert Sam Tessen, Telecommunications Infrastructure Fund; Pam Whittington, Public Utility Commission of Texas

BACKGROUND: Broadband Internet access enables users to send and receive data up to 100 times faster than with narrowband Internet access over traditional telephone lines. With faster data transmission, an Internet user can download lengthy files in seconds or browse through web pages faster. Various technologies or platforms can be used to provide broadband access, including cable, an enhanced telephone service called digital subscriber line (DSL), satellite technology, land-based wireless, and others.

The Federal Communications Commission (FCC) has defined broadband — also called "advanced telecommunications ability" or "advanced services"

— as services with an information-carrying speed of more than 200 kilobytes per second (kbps) in the last mile in both the downstream (provider to customer) and upstream (customer to provider) directions. The last mile is where an advanced service platform is deployed to connect an end user, such as a business or residential customer, to the higher-speed transmission lines carrying Internet traffic.

DIGEST:

CSSB 1783 would create a means of providing advanced telecommunications services to communities that lacked such services. The bill would define an advanced service as a service with an information-carrying capacity, either downstream or upstream, of at least 200 kbps in the last mile in one direction and of 128 kbps in the last mile in the alternative direction.

Request for advanced service. A community could request provision of advanced service from a local telecommunications provider. A requesting community other than a city or county would have to be sponsored by a city or county within which it was located. The request would have to include the boundaries of the community and identify a community contact person.

To be considered valid, a request would have to be signed by, and include contact information for, at least 75 telephone subscribers in the community if it was located in an exchange with more than 1,000 access lines, or 25 to 75 subscribers if the community was located in an exchange with 1,000 lines or fewer. The Public Utility Commission (PUC) would have to adopt rules for considering a valid request from an exchange with fewer than 25 subscribers.

Receipt of request and provision of service. For a valid request received on or after September 1, 2002, a company would have to respond within 30 days to the contact person as to whether the company intended to provide the service itself, to enter into a contract with another company to provide the service, or not to provide the service.

If the company intended to provide the service itself, it would have to do so within 150 days of its response. The company could delay providing the service for an additional 30 days. At the expiration of the 150 days and the delay period, the company could request an additional extension from the PUC, which could authorize the additional extension only on a showing of

circumstances beyond the company's control.

No matter who provided the service, the company would have to ensure that it was provided at terms and prices comparable to those for advanced services that the company provided in its exchange with the greatest number of lines. A company could charge a higher price if necessary to recover costs due to population density, distance, or terrain. The PUC would have to set the maximum price at an amount representing 140 percent of the price charged in the company's exchange with the greatest number of lines. The company could require each person who signed the request to commit to subscribe to the advanced service for one year.

Within five days of receiving a request, the company would have to notify the PUC of the request and whether it was valid. The PUC would have to publish a notice of the request in the *Texas Register* and on the agency's Internet web site. Within five days of responding to the community contact person, the company would have to provide a copy of the response to the PUC.

Community options if company declined to provide advanced service. If no provider offered to provide advanced service, the community could attempt to obtain funding to provide the service itself or to use the funding to enter into a contract with a company to provide the service. The community could seek funding from:

- a development corporation;
- the Telecommunications Infrastructure Fund (TIF);
- a Texas Agricultural Finance Authority program;
- a community development block grant; or
- other business incentives for which the county was eligible.

PUC responsibilities. The PUC would have to:

- maintain a database that included a graphic representation of all advanced service facilities statewide;
- develop policies in cooperation with the TIF board, Texas Department of Agriculture, or other state agencies or groups in regard to funding availability or setting priorities to accelerate deployment of advanced

service to all areas of the state;

- submit a biennial report to the Legislature on the deployment of advanced services; and
- maintain the confidentiality of any proprietary information obtained in connection with this program that was not subject to public information disclosure requirements.

The bill would supersede any PUC orders relating to the sale of utilities or to certificated areas that required a company to deploy a specified advanced service to end users or upon receipt of a certain number of valid requests.

Use of TIF account. CSSB 1783 would allow the TIF qualifying entities account to be used for:

- community planning and determination of advanced service requirements;
- developing and provisioning — not including the costs of construction or leasing — a community technology center, which would provide access to computers, training, technical support, and the Internet; or
- providing an advanced service to a community that had requested advanced service but that lacked a provider for that service.

The TIF board could award grants or loans to community technology centers or communities that had requested advanced service but that lacked a provider. In awarding grants and loans, the board would have to include in its priorities proposals that would establish or enhance provision of advanced service to rural or low-income communities.

A request for a grant or loan for a community technology center would have to include a cost estimate, a list of efforts to secure funding from other sources, and any amount of matching funds to be provided by the requestor. A request for a grant or loan from a community that had requested advanced service but that lacked a provider would have to include a network design and cost estimate, a list of efforts to secure funding from other sources, and a list of non-residential customers that could receive service under the proposal.

The bill would reduce the annual assessment charged to telecommunications and wireless providers from 1.25 to 0.76 percent of the provider’s taxable

telecommunications receipts. It also would remove the $1.5 billion cap on the TIF, set in Utilities Code, sec. 57.048.

Telecommunications utilities. Provisions of current law that prohibit a city from providing telecommunications service would not apply to a community that had requested advanced service but that lacked a provider.

