HOUSE JOURNAL

SEVENTY-FOURTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-THIRD DAY (CONTINUED) — TUESDAY, MAY 16, 1995

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 425).

Present — Mr. Speaker; Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheauser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Absent — Ehrhardt.

The invocation was offered by Representative Price, as follows:

Oh, God, we call ourselves Christians, Jews, Muslims, Hindus, Buddhists, Agnostics—and other names that divide us. You call us all your children.

Oh, God, we call ourselves Congregationalists, Baptists, Methodists, Catholics, Presbyterians—and other names that separate us. You call us all your children.

Oh, God, we call ourselves Democrats, Republicans, Liberals, Conservatives, Socialists, Communists—and other names that dissever us. You call us all your children.

Dear God, please give us the wisdom to know and accept that you are our Father and that we are your children. Help us to understand that any harm or slight done to any of your children is done to you also.

And dear God, as we proceed in our legislative duties for the people of this state, may we be ever mindful that all your children are precious in your sight and may we act accordingly.

Please hear our prayer. Amen.

CAPITOL PHYSICIAN

Speaker Laney presented Dr. Antonio Falcon of Rio Grande City as the "Doctor for the Day."

The house welcomed Dr. Falcon and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

MESSAGE FROM THE SENATE

Austin, Texas, May 16, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HB 949 by Hightower, et al. (Sponsor-Turner, Jim), relating to the availability to certain incarcerated individuals of public records or personal information pertaining to certain other individuals (amended).

HB 2062 by Alvarado, et al. (Sponsor-Madla), relating to the conversion to an elected board of certain mass transit authorities (amended).

HB 2245 by Black (Sponsor-Sims), relating to the continuation and functions of the Texas Animal Health Commission; providing administrative and criminal penalties (amended).

HB 2349 by Kuempel and Walker (Sponsor-Armbrister), relating to the regulation of sanitary landfills (amended).

SB 34 by Nixon, Drew, relating to improving the judicial system in Panola County.

SB 718 by Moncrief, et al., relating to the regulation of the practice of chiropractic; providing a penalty.

SB 1718 by Armbrister, relating to the protection of the San Marcos River; providing civil and criminal penalties.

Local and Uncontested Bills

HCR 69 by Hilderbran (Sponsor-Wentworth), designating the Texas State Arts and Crafts Fair in Kerrville as the official arts and crafts fair of Texas.

HCR 91 by Berlanga (Sponsor-Zaffirini, et. al.), granting the National Hispanic Institute permission to use the house and senate chambers July 26-28, 1995.

HB 172 by Thompson (Sponsor-Barrientos), relating to notary public fees.

HB 654 by Jones, Jesse (Sponsor-Henderson), relating to permitting a sequestered juror to vote on election day.

HB 795 by Hightower (Sponsor-Turner, Jim), relating to reinstatement, purchase, and transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas.

HB 1226 by Torres (Sponsor-Armbrister), relating to the regulation of liquefied petroleum gas.

HB 2020 by Swinford (Sponsor-Bivins), relating to the salary of a judge of a county court at law in Potter County.

HB 2093 by Thompson (Sponsor-Whitmire), relating to applications for emergency detention of certain persons at risk of harming themselves or others because of the effects of mental illness or substance abuse.

HB 2283 by Kuempel (Sponsor-Montford), relating to participation and credit in, contributions to, and benefits and administration of the Texas County and District Retirement System.

HB 2624 by Craddick (Sponsor-Montford), relating to the appraisal and ad valorem taxation of certain types of personal property; providing penalties (amended).

I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to the following: **SB 793** by Viva Voce Vote.

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to **SB 626** and requests the appointment of a Conference Committee to adjust the differences between the two Houses.

The following have been appointed on the part of the Senate: Senator Armbrister, Chair, Senator Sims, Senator Ratliff, Senator Montford, and Senator Barrientos.

The Senate granted the request of the House for a Conference Committee to adjust the differences between the Houses on **HB 984**.

The following have been appointed on the part of the Senate: Senator West, Chair, Senator Luna, Senator Cain, Senator Leedom, and Senator Gallegos.

Respectfully,
Betty King
Secretary of the Senate

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolutions:

HB 223, HB 247, HB 523, HB 592, HB 623, HB 724, HB 846, HB 867, HB 981, HB 1295, HB 1298, HB 1337, HB 1480, HB 1504, HB 1531, HB 1542, HB 1600, HB 1611, HB 1659, HB 1695, HB 1818, HB 1979, HB 2265, HB 2732, HB 3104, HJR 64, HCR 30, HCR 44, HCR 85, HCR 190, SB 532, SB 1228, SB 1617, SCR 152

RULES SUSPENDED

Representative Stiles moved to suspend House Rule 6, Section 16, to allow the Committee on Calendars to prepare and distribute a corrected daily calendar for Wednesday, May 17, to include **SB 14**, which was inadvertently left off the daily calendar that was printed and distributed at 8 p.m. last night.

The motion prevailed without objection.

HR 931 - ADOPTED

Representative H. Cuellar moved to suspend all necessary rules to take up and consider at this time **HR 931**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By H. Cuellar, Willis, Oakley, King, Van de Putte, et al.,

HR 931, In memory of Mary Beatrice Romani.

The resolution was unanimously adopted by a rising vote.

On motion of Representative Willis, the names of all the members of the house were added to **HR 931** as signers thereof.

HCR 204 - ADOPTED

Representative Krusee moved to suspend all necessary rules to take up and consider at this time **HCR 204**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Krusee,

HCR 204, Honoring William Gooch on the occasion of his retirement.

The resolution was adopted without objection.

SB 60 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wilson submitted the conference committee report on **SB 60**.

Representative Wilson moved to adopt the conference committee report on **SB 60**.

Representative Greenberg moved to recommit **SB 60** to the conference committee.

Representative Wilson moved to table the motion to recommit.

(Ehrhardt now present)

A record vote was requested.

The motion to table prevailed by (Record 426): 90 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Black; Bosse; Brimer; Carona; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Culberson; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Finnell; Goodman; Goolsby; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hilbert; Hilderbran; Hill; Holzheauser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Junell; Kamel; King; Krusee; Kuempel; Lewis, R.; Madden; Marchant; McCoulskey; Moffat; Mowery; Munoz; Nixon; Oakley; Ogden; Park; Patterson; Pitts; Place; Ramsay; Reyna; Rusling; Saunders; Shields; Siebert; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Turner, B.; Uher; Walker; West; Williamson; Wilson; Wohlgemuth; Woolley; Yarbrough; Yost; Zbranek.

Nays — Alonzo; Alvarado; Berlanga; Brady; Coleman; Conley; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dukes; Dutton; Edwards; Ehrhardt; Farrar; Gallego; Giddings; Glaze; Gray; Greenberg; Hartnett; Hernandez; Hightower; Hirschi; Hochberg; Hudson; Johnson; Jones, D.; Jones, J.; Kubiak; Lewis, G.; Longoria; Luna; Maxey; McCall; McDonald; Moreno; Oliveira; Pickett; Price; Puente; Rabuck; Rangel; Raymond; Rhodes; Rodriguez; Romo; Sadler; Seidlits; Serna; Solis; Tillery; Torres; Turner, S.; Van de Putte; Willis; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Naishtat.

STATEMENT OF VOTE

When Record No. 426 was taken, I was temporarily out of the house chamber. I would have voted no.

Naishtat

A record vote was requested.

The motion to adopt the conference committee report prevailed by (Record 427): 101 Yeas, 46 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Black; Bosse; Brimer; Carona; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Culberson; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Finnell; Gallego; Goodman; Goolsby; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hirschi; Holzheauser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; Marchant; McCall; McCoulskey; Moffat; Mowery; Munoz; Nixon; Oakley; Ogden; Park; Patterson; Pitts; Place; Rabuck; Ramsay; Raymond; Reyna; Rhodes; Rusling; Saunders; Seidlits; Shields; Siebert; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Turner, B.; Uher; Walker; West; Williamson; Wilson; Woolley; Yarbrough; Yost; Zbranek.

Nays — Alonzo; Alvarado; Berlanga; Brady; Conley; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dukes; Dutton; Edwards; Ehrhardt; Farrar; Giddings; Glaze; Gray; Greenberg; Hernandez; Hightower; Hochberg; Jones, D.; Jones, J.; Lewis, G.; Longoria; Luna; Maxey; McDonald; Moreno; Naishtat; Oliveira; Pickett; Price; Puente; Rangel; Rodriguez; Romo; Sadler; Serna; Solis; Torres; Turner, S.; Van de Putte; Willis; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Coleman; Wohlgemuth.

STATEMENT OF VOTE

When the house voted on **SB 60** (Record No. 427), I was absent because I was ill and had to leave the floor. I had consistently voted for this bill and would have done so on this vote had I been able.

Wohlgemuth

REASON FOR VOTE

While I support **SB 60** in concept, I have grave concerns about the deletion of several specific provisions by the conference committee. As the bill left the House, it contained provisions designed to protect the lives of our law enforcement officers (Section 5). The bill contained a provision requiring that renewal applications forms contain updated information (Section 10(b)). The bill also contained provisions regarding the revocation of licenses obtained under false pretenses (Section 12). And, the bill contained a requirement that a license

be suspended if the licensee is convicted of disorderly conduct or has been indicted for an offense that would make the licensee ineligible to hold a license (Section 13). All of these provisions were stripped by the conference committee. For these reasons, I supported Representative Greenberg's motion to recommit this bill to conference.

I voted for final passage of **SB 60** because both I and the people I represent support a person's right to carry a handgun. However, I remain concerned about the mechanics of this bill. I hope that none of my constituents, particularly my friends in the law enforcement community, are endangered or harmed by the passage of this legislation in its current form.

Gallego

MESSAGE FROM THE SENATE

Austin, Texas, May 16, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

SCR 153 by Barrientos, applauding the efforts of Youth Advocacy, Incorporated.

SCR 156 by Barrientos, extending best wishes to D. L. "Dally" Willis on the occasion of his 75th birthday.

HCR 102 by Brimer (Sponsor-Harris, Chris), designating October 1995 and October 1996 as Down Syndrome Months in Texas.

HB 2151 by Bosse (Sponsor-Cain), relating to the issuance of titles to certain motor vehicles; providing a penalty (committee substitute and amended).

HB 2459 by Marchant, Junell, and Greenberg (Sponsor-Ellis), relating to public funds investment (committee substitute and amended).

HB 2507 by Swinford (Sponsor-Bivins), relating to the lease of the Amarillo campus of the Texas State Technical College System to Amarillo College.

HB 2599 by Kubiak and Bosse (Sponsor-Cain), relating to the licensing and regulation of certain persons dealing in salvage vehicles and parts; providing criminal penalties (committee substitute).

HB 2162 by Hightower (Sponsor-Whitmire), relating to the efficient administration of criminal justice system (committee substitute).

HB 27 by Goolsby (Sponsor-Gallegos), relating to an exemption from continuing education requirements for certain county commissioners (amended).

HB 94 by Kamel, Yarbrough, Stiles, Chisum, Talton, et al. (Sponsor-Armbrister), relating to the use of deadly force in defense of a person.

HB 1157 by Hunter, Bob, et al. (Sponsor-Luna, Gregory), relating to the administration of the Texas Guaranteed Student Loan Corporation.

Respectfully,
Betty King
Secretary of the Senate

INTRODUCTION OF GUEST

The speaker recognized Representative Stiles, who introduced Officer Ricky Anderson.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today to attend a meeting of the conference committee on SB 1:

Sadler on motion of Uher.

Dear on motion of Uher.

Hernandez on motion of Uher.

Williamson on motion of Uher.

The following member was granted leave of absence temporarily for today to attend a meeting of the conference committee on SB 1:

Hochberg on motion of Uher.

