

CHAPTER 371

S.B. No. 444

AN ACT

relating to the regulation of local exchange telecommunications companies; establishing a telecommunications service assistance program and a universal service fund; providing for appropriations.

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

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

(v) *“Local exchange company” means a telecommunications utility certificated to provide local exchange service within the state.*

SECTION 2. Section 38, Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 38. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the commission may treat two or more municipalities served by a public utility as a single class wherever it deems such treatment to be appropriate. *Approval by the commission of a reduced rate for service for a class of consumers eligible under Section 95 of this Act for tel-assistance service does not constitute a violation of this section.*

SECTION 3. Section 18, Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Subsections (e), (f), (g), (h), (i), (j), and (k) to read as follows:

(e)(1) For the purpose of carrying out the public policy stated in Subsection (a) of this section and any other section of this Act notwithstanding, the commission is granted all necessary power and authority under this Act to promulgate rules and establish procedures applicable to local exchange companies for determining the level of competition in specific telecommunications markets and submarkets and providing appropriate regulatory treatment to allow local exchange companies to respond to significant competitive challenges. Nothing in this section is intended to change the burden of proof of the local exchange company under Sections 38, 39, 40, and 41 of Article VI of this Act.

(2) In determining the level of competition in a specific market or submarket, the commission shall hold an evidentiary hearing to consider the following:

(A) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service;

(B) the extent to which the same, equivalent, or substitutable service is available;

(C) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions;

(D) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions;

(E) the existence of any significant barrier to the entry or exit of a provider of the service; and

(F) other relevant information deemed appropriate.

(3) The regulatory treatments which the commission may implement include but are not limited to:

(A) approval of a range of rates for a specific service;

(B) approval of customer-specific contracts for a specific service; provided, however, that the commission shall approve a contract to provide central office based PBX-type services for systems of 200 stations or more, billing and collection services, high-speed private line services of 1.544 megabits or greater, and customized services, provided that the contract is filed at least 30 days before initiation of the service contracted for; that the contract is accompanied with an affidavit from the person or entity contracting for the telecommunications service stating that he considered the acquisition of the same, equivalent, or substitutable services by bid or quotation from a source other than the local exchange company; that the local exchange company is recovering the appropriate costs of providing the services; and that approval of the contract is in the public interest. The contract shall be approved or denied within 30 days after filing, unless the commission for good cause extends the effective date for an additional 35 days; and

(C) the detariffing of rates.

(f) Moreover, in order to encourage the rapid introduction of new or experimental services or promotional rates, the commission shall promulgate rules and establish procedures which allow the expedited introduction of, the establishment and adjustment of rates for, and withdrawal of such services, including requests for such services made to the commission by the governing body of a municipality served by a local exchange company having more than 500,000 access lines throughout the state. Rates established or adjusted at the request of a municipality may not result in higher rates for ratepayers outside the boundaries of the municipality and may not include any rates for local exchange company interexchange services or interexchange carrier access service.

(g) In promulgating new rules and establishing the procedures contemplated in Subsections (e) and (f) of this section, the commission shall seek to balance the public interest in a technologically advanced telecommunications system providing a wide range of new and innovative services with traditional regulatory concerns for preserving universal service, prohibiting anticompetitive practices, and preventing the subsidization of competitive services with revenues from regulated monopoly services. The commission shall promulgate these rules and establish these procedures so as to incorporate an appropriate mix of regulatory and market mechanisms reflecting the level and nature of competition in the marketplace. Rates established under Subsections (e) and (f) of this section shall not be (1) unreasonably preferential, prejudicial, or discriminatory; (2) subsidized either directly or indirectly by regulated monopoly services; or (3) predatory or anticompetitive.

(h) The commission shall initiate a rulemaking proceeding and take public comment and promulgate rules which prescribe the standards necessary to ensure that all rates set under the provisions of this section cover their appropriate costs as determined by the commission. Until such rules are promulgated, the commission shall use a costing methodology that is in the public interest in determining whether the rates set under the provisions of this section cover their appropriate costs.

