

BILL ANALYSIS

Senate Research Center
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S.B. 259
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Incumbent local exchange carriers (ILEC), sometimes called legacy carriers, are telecommunications providers that were historically regulated in the Texas market. In 1995, ILECs began the process of deregulation. Competitive local exchange carriers (CLEC) were formed in order to bring competition to areas that were once monopolized by a legacy carrier. Historically, CLECs have had less regulatory oversight than incumbent legacy telephone carriers. Over time, these policies have led to unequal treatment and regulatory uncertainties for telecommunication providers transitioning into deregulation.

Once ILECs have become fully deregulated, S.B. 259 will bring ILECs under the same regulatory scheme as CLECs. Additionally, S.B. 259 removes the requirement that incumbent providers price services above an artificial rate and removes the authority of the Public Utility Commission, upon complaint of an affected person, to require the submission of such a study. S.B. 259 also includes provisions to conform chapters of the Utility Code pertaining to non-basic service with those pertaining to basic service and to remove of a duplicative provision.

To provide more parity among deregulated providers, S.B. 259 will clarify and enumerate the specific provisions that will continue to apply to an ILEC when that carrier eventually becomes a "deregulated company" under Chapter 65 (Deregulation of Certain Incumbent Local Exchange Company Markets) of the Utilities Code.

As proposed, S.B. 259 amends current law relating to telecommunications services and markets.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Public Utility Commission is rescinded in SECTION 5 (Section 65.102, Utilities Code) and SECTION 8 of this bill.

Rulemaking authority previously granted to the Public Utility Commission is modified in SECTION 2 (Section 52.154, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 52.007, Utilities Code, by adding Subsections (d-1) and (d-2), as follows:

(d-1) Prohibits the Public Utility Commission of Texas (PUC) from requiring a nondominant carrier to obtain advance approval for a filing with PUC or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the service's rates, terms, or conditions.

(d-2) Defines, in this section, "deregulated company" and "transitioning company." Prohibits PUC from requiring a deregulated company or transitioning company to obtain advance approval for a filing with PUC or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers a nonbasic retail service or the service's rates, terms, or conditions or a basic network service for a market that has been deregulated or the service's rates, terms, or conditions.

SECTION 2. Amends Section 52.154, Utilities Code, to prohibit PUC from, by a rule or regulatory practice adopted under this chapter, imposing on a telecommunications utility a greater regulatory burden than is imposed on a holder of a certificate of convenience and necessity serving the same area or a deregulated company, as defined by Section 65.002 (Definitions), that holds a certificate of operating authority serving the same area.

SECTION 3. Amends Subchapter A, Chapter 55, Utilities Code, by adding Section 55.018, as follows:

Sec. 55.018. APPLICABILITY TO ELECTING OR TRANSITIONING COMPANY. Provides that Sections 55.001 (General Standard), 55.002 (Commission Authority Concerning Standards), 55.003 (Rule or Standard), and 55.004 (Local Exchange Company Rule or Practice Change) do not apply to nonbasic services offered by an electing company, as defined by Section 58.002 (Definition), or by a transitioning company, as defined by Section 65.002.

SECTION 4. Amends Section 65.101, Utilities Code, by adding Subsection (c) to provide that a deregulated company that holds a certificate of operating authority is a nondominant carrier.

SECTION 5. Amends Section 65.102, Utilities Code, as follows:

Sec. 65.102. REQUIREMENTS. (a) Provides that a deregulated company that holds a certificate of operating authority issued under this subchapter is not required to: fulfill the obligations of a provider of last resort; comply with retail quality of service standards or reporting requirements; file an earnings report with PUC unless the company is receiving support from the Texas High Cost Universal Service Plan; or comply with a pricing requirement other than a requirement prescribed by this subchapter.

Deletes existing text providing that a deregulated company that holds a certificate of operating authority issued under this subchapter is a dominant carrier governed in the same manner as a holder of a certificate of operating authority issued under Chapter 54 (Certificates), and is subject to the following provisions in the same manner as an incumbent local exchange company that is not deregulated: Sections 54.156 (Resale of Services), 54.158 (Interference with Resold Services Prohibited), and 54.159 (Retention of Access Service and IntraLATA Toll Service); Section 55.012 (Limitations on Discontinuance of Basic Local Telecommunications Service); and Chapter 60 (Competitive Safeguards). Makes nonsubstantive and conforming changes.

