

## CHAPTER 350

## S.B. No. 377

## AN ACT

relating to the regulation of certain telecommunications utilities.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsection (c), Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter) provided, however, that this definition shall not be construed to apply to or include a qualifying small power producer or qualifying cogenerator, as defined in Sections 3(17)(D) and 3(18)(C) of the Federal Power Act, as amended (16 U.S.C. Sections 796(17)(D) and 796(18)(C));

(2)(A) the conveyance, transmission, or reception of communications over a telephone system as a dominant carrier as hereinafter defined ("telecommunications utilities" hereinafter); provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system or the manufacture, distribution, installation, or maintenance of customer premise communications equipment and accessories; and provided further that nothing in this Act shall be construed to apply to telegraph services, television stations, radio stations, community antenna television services, or radio-telephone services that may be authorized under the Public Mobile Radio Services rules of the Federal Communications Commission, other than such radio-telephone services provided by wire-line telephone companies under the Domestic Public Land Mobile Radio Service and Rural Radio Service rules of the Federal Communications Commission; and provided further that interexchange telecommunications carriers (including resellers of interexchange telecommunications services), specialized communications common carriers, other resellers of communications, other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system, and providers of operator services as defined in Section 18A(a) of this Act (except that subscribers to customer-owned pay telephone service shall not be deemed to be telecommunications utilities) [~~who are not dominant carriers~~] are also telecommunications utilities, but the commission's regulatory authority as to them is only as hereinafter defined;

(B) "dominant carrier" when used in this Act means (i) a provider of any particular communication service which is provided in whole or in part over a telephone system who as to such service has sufficient market power in a telecommunications market as determined by the commission to enable such provider to control prices in a manner adverse to the public interest for such service in such market; and (ii) any provider of local exchange telephone service within a certificated exchange area as to such service. A telecommunications market shall be statewide until January 1, 1985. After this date the commission may, if it determines that the public interest will be served, establish separate markets within the state. Prior to January 1, 1985, the commission shall hold such hearings and require such evidence as is necessary to carry out the public purpose of this Act and to determine the need and effect of establishing separate markets. Any such provider determined to be a dominant carrier as to a particular telecommunications

service in a market shall not be presumed to be a dominant carrier of a different telecommunications service in that market. *The term does not include an interexchange carrier that is not a certificated local exchange carrier, with respect to interexchange services.*

(3) The term “public utility” or “utility” shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others. The term “electric utility” shall not include any person or corporation not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for consumption by the person or corporation. The term “public utility,” “utility,” or “electric utility” shall not include any person or corporation not otherwise a public utility that owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Article 1446d-2, Revised Statutes. A recreational vehicle park owner is considered a public utility if the owner fails to comply with Article 1446d-2, Revised Statutes, with regard to the metered sale of electricity at the recreational vehicle park.

SECTION 2. Subsections (c), (d), and (l), Section 18, Public Utility Regulatory Act (Article 1446c, Vernon’s Texas Civil Statutes), are amended to read as follows:

(c) Except as provided by *Subsections (l) and (m) of this section and Section 18A of this Act*, the commission shall only have the following jurisdiction over all telecommunications utilities who are not dominant carriers:

(1) to require registration as provided in Subsection (d) of this section;

(2) to conduct such investigations as are necessary to determine the existence, impact, and scope of competition in the telecommunications industry, including identifying dominant carriers *in the local exchange and intralata interexchange telecommunications industry* and defining the telecommunications market or markets, and in connection therewith may call and hold hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, and other actions of the commission;

(3) to require the filing of such reports as the commission may direct from time to time;

(4) to require the maintenance of statewide average rates or prices of telecommunications service;

(5) to require that every local exchange area have access to interexchange telecommunications service, except that an interexchange telecommunications carrier must be allowed to discontinue service to a local exchange area if comparable service is available in the area and the discontinuance is not contrary to the public interest. This section does not authorize the commission to require an interexchange telecommunications carrier that has not provided services to a local exchange area during the previous 12 months and that has never provided services to that same local exchange area for a cumulative period of one year at any time in the past to initiate services to that local exchange area; and

(6) to require the quality of interexchange telecommunications service provided in each exchange to be adequate to protect the public interest and the interests of customers of that exchange if the commission determines that service to a local exchange has deteriorated to the point that long distance service is not reliable.

(d) All providers of communications service described in Subsection (c) of this section who are providing such service to the public on the effective date of this Act shall register with the commission within 90 days of the effective date of this Act *unless the provider has previously registered with the commission*. All providers of communications service described in Subsection (c) of this section who commence such service to the public thereafter shall register with the commission within 30 days of commencing service. Such registration shall be accomplished by filing with the commission a description of the location and type of service provided, the cost to the public of such service, and such other registration information as the

commission may direct. Notwithstanding any other provision of this Act, an interexchange telecommunications carrier doing business in this state shall continue to maintain on file with the commission tariffs or lists governing the terms of providing its services.

(l) Notwithstanding any other provision of this Act, the commission may enter such orders as may be necessary to protect the public interest, including the imposition on any specific service or services of its full regulatory authority under Articles III through XI of this Act, if the commission *upon complaint from another interexchange telecommunications carrier finds by a preponderance of the evidence upon notice and hearing that an interexchange telecommunications carrier has engaged in predatory pricing or attempted to engage in predatory pricing* [~~conduct that demonstrates the ability to control prices in a manner adverse to the public interest~~].

SECTION 3. Section 78, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction, including interexchange telecommunications carriers, serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund the commission and the office of public utility counsel. [~~Any interexchange telecommunications carrier found dominant as to any service market under Section 100(b) or filing a petition under Section 100(f) of this Act shall be required to reimburse the Office of Public Utility Counsel for the costs of participation before the commission on behalf of residential ratepayers in any of the proceedings under Section 100 of this Act to the extent found reasonable by the commission. Recovery of costs under this section by the Office of Public Utility Counsel shall not exceed \$175,000 per annum.~~] Nothing in this Act or any other provision of law shall prohibit interexchange telecommunications carriers who do not provide local exchange telephone service from collecting the fee imposed under this Act as an additional item separately stated on the customer bill as "Utility Gross Receipts Assessment."

SECTION 4. Sections 100 and 101, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), are repealed.

SECTION 5. Nothing in this Act shall be construed to abrogate any agreement specified in the February 2, 1990, Stipulation and Agreement in Public Utility Commission of Texas Docket No. 8585/8218 (Stipulation). Any flow through of access reductions by an interexchange telecommunications carrier which is required by the stipulation shall provide reductions to each affected type of service in the same relative proportion as the annual access minutes of use billed to that type of service. Any interexchange telecommunications carrier required by the stipulation to flow through access reductions resulting from Docket No. 8585/8218 shall deliver revised tariff sheets reflecting such flow through, together with supporting documentation, to the commission staff for review and concurrence within 60 days of implementation of the last rate reduction required by the stipulation.

SECTION 6. Notwithstanding any provision of S.B. No. 498, H.B. No. 1229, or other law enacted by the 73rd Legislature, Regular Session, 1993, to the contrary, if there is a conflict between this Act and S.B. No. 498, H.B. No. 1229, or other enacted law, this Act controls regardless of date of enactment.

SECTION 7. This Act takes effect September 1, 1993.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 24, 1993, by a viva-voce vote; passed the House, with amendments, on May 6, 1993, by a non-record vote; the Senate concurred in House amendments on May 19, 1993, by a viva-voce vote.

Approved May 30, 1993.

Effective Sept. 1, 1993.