HR 890 - ADOPTED

Representative T. Hunter moved to suspend all necessary rules to take up and consider at this time **HR 890**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By T. Hunter,

HR 890, Commending the Texas Public Broadcasting Association.

The resolution was adopted without objection.

HB 1271 - WITH SENATE AMENDMENT

Representative Brimer called up with a senate amendment for consideration at this time,

HB 1271, A bill to be entitled An Act relating to the Texas Peace Officers' Memorial Advisory Committee.

On motion of Representative Brimer, the house concurred in the senate amendment to **HB 1271**.

HB 1271 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 1271** as follows:

(1) In SECTION 5, proposed Sec. 415.120(a), Government Code, strike the second sentence (the underlined portion of subsection (a)) and replace it with the following:

"Any entity that collects funds for the Texas peace officers' memorial or solicits funds in any way giving the impression that the proceeds or funds is for the benefit of the Texas peace officers' memorial shall send that money to the comptroller to be deposited in the fund account not later than the 30th day after the date on which the money was collected."

(2) In SECTION 7, proposed Sec. 415.122, Government Code, strike the first sentence in subsection (a) and replace it with the following:
"The dedication of the memorial on the Capitol Complex grounds shall be under the supervision of [~~conducted by~~] the lieutenant governor and the speaker of the house of representatives. [~~Combined Law Enforcement Association within reasonable guidelines established by the Texas Peace Officers' Memorial Advisory Committee, provided that the guidelines do not exceed the guidelines established by the State Preservation Board for other ceremonies held on the Capitol Complex grounds.~~]"

HB 1505 - WITH SENATE AMENDMENT

Representative Van de Putte called up with a senate amendment for consideration at this time,

HB 1505, A bill to be entitled An Act relating to the authority of the Texas State Board of Pharmacy to inspect certain facilities and to file a complaint resulting from the inspection.

On motion of Representative Van de Putte, the house concurred in the senate amendment to **HB 1505**.

HB 1505 - TEXT OF SENATE AMENDMENT

CSHB 1505, A bill to be entitled An Act, relating to the authority of the Texas State Board of Pharmacy to inspect certain facilities and register and inspect certain equipment and to file a complaint resulting from the inspection.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 17, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The board has the following responsibilities relating to the practice of pharmacy and to prescription drugs and devices used in this state in the diagnosis, mitigation, and treatment or prevention of injury, illness, and disease:

(1) regulation of the delivery or distribution of prescription drugs and devices, including the right to seize, after notice and hearing, any prescription drugs or devices posing a hazard to the public health and welfare, but the board may not regulate:

(A) manufacturers' representatives or employees acting in the normal course of business;

(B) persons engaged in the wholesale drug business and registered with the commissioner of health as provided by Chapter 431, Health and Safety Code; or

(C) employees of persons engaged in the wholesale drug business and registered with the commissioner of health as provided by Chapter 431, Health and Safety Code, if the employees are acting in the normal course of business;

(2) specification of minimum standards for professional environment, technical equipment, and security in the prescription dispensing area;

(3) specification of minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, dispensing in a

suitable container appropriately labeled, providing of prescription drugs or devices, monitoring of drug therapy, and counseling of patients on proper use of prescription drugs and devices within the practice of pharmacy; [~~and~~]

(4) adoption of rules regulating a prescription drug order or medication order transmitted by electronic means; and

(5) annual registration of balances used for the compounding of drugs in pharmacies licensed in this state and the periodic inspection of such balances to verify accuracy.

SECTION 2. Subsections (a) and (i), Section 18, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In this section, "facility" means:

(1) a place that has applied for licensing as a pharmacy under this Act;

(2) a place licensed as a pharmacy under this Act; [~~or~~]

(3) a place operating as a pharmacy in violation of this Act; or

(4) a place where the practice of pharmacy occurs.

(i) Before a complaint may be filed with the board as a result of a written warning notice that lists specific violations of this Act or a rule adopted by the board issued during an inspection authorized by this section, the licensee must be given a reasonable time, as determined by the board, to comply with this Act or rules adopted by the board as provided by this Act.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. 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.

HB 2128 - WITH SENATE AMENDMENTS

Representative Seidlits called up with senate amendments for consideration at this time,

HB 2128, A bill to be entitled An Act relating to the regulation of telecommunications utilities, to the provision of telecommunications and related services, and to the continuation of the Public Utility Commission of Texas.

On motion of Representative Seidlits, the house concurred in the senate amendments to **HB 2128**.

HB 2128 - TEXT OF SENATE AMENDMENTS

CSHB 2128, A bill to be entitled An Act, relating to the regulation of telecommunications utilities, to the provision of telecommunications and related services, and to the continuation of the Public Utility Commission of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 1.002. LEGISLATIVE POLICY AND PURPOSE. This Act is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that traditionally public utilities are by definition

monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations, and services are regulated by public agencies with the objective that this regulation shall operate as a substitute for competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

SECTION 2. Section 1.003(14), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(14) "Rate" means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in the definition of "utility" in Section 2.001 or 3.002 [~~3.001~~] of this Act and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

SECTION 3. Section 1.004, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 1.004. DEFINITIONS IN TITLE. In this title, "public utility" or "utility" has the meaning assigned by Section 2.001 or 3.002 [~~3.001~~] of this Act.

SECTION 4. Section 1.022, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 1.022. SUNSET PROVISION. The Public Utility Commission of Texas and the Office of Public Utility Counsel are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the office are abolished and this Act expires September 1, 2001 [~~1995~~].

SECTION 5. Section 1.353, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 1.353. PAYMENT OF ASSESSMENTS. (a) For the assessments covered by this section, assessments are due as provided by this section notwithstanding Section 1.352 of this Act, based on a public utility's estimate of its gross receipts.

(b) For the assessment due August 15, 1995, 50 percent of the assessment must be paid by August 15, 1994, and 50 percent must be paid by February 15, 1995.

(c) For the assessment due August 15, 1996, 50 percent of the assessment must be paid by August 15, 1995, and 50 percent must be paid by February 15, 1996.

(d) For the assessment due August 15, 1997, 50 percent of the assessment must be paid by August 15, 1996, and 50 percent must be paid by February [~~the remainder must be paid by August~~] 15, 1997.

(e) For the assessment due August 15, 1998, 50 percent of the assessment must be paid by August 15, 1997, and the remainder must be paid by August 15, 1998.

(f) Any assessment amounts underpaid on assessments due on August 15, 1995, [~~or~~] August 15, 1996, or August 15, 1997, must be paid by those respective dates. Any assessment amounts overpaid shall be credited against following assessments.

(g) [~~(f)~~] This section expires September 1, 1998 [~~1997~~].

SECTION 6. Subtitle A, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

SUBTITLE A. GENERAL PROVISIONS

Sec. 3.001. POLICY. The legislature finds that significant changes have occurred in telecommunications since this Act was initially adopted. The legislature hereby finds that it is the policy of this state to promote diversity of providers and interconnectivity and to encourage a fully competitive telecommunications marketplace while protecting and maintaining the wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates. These goals are best achieved by legislation that brings telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service in a competitively neutral manner, while fostering free market competition within the telecommunications industry. The legislature further finds that the technological advancements, advanced telecommunications infrastructure, and increased customer choices for telecommunications services generated by a truly competitive market will raise the living standards of all Texans by enhancing economic development and improving the delivery of education, health, and other public and private services and therefore play a critical role in Texas' economic future. It is the policy of this state to require the commission to do those things necessary to enhance the development of competition by adjusting regulation to match the degree of competition in the marketplace, thereby reducing the cost and burden of regulation and maintaining protection of markets that are not competitive. It is further the policy of this state to ensure that high quality telecommunications services are available, accessible, and usable by individuals with disabilities, unless making the services available, accessible, or usable would result in an undue burden, including unreasonable cost or technical feasibility, or would have an adverse competitive effect. However, the legislature recognizes that the strength of competitive forces vary widely between markets and products and services. Therefore, to foster, encourage, and accelerate the continuing development and emergence of a competitive and advanced telecommunications environment and infrastructure, the legislature declares that new rules, policies, and principles be formulated and applied to protect the public interest.

Sec. 3.002. DEFINITIONS. In this title:

(1) "Basic local telecommunications service" means:

(A) flat rate residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority or dual party relay service;

(F) the ability to report service problems seven days a week;

(G) lifeline and tel-assistance services; and

(H) any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

(2) "Dominant carrier" means:

(A) 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~~]

(B) any provider who provided [~~of~~] local exchange telephone service within a certificated exchange area on September 1, 1995, as to such service and as to any other service for which a competitive alternative is not available in a particular geographic market; and

(C) any provider of local exchange telephone service within a certificated exchange area as to intraLATA long distance message telecommunications service originated by dialing the access code "1+" so long as the use of that code for the origination of "1+" intraLATA calls within its certificated exchange area is exclusive to that provider. 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. The [~~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 may 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 company, with respect to interexchange services.

(3) "Incumbent local exchange company" means a local exchange company that has a certificate of convenience and necessity on September 1, 1995.

(4) "Least cost technology" means the technology, or mix of technologies, that would be chosen in the long run as the most economically efficient choice, provided that the choice of least cost technologies is:

(A) restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) consistent with overall network design and topology requirements.

(5) [~~(2)~~] "Local exchange company" means a telecommunications utility that has been granted either a certificate of convenience and necessity

or a certificate of operating authority [~~certificated~~] to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state.

(6) "Local exchange telephone service" means telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing, service connection charges, and directory assistance services when offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intraexchange or interexchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line and virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services; and

(J) any other service the commission declares is not a "local exchange telephone service."

(7) "Long run incremental cost" or "LRIC" has the meaning assigned by the commission in 16 T.A.C. Section 23.91.

(8) "Pricing flexibility" includes customer specific contracts, volume, term, and discount pricing, zone density pricing, packaging of services, and other promotional pricing flexibility. Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory.

(9) [~~(3)~~] "Public utility" or "utility" means any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for the conveyance, transmission, or reception of communications over a telephone system as a dominant carrier (hereinafter "telecommunications utility"). A person or corporation not otherwise a public utility within the meaning of this Act may not 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. Except as provided by Sections 3.606 and 3.608 of this Act, nothing [~~Nothing~~] in this Act shall be construed to apply to companies whose only form of business is being telecommunications managers, companies that administer central office based or customer based PBX-type sharing/resale arrangements as their only form of business, 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, or commercial mobile service providers, under Sections 153(n) and 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, 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. 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 3.052(a) of this Act (except that subscribers to customer-owned pay telephone service may not be deemed to be telecommunications utilities), and separated affiliate and electronic publishing joint ventures as defined by Subtitle L of this title are also telecommunications utilities, but the commission's regulatory authority as to them is only as hereinafter defined. The term "public utility" or "utility" does not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in this section only to itself, its employees, or its tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others.

(10) [~~(4)~~] "Separation" means the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(11) "Telecommunications provider" means a certificated telecommunications utility, a shared tenant service provider, a nondominant carrier of telecommunications services, provider of radio-telephone service authorized under the Commercial Mobile Service under Sections 153(n) and 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, a telecommunications entity that provides central office based PBX-type sharing or resale arrangements, an interexchange telecommunications carrier, a specialized common carrier, a reseller of communications, a provider of operator services, a provider of customer-owned pay telephone service, and other persons or entities that the commission may from time to time find provide telecommunications services to customers in this state. The term does not include a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services or any state agency or state institution of higher education, or any service provided by any state agency or state institution of higher education.

(12) "Tier 1 local exchange company" means a Tier 1 local exchange company as defined by the Federal Communications Commission.