(i) The commission is granted all necessary power and authority to prescribe and collect fees and assessments from local exchange companies necessary to recover the commission's and the Office of Public Utility Counsel's costs of activities carried out and services provided under Subsections (e), (f), (g), (h), (i), (j), and (k) of this section.

(j) Subsections (e) and (f) of this section are not applicable to basic local exchange service, including local measured service. Paragraph (B) of Subdivision (3) of Subsection (e) of this section is not applicable to message telecommunications services, switched access services for interexchange carriers, or wide area telecommunications service. A local exchange company may not price similar services provided pursuant to contracts under Paragraph (B) of Subdivision (3) of Subsection (e) of this section in an unreasonably discriminatory manner. For purposes of this section, similar services shall be defined as those services which are provided at or near the same point in time, which have the same characteristics and which are provided under the same or similar circumstances.

(k) Before January 15 of each odd-numbered year, the commission shall report to the legislature on the scope of competition in regulated telecommunications markets and the impact of competition on customers in both competitive and noncompetitive markets, with a specific focus on rural markets. The report shall include an assessment of the impact of competition on the rates and availability of telecommunications services for residential and business customers and shall specifically address any effects on universal service. The report shall provide a summary of commission actions over the preceding two years which reflect changes in the scope of competition in regulated telecommunications markets. The report shall also include recommendations to the legislature for further legislation which the commission finds appropriate to promote the public interest in the context of a partially competitive telecommunications market.

SECTION 4. Section 40, Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 40. *Except as hereafter provided, in [In] any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the public utility. In any proceeding involving a local exchange company in which the local exchange company's rate or rates are in issue, the burden of proof that such rate or rates are just and reasonable shall be on the local exchange company.*

SECTION 5. Section 43, Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Subsection (i) to read as follows:

(i) If the commission does not make a final determination concerning a local exchange company's schedule of rates prior to the expiration of the 150-day suspension period, the schedule of rates finally approved by the commission shall become effective and the local exchange company shall be entitled to collect such rates from the date the 150-day suspension period expired. Any surcharges or other charges necessary to effectuate this subsection shall not be recovered over a period of less than 90 days from the date of the commission's final order.

SECTION 6. The Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Sections 43A and 43B to read as follows:

Sec. 43A. A local exchange company may make changes in its tariffed rules, regulations, or practices that do not affect its charges or rates by filing the proposed changes with the commission at least 35 days prior to the effective date of the changes. The commission may require such notice to ratepayers as it considers appropriate. The commission may on complaint by any affected person or on its own motion hold a hearing, after reasonable notice, to determine the propriety of the change. Pending the hearing and decision, the commission may suspend the operation of the proposed changes for a period not to exceed 120 days after the date on which the changes would otherwise go into effect. The commission shall approve, deny, or modify the proposed changes before expiration of the suspension period. In any proceeding under this section, the burden of proving that the requested relief is in the public interest and complies with this Act shall be borne by the local exchange company.

Sec. 43B. (a) Except as otherwise provided by this section, a local exchange company that is a cooperative corporation or that has fewer than 5,000 access lines in service in this state may change rates by publishing notice of the change at least 60 days before the date of the change in the place and form as prescribed by the commission. The notice must include:

- (1) the reasons for the rate change;*
 - (2) a description of the affected service;*
 - (3) an explanation of the right of the subscriber to petition the commission for a hearing on the rate change; and*
 - (4) a list of rates that are affected by the proposed rate change.*
- (b) At least 60 days before the date of the change, the local exchange company shall file with the commission a statement of intent to change rates containing:*
- (1) a copy of the notice required by Subsection (a) of this section;*
 - (2) the number of access lines the company has in service in this state;*
 - (3) the date of the most recent commission order setting rates of the company;*
 - (4) the increase in total gross annual local revenues that will be produced by the proposed rates;*
 - (5) the increase in total gross annual local revenues that will be produced by the proposed rates together with any local rate changes which went into effect during the 12 months preceding the proposed effective date of the requested rate change and any other proposed local rate changes then pending before the commission;*
 - (6) the increase in rates for each service category; and*
 - (7) other information the commission by rule requires.*