(b) Provides that, notwithstanding any other provisions of this title, PUC has only the authority provided by this section over a deregulated company that holds a certificate of operating authority issued under this subchapter. Authorizes PUC to enforce:

(1) this subchapter using the remedies provided by Subchapter B (Enforcement and Penalties), Chapter 15 (Judicial Review, Enforcement, and Penalties);

(2) Section 52.007 (Tariff Requirements Relating to Providers Not Subject to Rate of Return Regulation);

(3) Sections 54.105 (Penalty for Violation of Title), 54.156 (Resale of Services), 54.158 (Interference With Resold Services Prohibited), 54.159 (Retention of Access Service and IntraLATA Toll Service), 54.255 (Transfer of Central Certificates), 54.256 (Application of Contracts), 54.257 (Interference With Another Telecommunications Utility), 54.259 (Discrimination by Property Owner Prohibited), 54.260 (Property Owner's Conditions), 54.261 (Shared Tenant Services Contract);

(4) Sections 55.015 (Lifeline Service), 55.123 (Notice of Use of Device to Telecommunications Utility), 55.133 (Notification of Local Exchange Company), and 55.136 (Disconnection of Service);

(5) Chapter 56 (Telecommunications Assistance and Universal Service Fund), except Subchapters F (Service to Uncertificated Area) and G (Funding for Certain Telecommunications Utilities);

(6) Chapter 60 (Competitive Safeguards), except Sections 60.001 (Fair Competition) and 60.101 (Pricing Rule);

(7) Chapter 62 (Broadcaster Safeguards);

(8) Subchapter E (Publication of Mobile Service Customer Telephone Numbers), Chapter 64 (Customer Protection);

(9) Subchapter E (Reduction of Switched Access Rates), Chapter 65; and

(10) Chapter 66 (State-Issued Cable and Video Franchise).

(c) Provides that PUC's authority in this subchapter is subject to:

(1) Sections 51.003 (Applicability) and 51.010(c) (relating to Section 14.101 not applying under Chapter 54 to a company that receives a service provider certificate of operating authority);

(2) Section 52.002(d) (relating to prohibiting certain state entities from directly or indirectly regulating rates);

(3) Sections 54.003 (Exceptions to Certificate Requirement for Certain Services), 54.204 (Discrimination by Municipality Prohibited), 54.205 (Municipality's Right to Control Access), and 54.206 (Recovery of Municipal Fee); and

(4) Section 65.051 (Markets Deregulated).

Deletes existing text of Subsection (b) requiring a deregulated company, except as provided by Subsection (c), in each deregulated market, to make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company. Deletes existing Subsection (c) authorizing a deregulated company to offer an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.

SECTION 6. Amends Section 65.154(a), Utilities Code, to provide that a transitioning company is not required to comply with the following requirements prescribed by this title on submission of a written notice to the commission: a direct or indirect requirement to price a service, rather than residential service, at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for services; or a requirement to file with PUC a long-run incremental cost study for residential or business services, and makes a conforming change.

SECTION 7. Amends Section 65.155, Utilities Code, as follows:

Sec. 65.155. COMPLAINT BY AFFECTED PERSON. Deletes existing Subsection (a) designation. Authorizes an affected person to file a complaint at the PUC challenging whether a transitioning company is complying with Section 65.154(b) (relating to provision prohibiting a transitioning company from performing certain actions in spite of

Subsection (a)). Deletes existing Subsection (b) authorizing PUC, notwithstanding Section 65.154(a)(2) (relating to a requirement to file with PUC a long-run incremental cost study for residential or business services), to require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under Subsection (a).

SECTION 8. Repealer: Section 55.012 (Limitations on Discontinuance of Basic Local Telecommunications Service), Utilities Code;

Repealers: Sections 65.153(c) (relating to requiring, in each deregulated market, a transitioning company to make available to all residential customers uniformly throughout that market the same price, terms, and conditions) and (c-1) (relating to authorizing a transitioning company to offer an individual residential customer a promotional offer not available uniformly throughout the market), Utilities Code.

SECTION 9. Effective date: September 1, 2013.