SECTION 7. Section 3.051, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsections (a), (c)-(f), (j), and (l)-(q) and adding Subsections (r) and (s) to read as follows:

(a) It is the policy of this state to protect the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair, and reasonable rates. The legislature finds that the telecommunications industry through technical advancements, federal legislative, judicial, and administrative actions, and the formulation of new telecommunications enterprises has become and will continue to be in many and growing areas a competitive industry which does not lend itself to traditional public utility regulatory rules, policies, and principles and that, therefore, the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace. It is the purpose of this section to grant to the commission the authority and the power under this Act to carry out the public policy herein stated.

(c) Except as provided by Subsections (l), [~~and~~] (m), and (s) of this section and Section 3.052 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 telecommunications [~~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 local and interexchange telecommunications service, except that a [~~an interexchange~~] telecommunications utility [~~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 a [~~an interexchange~~] telecommunications utility [~~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 commence such service to the public 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 price [~~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 utility [~~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.

(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 incumbent local exchange companies for determining the level of competition in specific telecommunications markets and submarkets and providing appropriate regulatory treatment to allow incumbent local exchange companies to respond to significant competitive challenges. Nothing in this section is intended to change the burden of proof of the incumbent local exchange company under Sections 3.202, 3.203, 3.204, 3.205, 3.206, 3.207, and 3.208 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 incumbent local exchange company; that the incumbent 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 the withdrawal of such services, including requests for such services made to the commission by the governing body of a municipality served by an incumbent [~~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 incumbent local exchange company interexchange services or interexchange carrier access service.

(j) Subsections (e) and (f) of this section are not applicable to basic local telecommunications [~~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. An incumbent [~~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.

(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 this subtitle, Subtitles C through F of this title, and Subtitles D through I of Title I of this Act, but not Subtitles H and I of this title, if the commission upon complaint from another interexchange telecommunications utility [~~carrier~~] finds by a preponderance of the evidence upon notice and hearing that an interexchange telecommunications utility [~~carrier~~] has engaged in predatory pricing or attempted to engage in predatory pricing.

(m) Notwithstanding any other provision of this Act, the commission may enter such orders as may be necessary to protect the public interest if the commission finds upon notice and hearing that an interexchange telecommunications utility [~~carrier~~] has:

(1) failed to maintain statewide average rates;

(2) abandoned interexchange message telecommunications service to a local exchange area in a manner contrary to the public interest; or

(3) engaged in a pattern of preferential or discriminatory activities prohibited by Sections [~~3.213 and~~] 3.215 and 3.217 of this Act, except that nothing in this Act shall prohibit volume discounts or other discounts based on reasonable business purposes.

(n) In any proceeding before the commission alleging conduct or activities by an interexchange telecommunications utility [~~carrier~~] against another interexchange telecommunications utility [~~carrier~~] in contravention of Subsections (l), (m), and (o) of this section, the burden of proof shall be upon the complaining interexchange telecommunications utility [~~carrier~~]; however, in

such proceedings brought by customers or their representatives who are not themselves interexchange telecommunications utilities [~~carriers~~] or in such proceedings initiated by the commission, the burden of proof shall be upon the respondent interexchange telecommunications utility [~~carrier~~]. However, if the commission finds it to be in the public interest, the commission may impose the burden of proof in such proceedings on the complaining party.

(o) The commission shall have the authority to require that a service provided by an interexchange telecommunications utility [~~carrier described in Subsection (c) of this section~~] be made available in an exchange served by the utility [~~carrier~~] within a reasonable time after receipt of a bona fide request for such service in that exchange, subject to the ability of the local exchange company to provide the required access or other service. A utility [~~carrier~~] may not be required to extend a service to an area if provision of that service would impose, after consideration of the public interest to be served, unreasonable costs upon or require unreasonable investments by the interexchange telecommunications utility [~~carrier~~]. The commission may require such information from interexchange utilities [~~carriers~~] and local exchange companies [~~carriers~~] as may be necessary to enforce this provision.

(p) The commission may exempt from any requirement of this section an interexchange telecommunications utility [~~carrier~~] that the commission determines does not have a significant effect on the public interest, and it may exempt any interexchange telecommunications utility [~~carrier~~] which solely relies on the facilities of others to complete long distance calls if the commission deems this action to be in the public interest.

(q) Requirements imposed by Subsections (c), (d), (k), [~~(l),~~] (m), (n), (o), and (p) of this section on an interexchange telecommunications utility [~~carrier~~] shall apply to nondominant carriers and shall constitute the minimum requirements to be imposed by the commission for any dominant carrier.

(r) The commission may, only as necessary to enforce its limited jurisdiction, prescribe forms of books, accounts, records, and memoranda to be kept by a company that has a certificate of operating authority or service provider certificate of operating authority under Subtitle F of this title that in the judgment of the commission may be necessary to carry out the limited jurisdiction over those companies that this Act provides to the commission.

(s)(1) Except as otherwise specifically provided by this Act, the commission shall have only the following authority over a holder of a certificate of operating authority or service provider certificate of operating authority:

(A) to enforce the applicable provisions of this Act as provided by Subtitle I, Title I, of this Act;

(B) to assert jurisdiction over a specific service in accordance with Section 3.2572 of this Act;

(C) to require co-carriage reciprocity; and

(D) to regulate condemnation and building access.

(2) The commission may not impose on a telecommunications utility that has a certificate of operating authority or service provider certificate of operating authority a rule or regulatory practice under this section that imposes a greater regulatory burden on that telecommunications utility than is imposed on a certificate of convenience and necessity holder serving the same area.

SECTION 8. Subtitle B, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.053 to read as follows:

Sec. 3.053. SALE OF PROPERTY. (a) The commission shall complete an investigation under Section 1.251 of this Act that relates to a public utility and enter a final order within 180 days after the date of notification by the utility. If an order is not entered, the utility's action is considered consistent with the public interest.

(b) Section 1.251 of this Act does not apply to an incumbent local exchange company electing under Subtitle H of this title or to a company that receives a certificate of operating authority or a service provider certificate of operating authority under Subtitle F of this title.

SECTION 9. Subtitle C, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.1015 to read as follows:

Sec. 3.1015. MUNICIPAL FEES. Nothing in this Act may be construed as in any way limiting the right of a public utility to pass through municipal fees, including any increase in municipal fees. A public utility that traditionally passes through municipal fees shall promptly pass through any reductions.

SECTION 10. Section 3.151(a), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission prescribes. On application of a utility, the commission shall fix depreciation rates that promote deployment of new technology and infrastructure. In setting those rates, the commission shall consider depreciation practices of nonregulated telecommunications providers. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings. A company electing under Subtitle H of this title may determine its own depreciation rates and amortizations, but shall notify the commission of any changes.

SECTION 11. Subtitle D, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.1545 to read as follows:

Sec. 3.1545. RECORDS. Notwithstanding Section 1.204 of this Act, books, accounts, records, or memoranda of a public utility may be removed from the state so long as those books, accounts, records, or memoranda are returned to the state for any inspection by the commission that is authorized by this Act.

SECTION 12. Subtitle D, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.1555 to read as follows:

Sec. 3.1555. MINIMUM SERVICES. (a) Except as provided by Subsection (d) of this section, the commission shall require each holder of a

certificate of convenience and necessity or certificate of operating authority in this state to provide at the applicable tariff rate, if any, to all customers, irrespective of race, national origin, income, or residence in an urban or rural area, not later than December 31, 2000:

(1) single party service;

(2) tone-dialing service;

(3) basic custom calling features;

(4) equal access for interLATA interexchange carriers on a bona fide request; and

(5) digital switching capability in all exchanges on customer request, provided by a digital switch in the exchange or by connection to a digital switch in another exchange.

(b) Notwithstanding Subsection (a) of this section, an electing incumbent local exchange company serving as of January 1, 1995, more than 175,000 but fewer than 1,500,000 access lines shall install digital switches in its central offices serving exchanges of less than 20,000 access lines before December 31, 1998.

(c) The commission may temporarily waive these requirements on a showing of good cause. The commission may not consider the cost of implementing this section in determining whether an electing company is entitled to a rate increase under Subtitle H or I of this title or increased universal service funds under Section 3.608 of this Act.

(d) This section does not affect the requirement prescribed by 16 T.A.C. Section 23.69 that, not later than July 1, 1996, each local exchange company shall make ISDN available to all customers in exchange areas of the company that have at least 50,000 access lines.

SECTION 13. Subtitle D, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.1556 to read as follows:

Sec. 3.1556. RECONNECTION FEE. The commission shall establish a reasonable limit on the amount that a local exchange company may charge a customer for changing the location at which the customer receives service.

SECTION 14. Sections 3.201 and 3.202, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

Sec. 3.201. POWER TO INSURE COMPLIANCE; RATE REGULATION. Subject to the provisions of this Act, the commission is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. Except as [~~To the extent~~] otherwise provided by this Act, the commission is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the commission may not conflict with the rulings of any federal regulatory body.

Sec. 3.202. JUST AND REASONABLE RATES. It shall be the duty of the commission to insure that every rate made, demanded, or received by any public utility or by any two or more utilities jointly shall be just and reasonable. Rates may 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 3.602 [~~3.352~~] of this Act for tel-assistance service does not constitute a violation of this section.

SECTION 15. Section 3.204, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.204. BURDEN OF PROOF. Except as hereafter provided, 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 an incumbent [~~a~~] local exchange company in which the incumbent 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 incumbent local exchange company.

SECTION 16. Section 3.208(b), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services or any property, right, or thing or for interest expense may not be allowed either as capital cost or as expense except to the extent that the commission shall find such payment to be reasonable and necessary for each item or class of items as determined by the commission. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items allowed and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations within the same market areas or having the same market conditions. If the supplying affiliate has calculated its charges to the utility in a manner consistent with the rules of the Federal Communications Commission, no finding shall be required as to the price charged by the supplying affiliate to its other affiliates or divisions. In any case in which the commission finds that the test period affiliate expense is unreasonable, the commission shall determine the reasonable level of the expense and shall include such expense in determining the utility's cost of service.

SECTION 17. Section 3.210, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (c) to read as follows:

(c) Except as provided by Subtitles H and I of this title, this section does not apply to a company electing into Subtitle H or I of this title. However, the commission shall retain jurisdiction to hear and resolve complaints regarding an electing company's compliance with obligations imposed by this Act.

SECTION 18. Section 3.211, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsections (f) and (h) and adding Subsection (j) to read as follows:

(f) If, after hearing, the commission finds the rates to be unreasonable or in any way in violation of any provision of law, the commission shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act. Except as provided by Subtitles H, I, and J of this title, this subsection does not apply to a company electing into Subtitle H or I of this title. Rates established under this section after a company's election must comply with Subtitle H or I of this title.

(h) If the commission does not make a final determination concerning an incumbent [~~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 incumbent 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 may not be recovered over a period of less than 90 days from the date of the commission's final order.

(j) An incumbent local exchange company may file with the commission tariffs for switched access service that have been approved by the Federal Communications Commission, provided that the tariffs include all rate elements in the company's interstate access tariff other than end user charges. If on review the filed tariffs contain the same rates, terms, and conditions, excluding any end user charges, as approved by the Federal Communications Commission, the commission shall order the rates to be the intrastate switched access rates, terms, and conditions for the incumbent local exchange company within 60 days of filing.

SECTION 19. Sections 3.212(a) and (c), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) An incumbent [~~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.

(c) 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 incumbent local exchange company.

SECTION 20. Subtitle E, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Section 3.213 and adding Section 3.2135 to read as follows:

Sec. 3.213. [~~COOPERATIVE OR~~] SMALL INCUMBENT LOCAL EXCHANGE COMPANIES[~~; STATEMENT OF INTENT TO CHANGE RATES; NOTICE OF INTENT; SUSPENSION OF RATE SCHEDULE; REVIEW~~]. (a) The legislature finds that regulatory policy should recognize differences between the small and large incumbent local exchange companies,

that there are a large number of customer-owned telephone cooperatives and small, locally owned investor companies, and that it is appropriate to provide incentives and flexibility to allow incumbent local exchange companies that serve the rural areas to provide existing services and to introduce new technology and new services in a prompt, efficient, and economical manner.