(c) *The commission shall review a proposed change in the rates set by a local exchange company under this section upon the receipt of complaints signed by at least five percent of all affected subscribers or upon its own motion. The commission may require notice to ratepayers as it considers appropriate. If sufficient complaints are presented to the commission within 60 days after the date notice of the rate change was sent to subscribers, the commission shall review the proposed change. After notice to the local exchange company, the commission may suspend the rates during the pendency of the review and reinstate the rates previously in effect. Review under this subsection shall be as provided by Section 43 of this Act. The period for review by the commission does not begin until the local exchange company files a complete rate-filing package.*

(d) *If the commission has entered an order setting a rate, the affected local exchange company may not change that rate under this section before 365 days after the date of the commission's order setting the rate.*

(e) *This section does not prohibit a local exchange company from filing for a rate change under any other applicable section of this Act.*

(f) *The commission shall review a proposed change in the rates of a local exchange company under this section if the proposed rates, together with any local rate changes which went into effect during the 12 months preceding the proposed effective date of the requested rate change as well as any other proposed local rate changes then pending before the commission, will increase its total gross annual local revenues by more than 2-½ percent or if the proposed change would increase the rate of any service category by more than 25 percent, except for basic local service, which shall be limited to a maximum of 2-½ percent of the total gross annual local revenue. Review under this subsection shall be as provided by Section 43 of this Act. Each local exchange company may receive a change in its local rates or in any service category pursuant to this section only one time in any 12-month period.*

(g) *Rates established under this section must be in accordance with the rate-setting principles of Article VI of this Act.*

(h) *The commission is granted all necessary power and authority to prescribe and collect fees and assessments from local exchange companies necessary to recover the commission's and the Office of Public Utility Counsel's costs of activities carried out and services provided under Subsection (i) of Section 43 and Sections 43A and 43B of this Act.*

SECTION 7. The Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Section 93 to read as follows:

Sec. 93. Local exchange companies' rates for interexchange telecommunications services must be statewide average rates unless the commission on application and hearing orders otherwise. Nothing in this section limits a local exchange company's ability to enter into contracts for high speed private line services of 1.544 megabits or greater under the provisions of Section 18 of this Act.

SECTION 8. The Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Article XIV, Telecommunications Service Assistance Program; Universal Service Fund, to read as follows:

**ARTICLE XIV. TELECOMMUNICATIONS SERVICE ASSISTANCE PROGRAM;
UNIVERSAL SERVICE FUND**

Sec. 94. The commission shall adopt and enforce rules requiring each local exchange company to establish a telecommunications service assistance program to be called "tel-assistance service." This service is established to provide eligible consumers with a reduction in costs of telecommunications services.

Sec. 95. (a) To be eligible for tel-assistance service, an applicant must be a head of household, 65 years of age or older, and disabled as determined by the Texas Department of Human Services and must have a household income at or below the poverty level as determined by the United States Office of Management and Budget and reported annually in the Federal Register. The department, in accordance with

this article and rules adopted by the department for the program, shall develop procedures for taking applications for certification of eligibility and for determining program eligibility. The burden of proving eligibility for tel-assistance service is on the consumer applying for the service.

(b) Each six months the department shall provide a list or lists of the names, addresses, and, if applicable, telephone numbers of all persons eligible for tel-assistance service to each local exchange company. The local exchange company shall determine from the list those consumers to whom the company provides service and within 60 days after receiving the list shall begin tel-assistance billing for eligible consumers. This billing shall continue until the local exchange company is notified by the department that a consumer is no longer eligible to receive tel-assistance service.

