HOUSE
RESEARCH
ORGANIZATION bill analysis 5/2/2011

HB 2620
Hancock
(CSHB 2620 by Frullo)

SUBJECT: Regulating telecommunications services and markets

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Cook, Menendez, Craddick, Frullo, Gallego, Geren, Hilderbran, Huberty, Smithee, Solomons, Turner

0 nays

2 absent — Harless, Oliveira

WITNESSES: For — (*Registered, but did not testify:* Jose Camacho, Windstream Communications; Jeffrey Clark, Technology Association of America; Bill Peacock, Texas Public Policy Foundation; Scott Stringer, Century Link)

Against — None

On — Todd Baxter, Texas Cable Association; Don Richards, Texas Telephone Cooperatives; (*Registered, but did not testify:* Bob Digneo, AT&T Texas; Carl Erhart, Verizon Communications; Sheri Hicks, TEXALTEL; Kristie Ince, TW Telcom of Texas; Howard Siegel, Logix Communications)

BACKGROUND: Telecommunication providers in Texas are classified as regulated companies, companies transitioning to deregulated, or deregulated companies. Each classification entails different reporting, price, and other rules. In regulated areas, mostly rural areas with a limited number of competitive providers, the Public Utility Commission (PUC) regulates telecommunications providers.

A tariff includes the terms, conditions, and prices that a provider offers to certain classes of customers.

Fees on telecommunications providers are deposited into the Texas Universal Service Fund (TUSF), which is used to pay for lower-cost service to rural areas with limited telecom options, discounts to low-income telephone customers, and service to persons with speech and hearing impairments.

DIGEST:

CSHB 2620 would:

- prevent the state from regulating Voice over Internet Protocol (VoIP) service providers;
- change the test for telecommunications market competitiveness;
- require the PUC to study whether the TUSF is meeting its goals and to suggest improvements to those efforts;
- prevent incumbent local exchanges (ILECs) in markets with more than 30,000 people from receiving TUSF support;
- change TUSF support eligibility rules for other ILECs;
- repeal the requirement that telecoms file customer-specific contracts with the PUC;
- stop the creation of new Extended Area Services;
- grant telecoms the option of continuing to file tariffs with the PUC or posting them on their websites; and
- allow incumbent telecoms to decrease prices for a basic-access line.

VoIP. The bill would prevent the state from regulating Internet Protocol or VoIP. This ban would not:

- affect payment of right-of-way fees under Local Government Code, ch. 283;
- affect obligations for the provision of video service;
- require or prohibit assessment of enhanced 911, relay access service, or TUSF fees;
- affect the rights or obligations of any entity under the federal Communications Act of 1934;
- affect any applicable wholesale tariff;
- require or prohibit the payment of switched network access rates or other inter-carrier compensation rates;
- grant or limit the PUC's authority over any of these matters; or
- affect the assessment, administration, collection or enforcement of a tax or fee over which the comptroller had authority.

CSHB 2620 would prevent the PUC from requiring a telecom that was not a public utility, including a deregulated or transitioning company, to comply with a requirement or standard that was more burdensome than one the commission imposed on a public utility.

The bill would define "Internet Protocol enabled service" and "Voice over Internet Protocol service."

Competitive market test. The bill would revise the competitive market test (CMT) to require the PUC to deregulate a market if:

- the population of the market area was at least 100,000; or
- the population of the market area was less than 100,000 but there were at least two competitors unaffiliated with the ILEC in all or part of the market area that provided voice service.

The bill would require the PUC to reclassify a regulated or transitioning telecom to transitioning or deregulated company if it no longer met the definition of its prior status.

The bill would require that a market that was deregulated as of September 1, 2011, remain deregulated. Only an ILEC could initiate proceedings to deregulate any of its markets, and the PUC would have to make a determination within 90 days.

TUSF. The bill would prevent an ILEC from receiving TUSF support for a deregulated market that had a population of at least 30,000. The bill would allow ILECs to receive TUSF support for a deregulated market with a population under 30,000 if it could show the PUC that it needed the support to provide basic service at reasonable rates.

The bill would require the PUC to conduct a study of the TUSF to determine if the fund was accomplishing its purposes and whether any changes were necessary.

Tariff rules for certain deregulated providers. The bill would allow certain providers to either file with the PUC or publish their tariffs, price lists, or customer service agreements online. The bill would allow providers to make changes in tariffs without PUC approval subject to certain pricing standards. The bill would allow providers to withdraw their tariffs upon notice to the PUC if the provider gave notice to the customer and posted the current tariff online. These changes would not apply to the TUSF or to certain price regulations.

Extended area service and expanded toll-free calling areas. The bill would prevent the PUC from requiring providers to provide extended area service or order provisions to expand toll-free local calling areas after September 1, 2011.

Provider of last resort and other obligations for deregulated and transitioning companies. The bill would exclude deregulated companies that held certificates of operating authority from the responsibilities of :

- fulfilling the obligations of a provider of last resort (PoLR);
- complying with retail quality of service standards or reporting requirements; or
- filing earnings reports with the PUC unless the company was receiving Texas High Cost Universal Service Plan support.

CSHB 2620 would provide that a deregulated company need not comply with uniform pricing standards for purposes of promotional offerings in deregulated markets.

The bill would exclude transitioning companies from fulfilling the obligations of a PoLR or filing earnings reports with the PUC unless the company received Texas High Cost Universal Service Plan support. A transitioning company could exercise pricing flexibility and introduce a new service, subject to certain price and rate rules. A transitioning company would not have to comply with uniform pricing standards for purposes of promotional offerings to individual customers in deregulated markets.