The bill would delay until September 1, 2005, current provisions set to take effect September 1, 2001, that would require a company to provide advanced services to rural areas.

CSSB 1783 would impose limitations on provision of cable service — including only cable video service and/or access to the Internet — by a city. A city could provide cable service directly, or through an electric system that the city operated, and in competition with private-sector providers. In providing service and regulating competing providers, a city would have to ensure nondiscriminatory and comparable treatment with regard to:

- financial and operational requirements imposed by the city on cable service providers;
- any franchise, license, or other authorization requirements;
- compliance with and enforcement of municipal regulations on cable service facilities; and
- access to the city's or municipal electric utility's poles or conduits, except that a city could deny access if there was insufficient capacity or for safety, reliability, or engineering reasons.

A city's franchise, license, or other authorization requirements could not be less burdensome on the city than for a competing provider in regard to design performance or public, institutional, educational, and governmental access. Tying arrangements and price discrimination prohibited by state and federal antitrust laws also would be prohibited.

A city would have to include in its service charges a fee that was equivalent to fees — such as property taxes, franchise fees, pole attachment fees, and other fees — that it imposed on competing providers.

A city could not begin offering service unless approved by voters in an

election or unless the city's governing body held a public hearing and adopted a resolution on its intent to offer the service. Before the hearing, the city would have to make information on the offering available to the public, provide advance notice to incumbent cable operators, and publish advance notice in a local newspaper. The governing body would have to consider public comments at the hearing and could not adopt the resolution until at least 30 days after the hearing.

If a dispute arose between a city and a competing provider, the parties would have to explore alternative dispute resolution before filing suit.

Incentive to provide advanced service. A company that committed to provide an advanced service beginning September 1, 2001, in response to a valid request from at least 75 subscribers could take advantage of incentives available under current law in certain situations, such as allowing a company to set its own prices for its nonbasic services. Basic services would remain subject to a rate cap.

The bill would include advanced service facilities or infrastructure in the list of projects that a development corporation could undertake.

The bill would take effect September 1, 2001. The PUC would have to submit its first report to the Legislature not later than January 15, 2003.

SUPPORTERS SAY:

CSSB 1783 would ensure that all areas of Texas could receive broadband Internet access. With the support of its telephone subscribers, a community could request the service from a local provider. A company would not be obligated to provide the service. It could choose to provide the service, make arrangements with another company to provide the service, or decline to provide the service altogether.

If the company declined, a community could seek funding either to provide the service itself or to arrange service from another provider. Money from the TIF could be used to provide advanced services for such communities.

CSSB 1783 would be "technology-neutral." It would not favor any specific technology for providing advanced services. Advanced services would be defined to accommodate the most commonly available platforms for

broadband service: cable, DSL, satellite, and fixed wireless. The 200/128 kbps requirement would ensure that the bill would cover platforms such as DSL, because some companies offering DSL guarantee only a 128 kbps upstream transmission rate. However, the 200 kbps requirement would ensure that outdated ISDN lines could not be considered an advanced service because they transmit at 128 kbps in both directions and have been mandated by the state since 1995.

Money from the TIF would be used to deploy advanced services without regard to urban or rural areas. Any community that had the support of enough subscribers and that was denied service by its local provider could receive funding for deployment of advanced service. Money from the fund also could be used to determine advanced service requirements and community technology centers. Both urban and rural communities would benefit from CSSB 1783. Also, the bill ultimately would increase revenues to the TIF by eliminating the $1.5 billion cap on the fund.

Deployment of advanced services is expanding rapidly across the nation. However, FCC data show that market forces alone will not guarantee all citizens access to such services. Low-income customers and those in sparsely populated areas are among the most likely to be overlooked. This bill would ensure that segments of the population that otherwise might be bypassed by market forces could receive advanced telecommunications services.

OPPONENTS SAY:

CSSB 1783 would require customers in urban areas to subsidize provision of advanced telecommunications services to rural areas. The TIF is funded by an assessment on telecommunications utilities and mobile telephone service providers. With the proliferation of cellular phones, an increasingly larger portion of the fund's total assessment comes from cellular customers, the majority of whom live in urban areas. Urban customers could be paying to provide advanced services to rural communities when those services were not available for many urban customers.

The bill is unnecessary. Deployment of advanced telecommunications services, especially in the last mile, already is progressing rapidly across the state and the nation. Market forces and the private sector will ensure that advanced services are deployed statewide without the need for legislation.

CSSB 1783 simply would add another layer of administrative bureaucracy to the statutes.

NOTES:

According to the bill's fiscal note, reducing the TIF assessment rate would cause an estimated $10.7 million decrease in general revenue in fiscal 2002-03. Because the TIF assessment is subject to state sales tax, a decrease in the assessment would lead to a decrease in sales tax revenue. Eliminating the fund cap, however, would create positive revenue in later years.

Major changes made by the committee substitute to the Senate engrossed version include:

- shifting the focus from rural to statewide deployment of advanced services;
- requiring a requesting community that was not a city or county to be sponsored by one;
- decreasing the TIF assessment rate to 0.76 percent rather than to 0.5 percent; and
- eliminating provisions that would have required the General Services Commission to provide governmental entities with access to the consolidated telecommunications system.