(b) Except as otherwise provided by this section, an incumbent local exchange company that is a cooperative corporation, or that, together with all affiliated incumbent local exchange companies, has fewer than 31,000 access lines in service in this state may offer extended local calling services or new services on an optional basis or make minor changes in its rates or tariffs if the company:

(1) files with the commission and the office a statement of intent, as prescribed by Subsection (c) of this section, not later than the 91st day before the date on which the proposed change will take effect;

(2) provides notice as prescribed by Subsection (d) of this section; and

(3) files with the commission affidavits verifying the provision of notice as prescribed by Subsection (d) of this section.

(c) The statement of intent required by Subsection (b)(1) of this section must include:

(1) a copy of a resolution approving the proposed change by the incumbent local exchange telephone company's board of directors;

(2) a description of the services affected by the proposed change;

(3) a copy of the proposed tariff for the affected service;

(4) a copy of the customer notice required by Subsection (b)(2) of this section;

(5) the number of access lines the company and each affiliate has in service in this state; and

(6) the amount by which the company's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change.

(d) The incumbent local exchange company shall provide notice to affected customers in the manner prescribed by the commission not later than the 61st day before the date on which the proposed change will take effect. Each notice prescribed by the commission must include:

(1) a description of the services affected by the proposed change;

(2) the effective date of the proposed change;

(3) an explanation of the customer's right to petition the commission for a review under Subsection (e) of this section, including the number of persons required to petition before a commission review will occur;

(4) an explanation of the customer's right to obtain information concerning how to obtain a copy of the proposed tariff from the company;

(5) the amount by which the company's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change; and

(6) a list of rates that are affected by the proposed rate change.

(e) The commission shall review a proposed change filed under this section if:

(1) the commission receives complaints relating to the proposed change signed by the lesser of five percent or 1,500 of the affected local service customers;

(2) the commission receives a complaint relating to the proposed change from an affected intrastate access customer, or a group of affected intrastate access customers, that in the preceding 12 months accounted for more than 10 percent of the company's total intrastate gross access revenues;

(3) the proposed change is not a minor change;

(4) the company does not comply with the procedural requirements of this section; or

(5) the proposed change is inconsistent with the commission's substantive policies as expressed in its rules.

(f) On review, the commission may suspend the proposed tariff during the pendency of review.

(g) This section does not prohibit an incumbent local exchange company from filing for a new service or rate change under another applicable section of this Act or the commission from conducting a review in accordance with Section 3.210 of this Act.

(h) In this section, "minor change" means a change, including the restructuring of rates of existing services, that decreases the rates or revenues of the incumbent local exchange company or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the company's total regulated intrastate gross annual revenues by not more than five percent. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the requested change, result in an increase of more than 10 percent. [~~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 3.211 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 2-1/2 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 2-1/2 percent of the total gross annual local revenue. Review under this subsection shall be as provided by Section 3.211 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.~~]

(i) [~~(g)~~] Rates established under this section must be in accordance with the rate-setting principles of this subtitle. However, companies may provide to their board members, officers, employees, and agents free or reduced rates for services.

(j)(1) The commission shall, within 120 days of the effective date of this section, examine its policies, its reporting requirements, and its procedural and substantive rules as they relate to rural and small incumbent local exchange companies and cooperatives to eliminate or revise those that place unnecessary burdens and expenses on those companies. Notwithstanding any other provisions of this Act, the commission shall consider and may adopt policies that include the following:

(A) policies to allow those companies to provide required information by report or otherwise as necessary, including a rate filing package when required, in substantially less burdensome and complex form than required of larger incumbent local exchange companies;

(B) policies that permit consideration of the company's future construction plans and operational changes in evaluating the reasonableness of current rates;

(C) policies that provide for evaluation of the overall reasonableness of current rates no more frequently than once every three years;

(D) policies that permit companies to change depreciation and amortization rates when customer rates are not affected by notice to the commission, subject to review by the commission in a proceeding under Section 3.210 or 3.211 of this Act;

(E) policies to allow the incumbent local exchange companies to adopt for new services the rates for the same or substantially similar services offered by a larger incumbent local exchange company, without commission requirement of additional cost justification; and

(F) policies that allow an incumbent local exchange company, instead of any management audit that would otherwise be required by law, policy, or rule, to submit to the commission financial audits of the company regularly performed by independent auditors or required and performed as a result of the company's participation in federal or state financing or revenue-sharing programs.

(2) Notwithstanding any other relevant provision of this Act, the commission may adopt policies under this subsection that the commission considers appropriate.

(k) [~~(h)~~] The commission is granted all necessary power and authority to prescribe and collect fees and assessments from incumbent local exchange companies necessary to recover the commission's and the office's costs of activities carried out and services provided under this section, Subsection (h) of Section 3.211, and Sections [~~Section~~] 3.212 and 3.2135 of this Act.

(l) Except as provided in Subsection (j), this section may not apply to any incumbent local exchange company that is a cooperative corporation partially deregulated under the provisions of Section 3.2135 of this Act.

Sec. 3.2135. COOPERATIVE CORPORATIONS. (a) An incumbent local exchange company that is a cooperative corporation may vote to partially deregulate the cooperative by sending a ballot to each cooperative member. The ballot may be included in a bill or sent separately. The ballot shall provide for voting for or against the proposition: "Authorizing the partial deregulation of the (name of the cooperative)."

(b) The cooperative is deemed to be partially deregulated if a majority of the ballots returned to the cooperative not later than the 45th day after the date on which the ballots are mailed favor deregulation.

(c) After the initial balloting, the cooperative may offer extended local calling services, offer new services on an optional basis, or make changes in its rates or tariffs if the cooperative:

(1) provides notice of the proposed action under this section to all customers and municipalities as prescribed by Subsection (e) of this section;

(2) files with the commission affidavits verifying the provision of notice as prescribed by Subsection (f) of this section; and

(3) files a statement of intent under Subsection (d) of this section.

(d) A statement of intent to use this section must be filed with the

commission and the office not later than the 61st day before the date on which a proposed change will take effect and must include:

(1) a copy of a resolution approving the proposed action and authorizing the filing of the statement of intent signed by a majority of the members of the cooperative's board of directors;

(2) a description of the services affected by the proposed action;

(3) a copy of the proposed tariff for the affected service; and

(4) a copy of the customer notice required by this section.

(e) The cooperative shall provide to all affected customers and parties, including municipalities, at least two notices of the proposed action by bill insert or by individual notice. The cooperative shall provide the first notice not later than the 61st day before the date on which the proposed action will take effect. The cooperative shall provide the last notice not later than the 31st day before the date on which the proposed action will take effect. Each notice prescribed by this subsection must include:

(1) a description of the services affected by the proposed action;

(2) the effective date of the proposed action;

(3) an explanation of the customer's right to petition the commission for a review under Subsection (g) of this section;

(4) an explanation of the customer's right to obtain a copy of the proposed tariff from the cooperative;

(5) the amount by which the cooperative's total gross annual revenues will increase or decrease and a statement explaining the effect on the cooperative revenues as a result of the proposed action; and

(6) a list of rates that are affected by the proposed rate action, showing the effect of the proposed action on each such rate.

(f) Not later than the 15th day before the date on which the proposed action will take effect, the cooperative shall file with the commission affidavits that verify that the cooperative provided each notice prescribed under Subsection (e) of this section.

(g)(1) The commission shall review a proposed action filed under this section if:

(A) the commission receives, not later than the 45th day after the first notice is provided under Subsection (e) of this section, complaints relating to the proposed action:

(i) signed by at least five percent of the affected local service customers; or

(ii) from an affected intrastate access customer, or group of affected intrastate access customers, that in the preceding 12 months accounted for more than 10 percent of the cooperative's total intrastate access revenues;

(B) the cooperative does not comply with the procedural requirements of this section; or

(C) the proposed action is inconsistent with the commission's substantive policies as expressed in its rules.

(2) If the commission conducts a review of the proposed action under this subsection before the effective date, the commission may suspend the proposed actions of the cooperative during the pendency of the review.

(h) A cooperative that is partially deregulated under this section may vote to reverse the deregulation by sending a ballot to each cooperative member. Upon its own motion or within 60 days upon receipt of a written request of 10 percent of its members, the cooperative's board of directors shall reballot. The ballot may be included in a bill or sent separately. The ballot shall provide for voting for or against the proposition: "Reversing the partial deregulation of the (name of the cooperative)." The partial deregulation is reversed if a majority of the ballots returned to the cooperative not later than the 45th day after the date on which the ballots are mailed favor reversal.

(i) The commission by rule shall prescribe the voting procedures a cooperative is required to use under this section.

(j) This section does not:

(1) prohibit a cooperative from filing for a new service or rate change under another applicable section of this Act; or

(2) affect the application of other provisions of this Act not directly related to ratemaking or the authority of the commission to require the cooperative to file reports as required under this Act, Section 3.213(j) of this Act, or under the rules adopted by the commission.

(k) Notwithstanding any other provision of this section, the commission may conduct a review in accordance with Section 3.210 of this Act.

SECTION 21. Subtitle E, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.219 to read as follows:

Sec. 3.219. INTRALATA CALLS. (a) Except as provided by Subsection (b) of this section, while any local exchange company in this state is prohibited by federal law from providing interLATA telecommunications services, the local exchange companies in this state designated or de facto authorized to receive "0+" and "1+" dialed intraLATA calls shall be exclusively designated or authorized to receive those calls.

(b) A telecommunications utility operating under a certificate of operating authority or service provider certificate of operating authority to the extent not restricted by Section 3.2532(f) of this Act is de facto authorized to receive "0+" and "1+" dialed intraLATA calls on the date on which the utility receives its certificate.

(c) Effective as of the time the local exchange company is allowed by federal law to provide interLATA telecommunications services, the commission shall ensure that customers may designate a provider of their choice to carry their "0+" and "1+" dialed intraLATA calls and that equal access in the public network is implemented such that the provider may carry such calls.

SECTION 22. Section 3.251, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsections (c) and (d) to read as follows:

(c) A person may not provide local exchange telephone service, basic local telecommunications service, or switched access service without a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

(d) A municipality may not receive a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of

operating authority under this Act. In addition, a municipality may not provide a service for which a certificate is required.

SECTION 23. Section 3.252, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.252. EXCEPTIONS [~~FOR EXTENSION OF SERVICE~~]. (a) A telecommunications [~~public~~] utility is not required to secure a certificate of public convenience and necessity, certificate of operating authority, or service provider certificate of operating authority for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another telecommunications [~~public~~] utility and not within the certificated area [~~of public convenience and necessity~~] of another telecommunications utility [~~of the same kind~~];

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity, certificate of operating authority, or service provider certificate of operating authority; [~~or~~]

(3) operation, extension, or service in progress on September 1, 1975; or

(4) interexchange telecommunications service, non-switched private line service, shared tenant service, specialized communications common carrier service, commercial mobile service, or operator service as defined by Section 3.052(a) of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting telecommunications [~~public~~] utility services from existing facilities to customers of retail utility service.

SECTION 24. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2531 to read as follows:

Sec. 3.2531. CERTIFICATE OF OPERATING AUTHORITY. (a) In lieu of applying for a certificate of convenience and necessity, an applicant may apply for a certificate of operating authority.