Price floor and long-run incremental cost. Effective January 2, 2012, the bill would allow a transitioning company, after giving notice to the PUC, to opt out of a requirement to price a residential service at, above, or according to the service's long-run incremental cost (LRIC). A transitioning company could opt out of requirements to file LRIC cost studies for residential or business services. The commission could require a provider to file in cases in which complaints were filed.

The bill would prohibit a transitioning company from setting rates that were anticompetitive, predatory, or unreasonably preferential, discriminatory, or prejudicial. A price would not be anticompetitive, predatory, or unreasonably preferential, discriminatory, or prejudicial if it was equal to or greater than the tariffed price on the date the transitioning company provided notice to the PUC. The requirements would not affect certain infrastructure commitments.

Effective date. Provisions dealing with TUSF support of ILECs with populations above and below 30,000, with price floors, and with LRIC would take effect on January 2, 2012. Otherwise, the bill would take effect on September 1, 2011.

SUPPORTERS SAY:

CSHB 2620 would help modernize Texas' telecommunication laws to reflect a rapidly changing and increasingly competitive market place. The bill would adopt the Sunset Advisory Commission's conclusion that incumbent and competitive providers compete with cable, wireless, and VoIP companies and would establish rules to foster increased competition between these groups.

VoIP. CSHB 2620 would provide regulatory certainty for VoIP and other internet protocol services by preventing the state from regulating these services. The FCC already has created a uniform framework for the regulation of two-way VoIP services that applies in all 50 states. At least 17 other states have enacted or have in place similar "regulatory safe harbors" to encourage the kind of serious investments required for the creation of advanced, next-generation networks. CSHB 2620 would reinforce the existing, successful federal regulations, while encouraging business development.

Texas should encourage investment in VoIP and related technologies to transform markets to better meet customer needs. VoIP already has proven helpful to small and medium businesses by lowering costs and increasing mobility and collaboration. The ability of Internet protocols to converge voice, video, and data into one application dramatically improves accessibility for the disabled. For instance, video conferencing facilitates use sign language and can incorporate Braille displays as well as voice technology.

Competitive market test. Utility Code, sec. 65.052 requires a telecommunications market to have at least four competitors in order to be eligible for deregulation. In addition to the incumbent telephone company, a landline telecommunications provider such as AT&T or Verizon, the market must have at least three other competitors, of which:

- at least one is a certified provider of residential telephone service, which is typically a competitive local exchange carrier that resells telephone service from the local incumbent provider;
- at least one provides residential telephone service through its own facilities, such as a cable company that offers voice service; and
- at least one provides mobile service that is not affiliated with the incumbent provider.

CSHB 2620 would redefine the market test and require the PUC to deregulate a market if:

- the population of the market area was at least 100,000; or
- the population of the market area was less than 100,000 but there were at least two competitors unaffiliated with the ILEC in all or part of the market area that provided voice service.

Both the PUC and the Sunset Advisory Commission recommended that the market test be redefined to address new technologies that increasingly are available and used by customers. The new test would remove obsolete competitive modes from the determination of competitiveness and give the PUC flexibility to assess all technology modes available in a market.

TUSF. The bill would improve the TUSF. It would require the PUC to conduct a study to see if the fund was accomplishing its goals and to suggest any changes needed to better achieve those goals. The fund, especially in light of increased competition across the state, must be evaluated to determine how it's meeting its goals today and how it should meet them in the future.

The bill also would prevent ILECs from receiving TUSF support for a deregulated market that had a population of at least 30,000. These markets are large enough that servicing them does not require tax payer subsidy.

An ILEC would be able to receive TUSF support for a market with less than 30,000 people if the company demonstrated to the PUC that it needed the support to provide basic local telecommunications services at reasonable rates. This would allow those ILECs that truly needed the subsidy to continue to receive it while discontinuing the tax payer subsidy to those that did not.

Tariff and other reporting changes. CSHB 2620 would allow certain deregulated providers to either continue filing tariffs with the PUC or to replace them with online price guides and other forms of written customer notices. The Sunset Advisory Commission recommended this change in its July 2010 Commission Decisions Report on the PUC. Roughly 30 states and the FCC exempt some or all services from tariff reporting requirements. This saves the industry significant time and expense complying with filing rules and creates less needless processing work on behalf of the PUC.

These tariff and filing rules were necessary when providers were regulated based on their rates of return. However, in a deregulated market, these requirements are obsolete because the PUC does not need access to paper copies of tariffs and other agreements. Under the bill, the PUC still would have these documents where necessary by requiring that a provider file tariffs and changes when a complaint had been lodged against the provider.

OPPONENTS SAY:

The competitive market test should determine whether there is effective competition for a substantial number of residential and small business customers within a local telephone exchange. This would be a superior test to the bill's approach of determining the existence of number and types of telecoms in the market. Number and type alone do not guarantee true competition.

CSHB 2620 improperly would cut smaller ILECs off from TUSF support. The markets served by these companies rely on TUSF support in order to offer services at reasonable prices.

OTHER OPPONENTS SAY:

The bill should introduce competition in telecommunication markets with a population of at least 30,000 and at least two providers. According to the Sunset Advisory Commission's July 2010 report on the PUC, Texas has more than 1,000 telecommunications markets, and only 70 of them are deregulated. The benefits of competition should be extended to more of these markets.

NOTES:

The companion bill, SB 980 by Carona, passed the Senate by 30-1 (Harris) on April 7 and was reported favorably, without amendment, by the House State Affairs Committee on April 19, making it eligible for consideration in lieu of HB 2620.