Sec. 96. (a) The local exchange company shall provide tel-assistance service to all eligible consumers within its certificated area in the form of a reduction on each eligible consumer's telephone bill. The reduction shall apply only to the following types of service:

(1) residential flat rate basic local exchange service;

(2) residential local exchange access service; and

(3) residential local area calling usage, except that the reduction for local area calling usage shall be limited to an amount such that together with the reduction for local exchange access service the rate does not exceed the comparable reduced flat rate for the service.

(b) No other local voice service may be provided to the dwelling place of a tel-assistance consumer, nor may single or party line optional extended area service, optional extended area calling service, foreign zone, or foreign exchange service be provided to a tel-assistance consumer. Nothing in this section shall prohibit a person otherwise eligible to receive tel-assistance service from obtaining and using telecommunications equipment designed to aid such person in utilizing telecommunications services.

(c) The reduction allowed by the telecommunications service assistance program shall be 65 percent of the applicable tariff rate for the service provided.

Sec. 97. A local exchange company is entitled to recover the lost revenue, if any, resulting solely from the provision of tel-assistance service from the universal service fund, the establishment of which is provided for by this Act.

Sec. 98. (a) The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist local exchange companies in providing basic local exchange service at reasonable rates in high cost rural areas, to reimburse local exchange companies for revenues lost as a result of providing tel-assistance service under this Act, and to reimburse the Texas Department of Human Services and the Public Utility Commission of Texas for costs incurred in implementing the provisions of this article.

(b) The universal service fund shall be funded by a statewide uniform charge, at rates and on services determined by the commission, payable by all telecommunications utilities that have access to the customer base. In establishing the uniform level of the charge and the services to which it will apply, the commission may not make or grant an unreasonable preference or advantage to a telecommunications utility or subject a telecommunications utility to unreasonable prejudice or disadvantage. The charge shall be paid in accordance with procedures approved by the commission.

(c) The commission shall:

(1) establish, in a manner that assures reasonable rates for basic local exchange service, eligibility criteria it finds necessary for participation in the universal service fund;

(2) determine which local exchange companies meet the eligibility criteria;

(3) determine the amount of and approve a procedure for reimbursement to local exchange companies of revenue lost in providing tel-assistance service under this Act;

(4) *prescribe and collect fees from the universal service fund necessary to recover the costs the Texas Department of Human Services and the Public Utility Commission incurred in implementing and administering the provisions of this Article; and*

(5) *approve procedures for the collection and disbursement of the revenues of the universal service fund.*

(d) *The commission shall adopt rules for the implementation and administration of the universal service fund.*

(e) *The commission may do all things necessary and convenient to implement and administer the universal service fund.*

Sec. 99. If this article conflicts with another provision of this Act, this article prevails.

SECTION 9. (a) The Texas Department of Human Services shall provide the first list required by Section 95, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and the Public Utility Commission of Texas shall adopt the initial rules required by Subsections (e) and (f) of Section 18 of that Act before January 1, 1988, and by Subsection (h) of Section 18 and by Section 98 of that Act before July 1, 1988.

(b) All fees and assessments collected under Subsection (i), Section 18, and Subsection (h), Section 43B, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), are appropriated to the Public Utility Commission of Texas in an amount estimated to be \$1,700,448 and to the Office of Public Utility Counsel in an amount not to exceed \$509,802 to be used for the purposes specified in those sections for the biennium ending August 31, 1989. All fees collected under Subdivision (4), Subsection (c), Section 98, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), are appropriated to the Public Utility Commission of Texas in an amount not to exceed \$300,000 and to the Texas Department of Human Services in an amount estimated to be \$616,998 to be used for the purposes specified in that section for the biennium ending August 31, 1989.

SECTION 10. This Act takes effect September 1, 1987.

SECTION 11. 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 April 15, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on May 23, 1987, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas. Passed the House, with amendment, on May 21, 1987, by a non-record vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved June 16, 1987.

Effective Sept. 1, 1987.