(b) An application for a certificate of operating authority shall specify whether the applicant is seeking a facilities based certificate of operating authority under this section or a service provider certificate of operating authority under Section 3.2532. When an application for a certificate of operating authority or service provider certificate of operating authority is filed, the commission shall give notice of the application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(c) If seeking a facilities based certificate of operating authority, the applicant must include in the application a proposed build-out plan demonstrating how the applicant will deploy its facilities throughout the geographic area of its certificated service area over a six-year period. The commission may issue rules for a holder of a certificate of operating authority with respect to the time within which the holder must be able to serve customers, except that a holder must serve customers within a build-out area within 30 days of the date of a customer request for service. The commission

may not require a holder to place "drop" facilities on every customer's premises or to activate fiber optic facilities in advance of customer request as part of the build-out requirements. The plan required by this subsection must meet the following conditions:

(1) 10 percent of the area to be served must be served with facilities other than the facilities of the incumbent local exchange company by the end of the first year;

(2) 50 percent of the area to be served must be served with facilities other than the facilities of the incumbent local exchange company by the end of the third year; and

(3) all of the area to be served must be served with facilities other than the facilities of the incumbent local exchange company by the end of the sixth year.

(d) The build-out plan may permit not more than 40 percent of the applicant's service area to be served by resale of the incumbent local exchange company's facilities under the tariff required to be approved in Section 3.453 of this Act, except that during the six years immediately following the grant, a holder of a certificate of operating authority may extend its service by resale only within the area it is obligated to serve under the build-out plan approved by the commission and to the distant premises of one of its multi-premises customers beyond that build-out area but within its certificated service area. The 40-percent resale limitation applies to incumbent local exchange facilities resold by a holder of a certificate of operating authority as part of the provision of local exchange telephone service, regardless of whether the facilities are purchased directly by the certificate of operating authority holder from the incumbent local exchange company or purchased by an intermediary carrier from the incumbent local exchange company and then provided to the certificate of operating authority holder for resale. In no event may an applicant use commercial mobile service to meet the build-out requirement imposed by this section, but an applicant may use PCS or other wireless technology licensed or allocated by the Federal Communications Commission after January 1, 1995, to meet the build-out requirement.

(e) A certificate of operating authority shall be granted within 60 days after the date of the application on a nondiscriminatory basis after consideration by the commission of factors such as the technical and financial qualifications of the applicant and the applicant's ability to meet the commission's quality of service requirements. The commission may extend the 60-day period on good cause shown. In an exchange of an incumbent local exchange company serving fewer than 31,000 access lines, the commission shall also consider:

(1) the effect of granting the certificate on any public utility already serving the area and on the utility's customers;

(2) the existing utility's ability to provide adequate service at reasonable rates;

(3) the impact of the existing utility's ability as the provider of last resort; and

(4) the ability of the exchange, not the company, to support more than one provider of service.

(f) In addition to the factors prescribed by Subsection (e) of this section,

the commission shall consider the adequacy of the applicant's build-out plan in determining whether to grant the application. The commission may administratively and temporarily waive compliance with the six-year build-out plan on a showing of good cause. The holder of a certificate shall file periodic reports with the commission demonstrating compliance with the plan approved by the commission, including the requirement that not more than 40 percent of the service area of a new certificate may be served by resale of the facilities of the incumbent local exchange company.

(g) An application for a certificate of operating authority may be granted only for an area or areas that are contiguous and reasonably compact and cover an area of at least 27 square miles, except that:

(1) in an exchange in a county having a population of less than 500,000 that is served by an incumbent local exchange company having more than 31,000 access lines, an area covering less than 27 square miles may be approved if the area is contiguous and reasonably compact and has at least 20,000 access lines; and

(2) in an exchange of a company serving fewer than 31,000 access lines in this state, an application may be granted only for an area that has boundaries similar to the boundaries of the serving central office served by the incumbent local exchange company holding the certificate of convenience and necessity for that area.

(h) The commission may not, before September 1, 1998, grant a certificate of operating authority in an exchange of an incumbent local exchange company serving fewer than 31,000 access lines. The commission shall require that the applicant meet the other appropriate certification provisions of this Act.

(i) Six years after an application for a certificate of operating authority has been granted for a particular area or areas or when the new applicant has completed its build-out plan required by this section, the commission may waive the build-out requirements of this section for additional applicants. In addition, in service areas served by an incumbent local exchange company having more than five million access lines which, as of September 1, 1995, is subject to any prohibition under federal law on the provision of interLATA service, the build-out requirements of this section shall be eliminated in any service area where all prohibitions on that company's provision of interLATA services are removed such that the company can offer interLATA service together with its local and intraLATA toll service.

(j)(1) On an application filed after September 1, 1997, the commission may conduct a hearing to determine:

(A) if the build-out requirements of Subsections (c), (d), and (g) of this section have created barriers to the entry of facilities based local exchange telephone service competition in exchanges in counties with a population of more than 500,000 served by companies having more than 31,000 access lines; and

(B) the effect of the resale provisions on the development of competition except in certificated areas of companies serving fewer than 31,000 access lines as provided by Section 3.2532(d)(1) of this Act.

(2) In making the determination under Subdivision (1) of this subsection, the commission shall consider:

(A) the policy of this Act to encourage construction of local exchange networks;

(B) the number and type of competitors that have sought to provide local exchange competition under the existing rules prescribed by this Act; and

(C) whether, if new build-out and resale rules were adopted, innovative and competitive local exchange telephone services are more likely to be provided.

(3) If the commission determines that the existing build-out requirements have created barriers to facilities based local exchange competition in exchanges described by Subdivision (1)(A) of this subsection, the requirements of Subsections (c), (d), and (g) of this section and of Section 3.2532 may be changed if the changes will encourage additional facilities based competition. However, in no event may exchange sizes be reduced below 12 square miles, or the permitted resale percentage of Subsection (d) of this section be increased to more than 50 percent. If new rules are adopted, the rules may apply only to applicants for certificates filed after the date of adoption of those rules.

(k) If the holder of a certificate of authority fails to comply with any requirement imposed by this Act, the commission may:

(1) revoke the certificate; or

(2) impose administrative penalties or take other action under Subtitle I, Title I, of this Act.

SECTION 25. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2532 to read as follows:

Sec. 3.2532. SERVICE PROVIDER CERTIFICATE OF OPERATING AUTHORITY. (a) To encourage innovative, competitive, and entrepreneurial businesses to provide telecommunications services, the commission may grant service provider certificates of operating authority. An applicant must demonstrate that it has the financial and technical ability to provide its services and show that the services will meet the requirements of this section.

(b) A company is eligible for a service provider certificate of operating authority under this section unless the company, together with affiliates, had in excess of six percent of the total intrastate switched access minutes of use as measured by the most recent 12-month period preceding the filing of the application for which data is available. The commission shall obtain from the incumbent local exchange telephone companies such information as is necessary to determine eligibility and shall certify such eligibility within 10 days of the filing of the application. A service provider certificate of operating authority shall be granted within 60 days after the date of the application on a nondiscriminatory basis after consideration by the commission of factors such as the technical and financial qualifications of the applicant and the applicant's ability to meet the commission's quality of service requirements. The commission may extend the 60-day period on good cause shown.

(c) An applicant for a service provider certificate of operating authority shall file with its application a description of the services it will provide and show the areas in which it will provide those services.

(d) A service provider certificate of operating authority holder:

(1) may obtain services under the resale tariffs ordered by the commission as specified by Section 3.453 of this Act, except in certificated areas of companies serving fewer than 31,000 access lines;

(2) may obtain for resale the monthly recurring flat rate local exchange telephone service and associated nonrecurring charges, including any mandatory extended area service, of an incumbent local exchange company at a five percent discount to the tariffed rate, and:

(A) the incumbent local exchange company shall also sell any feature service that may be provided to customers in conjunction with local exchange service, including toll restriction, call control options, tone dialing, custom calling services, and caller ID at a five percent discount to the tariffed rate, including any associated nonrecurring charge for those services, provided that the incumbent local exchange company shall make available to a holder of a service provider certificate of operating authority at an additional five percent discount any discounts made available to the customers of the incumbent local exchange company who are similarly situated to the customers of the holder of the service provider certificate of operating authority;

(B) service providers and incumbent local exchange companies may agree to rates lower than the tariffed rates or discounted rates;

(C) the five percent discounts provided by this subdivision do not apply in exchanges of companies having fewer than 31,000 access lines in this state;

(D) if the tariffed rates for the services being resold change, the changed rate is applicable to the resold service, but the commission may not, for holders of service provider certificates of operating authority, create a special class for purposes of resold services, and the discount provided to holders of service provider certificates of operating authority shall remain at five percent of the tariffed rate or discounted rate; and

(E) the holder of a service provider certificate of operating authority may purchase for resale optional extended area service and expanded local calling service but those services may not be discounted;

(3) may sell the flat rate local exchange telephone service only to the same class of customers to which the incumbent local exchange company sells that service;

(4) may not use a resold flat rate local exchange telephone service to avoid the rates, terms, and conditions of an incumbent local exchange company's tariffs;

(5) may not terminate both flat rate local exchange telephone service and services obtained under the resale tariff approved as prescribed by Sections 3.453(a)-(c) of this Act on the same end user customer's premises;

(6) may not use resold flat rate local exchange telephone services to provide access services to other interexchange carriers, cellular carriers, competitive access providers, or other retail telecommunications providers, but may permit customers to use resold local exchange telephone services to access interexchange carriers, cellular carriers, competitive access providers, or other retail telecommunications providers;

(7) may obtain services offered by or negotiated with a holder of a certificate of convenience and necessity or certificate of operating authority; and

(8) may obtain for resale single or multiple line flat rate intraLATA calling service when provided by the local exchange company at the tariffed rate for online digital communications.

(e) The holder of a certificate of operating authority or certificate of convenience and necessity shall not be granted a service provider certificate of operating authority as to the same territory. A holder of a service provider certificate of operating authority who applies for either a certificate of operating authority or a certificate of convenience and necessity as to the same territory must include a plan to relinquish its service provider certificate of operating authority.

(f) An incumbent local exchange company that sells flat rate local exchange telephone service to a holder of a service provider certificate of operating authority may retain all access service and "1+" intraLATA toll service originated over the resold flat rate local exchange telephone service.

(g) An incumbent local exchange company may not:

(1) delay provisioning or maintenance of services provided under this section;

(2) degrade the quality of access provided to another provider;

(3) impair the speed, quality, or efficiency of lines used by another provider;

(4) fail to fully disclose in a timely manner after a request for the disclosure all available information necessary for the holder of the service provider certificate of operating authority to provision resale services; or

(5) refuse to take any reasonable action to allow efficient access by a holder of a service provider certificate of operating authority to ordering, billing, or repair management systems of the local exchange company.

(h) In this section:

(1) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with a company that applies for a service provider certificate of operating authority under this section.

(2) "Control" means to exercise substantial influence over the policies and actions of another.

SECTION 26. Sections 3.255(a) and (b), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all telecommunications [~~public~~] utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of certification [~~public convenience and necessity~~] within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a certificated telecommunications [~~public~~] utility shall have the right to continue and extend service within its area of certification [~~public convenience and necessity~~] and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the

governing body of a municipality to require any certificated telecommunications [~~public~~] utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the certificated telecommunications [~~public~~] utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

SECTION 27. Sections 3.256 and 3.257, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

Sec. 3.256. CONTRACTS VALID AND ENFORCEABLE. Contracts between telecommunications [~~public~~] utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of certification [~~public convenience and necessity~~].

Sec. 3.257. PRELIMINARY ORDER FOR CERTIFICATE. If a telecommunications [~~public~~] utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such telecommunications [~~public~~] utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the telecommunications [~~public~~] utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the telecommunications [~~public~~] utility, the commission shall issue the certificate.

SECTION 28. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2555 to read as follows:

Sec. 3.2555. DISCRIMINATION. (a) An applicant for a certificate of operating authority or service provider certificate of operating authority shall file with its application a sworn statement that it has applied for any necessary municipal consent, franchise, or permit required for the type of services and facilities for which it has applied. Notwithstanding Section 1.103 of this Act, a municipality may not discriminate against a telecommunications utility in relation to:

(1) the authorization or placement of telecommunications facilities within public right-of-way;

(2) access to buildings; or

(3) municipal utility pole attachment rates, terms, and conditions, to the extent not addressed by federal law.

(b) In the granting of consent, franchises, and permits for the use of public streets, alleys, or rights-of-way within its corporate municipal limits, a municipality may not discriminate in favor of or against a telecommunications utility that holds or has applied for a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority all in relation to:

(1) the authorizing, placement, replacement, or removal of telecommunications facilities within public rights-of-way and the reasonable

compensation therefor of whatever kind, whether money, services, use of facilities, or any other consideration; or

(2) municipal utility pole attachment or underground conduit rates, terms, and conditions, to the extent not addressed by federal law, provided that a municipal utility may not charge pole attachment rates or underground conduit rates that exceed the fee the utility would be permitted to charge if its rates were regulated under federal law and the rules of the Federal Communications Commission.

(c) Whenever a telecommunications utility holds a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality, and where required by this Act, a certificate, a public or private property owner may not:

(1) interfere with or prevent a telecommunications utility from installing on the owner's property telecommunications service facilities requested by a tenant;

(2) discriminate against one or more telecommunications utilities in relation to the installation, terms, conditions, and compensation of telecommunications services facilities to a tenant on the owner's property;

(3) demand or accept an unreasonable payment in any form from a tenant or a telecommunications utility for allowing the utility on or within the owner's property; or

(4) discriminate in favor or against a tenant in any manner, including rental charges, because of the telecommunications utility from which the tenant receives telecommunications services.

(d) Notwithstanding Subsection (c) of this section, whenever a telecommunications utility holds a municipal consent, franchise, or permit as determined to be the appropriate grant of authority by the municipality, and where required by this Act, a certificate, a public or private property owner may:

(1) impose conditions on such telecommunications utility that are reasonably necessary to protect the safety, security, appearance, and condition of the property and the safety and convenience of other persons;

(2) impose reasonable limitations on the times at which such telecommunications utility may have access to the property for the installation of telecommunications services facilities;

(3) require such telecommunications utility to agree to indemnify the owner of any damage caused by the installation, operation, or removal of the facilities;

(4) require the tenant or the telecommunications utility to bear the entire cost of the installation, operation, or removal of the facilities;

(5) impose reasonable limitations on the number of such telecommunications utilities having access to the owner's property if the owner can demonstrate space constraints that require such limitations; and

(6) require such telecommunications utility to pay compensation that is reasonable and nondiscriminatory among such telecommunications utilities.

(e) Notwithstanding any other provision of law, the commission has the jurisdiction necessary to enforce this section.

(f) Nothing in this Act shall restrict or limit a municipality's historical right

to control and receive reasonable compensation for access to its public streets, alleys, or rights-of-way or other public property.

(g) Subsection (c) of this section does not apply to an institution of higher education. In this subsection, "institution of higher education" has the meaning assigned by Section 61.003, Education Code, and also includes a "private or independent institution of higher education" as that term is defined by Section 61.003, Education Code.

(h) The holder of a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority shall have the right to collect the fee imposed by a municipality under this section through a pro rata charge to customers within the boundaries of the municipality imposing the fee, which may be shown as a separate line item on the customer bill.

SECTION 29. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2571 to read as follows:

Sec. 3.2571. FLEXIBILITY PLAN. After an application for a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority is granted or the commission determines that a certificate is not needed for the services to be provided by the applicant, the commission shall conduct proceedings it determines appropriate to establish a transitional flexibility plan for the incumbent local exchange company in the same area or areas as the new certificate holder. However, a basic local telecommunications service price of the incumbent local exchange company may not be increased until four years following the grant of the certificate to the applicant, except:

(1) as provided by this Act; or

(2) when the new applicant has completed its build-out plan required by Section 3.2531 or when the build-out requirements have been eliminated.

SECTION 30. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2572 to read as follows:

Sec. 3.2572. MARKET POWER TEST. (a) Notwithstanding any other provision of this Act, on notice and hearing, the commission may grant price deregulation of a specific service in a particular geographic market if the commission determines that the incumbent local exchange company or certificate of operating authority holder that is a dominant provider is no longer dominant as to that specific service in that particular geographic market. For purposes of this section only, in determining a particular geographic market, the commission shall consider economic and technical conditions of the market. Once a service in a particular market is price-deregulated under this section, the incumbent local exchange company or certificate of operating authority holder that is a dominant provider may set the rate for the deregulated service at any level above the service's LRIC.

(b) To determine that an incumbent local exchange company or certificate of operating authority holder that is a dominant provider is no longer dominant as to a specific service in a particular geographic market, the commission must find that an effective competitive alternative exists and that the incumbent local

exchange company or certificate of operating authority holder that is a dominant provider does not have sufficient market power to control the price of the service within a specified geographic area in a manner that is adverse to the public interest.

(c) The commission shall consider the following factors in determining whether the incumbent local exchange company or certificate of operating authority holder that is a dominant provider is dominant as to a specific service in a particular geographic area:

(1) number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service in the relevant market and the extent to which the service is available in the relevant market;

(2) ability of customers in the relevant market to obtain the same, equivalent, or substitutable service at comparable rates, terms, and conditions;

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

(4) proportion of the relevant market that is currently being provided the service by a telecommunications utility other than the incumbent local exchange company or certificate of operating authority holder that is a dominant carrier; and

(5) other relevant information deemed necessary by the commission.

(d) The commission, on its own motion, or on a complaint that the commission deems has merit, is granted all necessary power and authority to assert or reassert regulation over a specific service in a particular geographic market if the incumbent local exchange company or certificate of operating authority holder that is a dominant carrier is found to again be dominant or the provider of services under a certificate of operating authority or service provider certificate of operating authority is found to be dominant as to that specific service in that particular geographic market.

(e) On request of an incumbent local exchange company or certificate of operating authority holder that is a dominant carrier in conjunction with an application under this section, the commission shall conduct investigations to determine the existence, impact, and scope of competition in the particular geographic and service markets at issue and in connection therewith may call and hold hearings, may issue subpoenas to compel the attendance of witnesses and the production of papers and documents, has any other powers, whether specifically designated or implied, necessary and convenient to the investigation, and may make findings of fact and decisions with respect to those markets.

(f) The parties to the proceeding shall be entitled to use the results of the investigation required to be conducted under Subsection (e) of this section in an application for pricing flexibility.

(g) In conjunction with its authority to collect and compile information, the commission may collect reports from a holder of a certificate of operating authority or service provider certificate of operating authority. Any information contained in the reports claimed to be confidential for competitive purposes shall be maintained as confidential by the commission, and the information is exempt from disclosure under Chapter 552, Government Code. The commission shall aggregate the information to the maximum extent possible

considering the purpose of the proceeding to protect the confidential nature of the information.

SECTION 31. Section 3.258(a), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) Except as provided by this section, [~~or~~] Section 3.259, or Section 3.2595 of this Act, a telecommunications utility that is granted a certificate of convenience and necessity or certificate of operating authority shall be required to offer to any customer in its certificated area all basic local telecommunications services [~~the holder of any certificate of public convenience and necessity shall serve every consumer within its certified area~~] and shall render continuous and adequate service within the area or areas. In any event, as between a holder of a certificate of convenience and necessity and a holder of a certificate of operating authority, the holder of the certificate of convenience and necessity has provider of last resort obligations.

SECTION 32. Section 3.259, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.259. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity, certificate of operating authority, or service provider certificate of operating authority shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.

SECTION 33. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2595 to read as follows:

Sec. 3.2595. DISCONTINUATION OF SERVICE. (a) Notwithstanding Section 3.258 of this Act, a telecommunications utility that holds a certificate of operating authority or service provider certificate of operating authority may:

(1) discontinue an optional service that is not essential to the provision of basic local telecommunications service; or

(2) cease operations within its certificated area.

(b) Before such telecommunications utility discontinues an optional service or ceases operations, the utility must provide notice of the intended action to the commission and each affected customer in the manner required by the commission.

(c) Such telecommunications utility is entitled to discontinue an optional service on or after the 61st day after the date on which the utility provides the notice required by Subsection (b) of this section.

(d) Such telecommunications utility may not cease operations within its certificated area unless:

(1) another provider of basic local telecommunications services has adequate facilities and capacity to serve the customers in the certificated area; and

(2) the commission authorizes the utility to cease operations.

(e) The commission may not authorize such telecommunications utility to cease operations under Subsection (d) of this section before the 61st day after

the date on which the utility provides the notice required by Subsection (b) of this section. The commission may enter an order under this subsection administratively unless the commission receives a complaint from an affected person.

SECTION 34. Section 3.260, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.260. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a telecommunications [~~public~~] utility may sell, assign, or lease a certificate of public convenience and necessity or certificate of operating authority or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

SECTION 35. Section 3.261, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.261. INTERFERENCE WITH OTHER TELECOMMUNICATIONS [~~PUBLIC~~] UTILITY. If a telecommunications [~~public~~] utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

SECTION 36. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2615 to read as follows:

Sec. 3.2615. DIRECTORY LISTINGS AND ASSISTANCE. (a) Companies providing local exchange telephone service shall negotiate the terms and conditions of printed directory listings and directory assistance within overlapping certificated areas.

(b) On complaint by the incumbent local exchange company or the holder of the certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority, the commission may resolve disputes between the parties and, if necessary, issue an order setting the terms and conditions of the directory listings or directory assistance.

(c) This section does not affect the authority of an incumbent local exchange company to voluntarily conduct negotiations with an applicant for a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority.

SECTION 37. Section 3.262, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.262. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE; EXTENDED AREA TOLL-FREE TELEPHONE SERVICE. (a) After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

(2) order two or more utilities to establish specified facilities for the interconnecting service; [~~and~~]

(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided; and

(4) order one or more telephone companies to provide optional extended area service within a specified calling area if provision of the service is jointly agreed to by the representatives of each affected telephone company and the representatives of a political subdivision or subdivisions within the proposed common calling area, provided that the proposed common calling area has a single, continuous boundary.

(b) If more than one political subdivision is affected by a proposed optional calling plan under Subsection (a)(4) of this section, the agreement of each political subdivision is not required. The commission may not adopt rules that diminish in any manner the ability of a political subdivision or affected telephone company to enter into joint agreements for optional extended area calling service. In this subsection and in Subsection (a)(4) of this section, "political subdivision" means a county or municipality or an unincorporated town or village that has 275 or more access lines.

SECTION 38. Subtitle F, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.2625 to read as follows:

Sec. 3.2625. PAY TELEPHONES. (a) The right of a provider of pay telephone service to set the provider's rates and charges and the commission's authority over the pay telephone service rates of incumbent local exchange companies is expressly limited by this section.

(b) A provider of pay telephone service may not impose on pay phone end users any charge for local directory assistance or calls made under Chapter 771 or 772, Health and Safety Code.

(c) The commission shall establish a limit on the charge that may be imposed for a pay telephone coin sent-paid call within the local exchange company's toll-free calling area. The commission may also establish a statewide ceiling on the charge that may be imposed by a provider of pay telephone service for local calls which are collect or operator-assisted or paid by credit card or calling card, provided that the commission shall not establish the ceiling at less than the applicable local rates for such calls of any of the four largest interexchange carriers operating in Texas.

(d) A provider of pay telephone service may impose a set use fee not exceeding 25 cents at the point at which the call is initiated for each "1-800" type call made from a pay telephone, provided that:

(1) except for pay telephones of local exchange companies, the pay telephone is registered with the commission and the provider certifies that the pay telephone is in compliance with commission rules regarding the provision of pay telephone service;

(2) the imposition of the set use fee is not inconsistent with federal law;

(3) the fee is not imposed for any local call, 9-1-1 call, or local directory assistance call;

(4) the fee is not imposed for a call that is covered by the Telephone Operator Consumer Services Improvement Act of 1990 (47 U.S.C. Section 226);

(5) the pay telephone service provider causes to be posted on each pay telephone instrument, in plain sight of the user and in a manner consistent with existing commission requirements for posting information, the fact that the surcharge will apply to those calls; and

(6) the commission may not impose on a local exchange company the duty or obligation to record the use of pay telephone service, bill or collect for the use, or remit the fee provided by this subsection to the provider of the service.

(e) A provider of pay telephone service, other than an incumbent local exchange company, may not charge for credit card, calling card, or live or automated operator-handled calls a rate or charge that is an amount greater than the authorized rates and charges published, in the eight newspapers having the largest circulation in this state, on March 18, 1995, provided that the pay phone rates of an incumbent local exchange company subject to Subtitle H of this title are governed by that subtitle. The published rates remain in effect until changed by the legislature.

(f) The commission shall adopt rules within 180 days from the effective date of this section that require every provider of pay telephone service not holding a certificate of convenience and necessity to register with the commission. A provider of pay telephone service must be registered with the commission in order to do business in this state.

(g) The commission may order disconnection of service for up to one year for repeat violations of commission rules.

(h) The commission may adopt rules regarding information to be posted on pay telephone instruments, but those rules may not require a provider of pay telephone service or an affiliate of a provider to police the compliance with those rules by another provider of pay telephone service.

(i) In this section, "provider of pay telephone service" means a subscriber to customer-owned pay telephone service, an incumbent local exchange company providing pay telephone service, and any other entity providing pay telephone service.

SECTION 39. Section 3.263(a), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority if it finds that the certificate holder has never provided or is no longer providing service in the area or part of the area covered by the certificate.

SECTION 40. Section 3.302, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (i) to read as follows:

(i) A commercial mobile service provider may offer caller identification services under the same terms and conditions provided by Subsections (c)-(f) of this section.

SECTION 41. Subtitle G, Title III, Public Utility Regulatory Act of 1995,

as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.3025 to read as follows:

Sec. 3.3025. CALLER ID SERVICES: CONSUMER INFORMATION. (a) When a customer requests per-line blocking through the commission, the telecommunications provider shall notify the customer by mail of the effective date that per-line blocking will be instituted. When a telecommunications provider providing Caller ID service to a customer originating a call becomes aware of a failure to block the delivery of the calling party's identification information from a line equipped with per-call blocking or per-line blocking of Caller ID information, it shall report such failure to the panel, the commission, and the affected customer if that customer did not report the failure. A reasonable effort shall be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

(b) The commission shall form the Caller ID Consumer Education Panel. The panel shall consist of one person appointed by the governor, one person appointed by the chair of the commission, after consultation with the Texas Council on Family Violence, and one person appointed by the public counsel of the Office of Public Utility Counsel. The panel shall meet at least quarterly and shall file an annual report with the commission regarding the level of effort and effectiveness of consumer education materials and its recommendations for increasing the safe use and privacy of the calling customer and decreasing the likelihood of harm resulting from Caller ID services. The commission may implement the recommendations of the panel and interested parties to the extent consistent with the public interest. The panel shall disband on September 1, 1999, unless reauthorized by statute.

(c) All providers offering Caller ID services shall file with the Caller ID Consumer Educational Panel, no later than the effective date of this Act, all existing Caller ID materials used on or before September 1, 1995. All future materials shall be provided when they become available. The panel shall also investigate whether educational materials are distributed in as effective a manner as marketing materials.

(d) For purposes of this section, "Caller ID services" include Caller ID and any other service which permits the called party to determine the identity, telephone number, or address of the calling party, except Caller ID services do not include 911 services.

(e) For purposes of this section, "Caller ID materials" shall include any advertisements, educational material, training materials, audio and video marketing devices, and any information disseminated about Caller ID services.

SECTION 42. Section 3.303, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3.303. INTEREXCHANGE SERVICES; INCUMBENT LOCAL EXCHANGE COMPANIES' RATES. Incumbent local [~~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 an incumbent [~~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 3.051 of this Act.

SECTION 43. Sections 3.304(a) and (b), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) To address telephone calling needs between nearby telephone exchanges, the commission shall initiate a rulemaking proceeding to approve rules to provide for an expedited hearing to allow the expanding of toll-free calling areas according to the following criteria:

(1) Toll-free calling boundaries may only be expanded under this section after the filing of a petition signed by the lesser of five percent of the subscribers or 100 subscribers within an exchange. If such a petition is filed with the commission, the commission shall order the incumbent local exchange company to provide for the balloting of its subscribers within the petitioning exchange and, if there is an affirmative vote of at least 70 percent of those responding, the commission shall consider the request.

(2) The commission shall provide for the expansion of toll-free calling areas for each incumbent local exchange customer in the petitioning exchange if the petitioning exchange serves not more than 10,000 lines and if:

(A) the central switching office of the petitioning exchange is located within 22 miles utilizing vertical and horizontal geographic coordinates of the central switching office of the exchange requested for toll-free calling service; or

(B) the petitioning exchange shall demonstrate in its petition that it shares a community of interest with the exchange requested for toll-free calling service. For purposes of this paragraph, "community of interest" includes areas that have a relationship because of schools, hospitals, local governments, business centers, and other relationships the unavailability of which would cause a hardship to the residents of the area but shall [~~need~~] not include an area where the affected central offices are more than 50 miles apart.

(3)(A) The incumbent local exchange company shall recover all of its costs incurred and all loss of revenue from any expansion of toll-free calling areas under this section through a request other than a revenue requirement showing by:

(i) a monthly fee for toll-free calling service of not more than $3.50 per line for residential customers nor more than $7 per line for business customers for up to five exchanges, together with an additional monthly fee of $1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, to be collected from all such residential or business customers in the petitioning exchange and only until the incumbent local exchange company's next general rate case;

(ii) a monthly fee for toll-free calling service for all of the incumbent local exchange company's local exchange service customers in the state in addition to the company's current local exchange rates; or

(iii) both (i) and (ii).

(B) An incumbent [~~A~~] local exchange company may not recover regulatory case expenses under this section by surcharging petitioning exchange subscribers.

(b)(1) The commission and an incumbent [~~a~~] local exchange company are not required to comply with this section with regard to a petitioning exchange or petitioned exchange if:

(A) the commission determines that there has been a good and sufficient showing of a geographic or technological infeasibility to serve the area;

(B) the incumbent local exchange company has less than 10,000 lines;

(C) the petitioning or petitioned exchange is served by a cooperative;

(D) extended area service or extended metropolitan service is currently available between the petitioning and petitioned exchanges; or

(E) the petitioning or petitioned exchange is a metropolitan exchange.

(2) The commission may expand the toll-free calling area into an exchange not within a metropolitan exchange but within the local calling area contiguous to a metropolitan exchange that the commission determines to have a community of interest relationship with the petitioning exchange. For the purposes of this section, metropolitan exchange, local calling area of a metropolitan exchange, and exchange have the meanings and boundaries as defined and approved by the commission on September 1, 1993. However, under no circumstances shall a petitioning or petitioned exchange be split in the provision of a toll-free calling area.

SECTION 44. Subtitle G, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.308 to read as follows:

Sec. 3.308. CHARGE FOR EXTENDED AREA SERVICE. (a) An incumbent local exchange company serving more than one million access lines in this state that provides mandatory two-way extended area service to customers for a separately stated monthly charge of more than $3.50 per line for residential customers and $7 per line for business customers shall file with the commission to reduce its monthly rates for that extended area service to $3.50 per line for residential customers and $7 per line for business customers. The incumbent local exchange company shall recover all of its costs incurred and all loss of revenue that results from implementation of those rates in the manner prescribed by Section 3.304(a)(3)(A)(ii) of this Act.

(b) The commission and an incumbent local exchange company are not required to comply with this section with regard to the separately stated monthly charges for the provision of mandatory two-way extended area service if the charge is for extended area service in or into a metropolitan exchange or the charge is for extended metropolitan service.

SECTION 45. (a) Subtitle G, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.309 to read as follows:

Sec. 3.309. (a) A private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost shall include in the directory a listing of any toll-free and local telephone numbers of state agencies and state public services and of each state elected official who represents all or part of the geographical area for which the directory contains listings.

(b) The listing required by this section must be clearly identified and must

be located or clearly referenced at the front of the directory before the main listing of residential and business telephone numbers. The listing is not required to exceed a length equivalent to two 8-1/2-inch by 11-inch pages, single-spaced in eight-point type.

(c) The commission may adopt rules to implement this section, including rules specifying the format of the listing and criteria for inclusion of agencies, services, and officials. The commission, with the cooperation of other state agencies, shall compile relevant information to ensure accuracy of information in the listing and shall provide the information to a telecommunications utility or telephone directory publisher within a reasonable time after a request by the utility or publisher.

(b) This section takes effect September 1, 1995, and applies only to a telephone directory published on or after September 1, 1996.

SECTION 46. Subtitle G, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.310 to read as follows:

Sec. 3.310. A telecommunications utility or an affiliate of that utility that publishes a residential or business telephone directory that is distributed to the public shall publish the name of each state senator or representative who represents all or part of the geographical area for which the directory contains listings.

SECTION 47. Subtitle G, Title III, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 3.311 to read as follows:

Sec. 3.311. HUNTING SERVICE. Local exchange companies shall make available, at a reasonable tariffed rate, hunting service from local exchange lines to extended metropolitan service lines. The customer may not be required to purchase additional extended metropolitan service in order to purchase hunting service from local exchange service to extended metropolitan service.

SECTION 48. The Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subtitles H and I and adding Subtitles J-O to read as follows:

SUBTITLE H. INCENTIVE REGULATION OF TELECOMMUNICATIONS

Sec. 3.351. POLICY. Given the current status of competition in the telecommunications industry, it is the policy of the legislature to:

(1) provide a framework for an orderly transition from traditional return on invested capital regulation to a fully competitive telecommunications marketplace where all telecommunications providers compete on fair terms;

(2) preserve and enhance universal telecommunications service at affordable rates;

(3) upgrade the telecommunications infrastructure of this state;

(4) promote network interconnectivity; and

(5) promote diversity in the supply of telecommunications services and innovative products and services throughout the entire state, both urban and rural.

Sec. 3.352. ELECTION AND BASKETS OF SERVICES. (a) After the enactment of this subtitle, an incumbent local exchange company may notify the commission in writing of the company's election to be regulated under this

subtitle. The notice must state the company's commitment to limit any increase in the rates charged for a four-year period for the services included in Section 3.353 of this Act and its infrastructure commitment as described by Section 3.358 of this Act.

(b)(1) The services provided by an incumbent local exchange company electing incentive regulation under this subtitle ("electing company") shall be initially classified into three categories or "baskets":

(A) "Basket I: basic network services";

(B) "Basket II: discretionary services"; and

(C) "Basket III: competitive services."

(2) The commission shall have the authority to reclassify a service from Basket I to Basket II or Basket III, or from Basket II to Basket III, consistent with the criteria prescribed by Section 3.357 of this Act.

(c) An electing company's telecommunications services shall be regulated under this subtitle regardless of whether that company is a "dominant carrier" as that term is defined by Section 3.002 of this Act.

(d) If, subsequent to the enactment of this subtitle, an incumbent local exchange company notifies the commission in writing of its election to incentive regulation under this subtitle, the company may not under any circumstances be subject to any complaint, hearing, or determination as to the reasonableness of its rates, its overall revenues, its return on invested capital, or its net income. However, the company's implementation and enforcement of the competitive safeguards required by Subtitle J of this title are not excluded from a complaint, hearing, or determination. Nothing herein restricts any consumer's right to complain to the commission regarding quality of service, the commission's right to enforce quality of service standards, or the consumer's right to complain regarding the application of an ambiguous tariff, and if the commission finds an ambiguity, the commission's right to determine the proper application of the tariff or to determine the proper rate if the tariff is found to not apply, but this does not permit the commission to lower a tariff rate except as specifically provided by this Act, to change its interpretation of a tariff, or to change a tariff so as to extend its application to new classes of customers.

Sec. 3.353. BASKET I: BASIC NETWORK SERVICES. (a) The following services shall initially be classified as basic network services in Basket I as of September 1, 1995:

(1) flat rate residential and business local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(2) tone dialing service;

(3) lifeline and tel-assistance services;

(4) service connection charges for basic services;

(5) direct inward dialing service for basic services;

(6) private pay telephone access service;

(7) call trap and trace service;

(8) access to 911 service where provided by a local authority and access to dual party relay service;

(9) switched access service;

(10) interconnection to competitive providers;

(11) mandatory extended area service arrangements;

(12) mandatory extended metropolitan service or other mandatory toll-free calling arrangements;

(13) interconnection for commercial mobile service providers;

(14) directory assistance; and

(15) 1+ intraLATA message toll service.

(b) On an incumbent local exchange company's election under Section 3.352 of this Act, increases in rates for basic network services are permitted only with commission approval and only within the parameters specified by Subsection (c) of this section for four years following the election. Notwithstanding the requirements prescribed by Section 3.457 of this Act, rates for basic network services may be decreased at any time on the initiative of the electing company to a floor above long run incremental cost for switched access service or the appropriate cost for any basic local telecommunications service, which shall be long run incremental cost as to any incumbent local exchange company that is required by the commission to perform long run incremental cost studies or elects to perform those studies. This section does not affect the charges permitted under Section 3.304, 3.308, or 3.608 of this Act. The commission may not increase service standards applicable to the provision of local exchange telephone service by an electing company if the increased investment required to comply with the increased standard exceeds in any one year 10 percent of the incumbent local exchange company's average annual intrastate additions in capital investment for the most recent five-year period. In calculating the average, the incumbent local exchange company shall exclude extraordinary investments made during that five-year period.

(c)(1) Rates for basic network services may be changed in the following circumstances and only with commission approval that the proposed change is included in this subsection.

(2) On motion of an electing incumbent local exchange company or on its own motion, the commission shall proportionally adjust prices for services to reflect changes in Federal Communications Commission separations affecting intrastate net income by 10 percent or more.

(3) If, after 42 months after the date of the incumbent local exchange company's election, an electing company in this state with less than five million access lines is in compliance with its infrastructure commitment, all quality of services requirements, and all commission rules enacted under Subtitle J of this title, on application of the incumbent local exchange company, the commission may undertake a proceeding to review the need for changes in the rates of services. The application may request that the commission adjust rates, implement new pricing plans, restructure rates, or rebalance revenues between services to recognize changed market conditions and the effects of competitive entry. The commission may use an index and a productivity offset in determining these changes. The commission may not order an increase in residential local exchange telephone service that would cause those rates to increase by more than the United States Consumer Price Index in any 12-month period. In no case may the new monthly rate exceed the nationwide average of local exchange telephone service rates for like services.

(4) Notwithstanding the commitments made under Section 3.352 of

this Act, a rate group reclassification occurring as a result of access lines growth shall be allowed by the commission on request of the electing company.

(d)(1) Except as provided by Section 3.2572 of this Act, the regulation of basic network services of an electing company shall, to the extent not inconsistent with this subtitle, be governed by:

(A) Title I of this Act;

(B) this subtitle;

(C) Subtitles A, B, C, F, G, J, K, and L of this title;

(D) Sections 3.201, 3.202, 3.204, 3.210, 3.211, 3.215, 3.216, 3.217, 3.218, and 3.219 of this Act; and

(E) all commission procedures and rules not inconsistent with this subtitle.

(2) Changes to the terms and conditions of the tariff offering of a basic network service, other than price changes, continue to require commission approval.

(e) The rates capped in Subsection (b) of this section as a result of a company's election shall be the rates charged by the company on June 1, 1995, without regard to proceedings pending under Section 1.301 or 3.210 of this Act or under Subchapter G, Chapter 2001, Government Code.

Sec. 3.354. RATE ADJUSTMENT PROCEDURES. (a) An electing company may adjust its rates for basic network services under Section 3.353(c) of this Act on notice to the commission. The notice to the commission of a rate adjustment must be accompanied with sufficient documentary support to demonstrate that the rate adjustment meets the criteria prescribed by Section 3.353(c) of this Act. The commission shall establish by rule or order the documentation to be required under this subsection.

(b) Notice to customers shall be published once in a newspaper of general circulation in the service area to be affected within a reasonable time period after the notice for a rate adjustment is provided to the commission, and shall be included in or on the bill of each affected consumer in the next billing subsequent to the filing with the commission. The notice shall contain a title that includes the name of the company and the words "NOTICE OF POSSIBLE RATE CHANGE." The notice shall contain the following information:

(1) a statement that the consumer's rate may change;

(2) an estimate of the amount of the annual change for the typical residential, business, or access consumers that would result if the rate adjustment is approved by the commission, which estimate shall be printed in a type style and size that are distinct from and larger than the type style and size of the body of the notice; and

(3) a statement that a consumer who wants to comment on the rate adjustment or who wants additional details regarding the rate adjustment may call or write the commission, which statement must include the telephone number and address of the commission and a statement that additional details will be provided free of charge to the consumer at the expense of the company.

(c) The commission shall review the adjusted rates to ensure that the proposed adjustment conforms to the requirements of Section 3.353(c) of this Act. A rate adjustment under Section 3.353(c)(2), (3), (4), or (5) of this Act takes effect 90 days after the date of completion of notice.

(d) An incumbent local exchange company that has five percent or fewer of the total access lines in this state may adopt the cost, if determined based on a long run incremental cost study, for the same or substantially similar services offered by a larger incumbent local exchange company without the requirement of presenting long run incremental cost studies of its own.

(e) Either by complaint filed by an affected party or on the commission's own motion at any time before the rate adjustment takes effect, the commission may suspend the effective date of the rate adjustment and hold a hearing to review a rate set under Section 3.353(c)(2), (3), (4), or (5) of this Act and after the review issue an order approving, modifying, or rejecting the rate adjustment if it is not in compliance with the applicable provisions. Any order modifying or rejecting the proposed rate adjustment shall specify each reason why the proposed adjustment is not in compliance with the applicable provisions of Section 3.353(c)(2), (3), (4), or (5) of this Act and the means by which the proposed adjustment may be brought into compliance.

(f) Any rate restructure under Section 3.353(c) of this Act shall follow the notice and hearing procedures prescribed by Sections 3.211(a)-(c) of this Act, except as otherwise provided in this section.

Sec. 3.355. BASKET II: DISCRETIONARY SERVICES. (a) Basket II services include all services or functions provided by the electing company that have not been granted pricing flexibility in a particular geographic market and that have not been listed under Basket I or III.

(b) The following services are initially classified as discretionary services in Basket II as of September 1, 1995:

(1) 1+ intraLATA message toll services, where intraLATA equal access is available;

(2) 0+, 0- operator services;

(3) call waiting, call forwarding, and custom calling features not listed in Basket III;

(4) call return, caller ID, and call control options not listed in Basket III;

(5) central office based PBX-type services;

(6) billing and collection services;

(7) integrated services digital network (ISDN) services; and

(8) new services.

(c) The commission may reclassify a service from Basket I to Basket II or Basket III, or from Basket II to Basket III, consistent with the criteria prescribed by Section 3.357 of this Act.

(d) The prices for each Basket II service or function provided by the electing company shall be set above the LRIC cost. The commission shall set the reasonable price ceiling over and above LRIC cost, but the ceiling may not be set below or above the rate in effect on September 1, 1995, without regard to proceedings pending under Section 1.301 or 3.210 of this Act or under Subchapter G, Chapter 2001, Government Code. The ceiling may be raised only after the proceedings required under Subtitle J of this title. Thereafter, on application by the electing company or on the commission's own motion, the commission may change the price ceiling but may not increase the ceiling more than 10 percent annually. Within the range of the LRIC floor and the

price ceiling, the incumbent local exchange company may change the price of each service, including using volume and term discounts, zone density pricing, packaging of services, customer specific pricing, and other promotional pricing flexibility, but shall notify the commission of each change. The placement of a service in Basket II does not preclude an incumbent local exchange company from using any of the regulatory treatments authorized by or under Section 3.051 of this Act. Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory.

Sec. 3.356. BASKET III: COMPETITIVE SERVICES. (a) The following services are Basket III competitive services and shall be subject to pricing flexibility as of September 1, 1995:

(1) services described in the WATS tariff as of January 1, 1995;
(2) 800 and foreign exchange services;
(3) private line service;
(4) special access service;
(5) services from public pay telephones;
(6) paging services and mobile services (IMTS);
(7) 911 premises equipment;
(8) speed dialing; and
(9) three-way calling.

(b) The commission may reclassify a service from Basket I to Basket II or Basket III or from Basket II to Basket III, consistent with the criteria prescribed by Section 3.357 of this Act.

(c) The electing company may set the price for the service at any level above the service's LRIC, in compliance with the imputation rules established under Subtitle J of this title. Permissible pricing flexibility includes volume and term discounts, zone density pricing, packaging of services, customer specific contracts, and other promotional pricing flexibility, subject to the requirements of Section 3.451 of this Act. Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. However, an electing incumbent local exchange company may not increase the price of a service in a geographic area in which that service or a functionally equivalent service is not readily available from another provider.

(d) Not later than January 1, 2000, the commission shall initiate a review and evaluation of any incumbent local exchange company electing treatment under this subtitle or Subtitle I of this title to review and evaluate the effects of the election, including consumer benefits, impact of competition, infrastructure investments, and quality of service. The commission shall file a report and its recommendations to the legislature by January 1, 2001, as to whether the incentive regulation plan should be extended, modified, eliminated, or replaced with some other form of regulation. The legislature, based on the commission's report, may authorize the commission to take action to extend, modify, eliminate, or replace the incentive plan provided by this subtitle and Subtitle I of this title.

Sec. 3.357. TRANSFERRING SERVICES. (a) In determining whether to transfer services from Basket I to Basket II or Basket III, or from Basket II to Basket III, the commission shall establish standards that consider factors including:

(1) availability of the service from other providers;

(2) the proportion of the market that currently receives the service;

(3) the effect of the transfer on subscribers of the service; and

(4) the nature of the service.

(b) The commission may not transfer a service from one basket to another until full implementation of all competitive safeguards required by Sections 3.452, 3.453, 3.454, 3.455, 3.456, 3.457, and 3.458 of this Act.

Sec. 3.358. INFRASTRUCTURE. (a) It is the goal of this State to facilitate and promote the deployment of an advanced telecommunications infrastructure in order to spur economic development throughout Texas. Texas should be among the leaders in achieving this objective. The primary means of achieving this goal shall be through encouraging private investment in the state's telecommunications infrastructure by creating incentives for such investment and promoting the development of competition. The best way to bring the benefits of an advanced telecommunications network infrastructure to Texas communities is through innovation and competition among all the state's communications providers. Competition will provide Texans a choice of telecommunications providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms seek to satisfy customer needs.

(b) In implementing this section, the commission shall consider the following policy goals of this State:

(1) ensure the availability of the widest possible range of competitive choices in the provision of telecommunications services and facilities;

(2) foster competition and rely on market forces where competition exists to determine the price, terms, availability, and conditions of service in markets in which competition exists;

(3) ensure the universal availability of basic local telecommunications services at reasonable rates;

(4) encourage the continued development and deployment of advanced, reliable capabilities and services in telecommunications networks;

(5) assure interconnection and interoperability, based on uniform technical standards, among telecommunications carriers;

(6) eliminate existing unnecessary administrative procedures which impose regulatory barriers to competition and assure that competitive entry is fostered on an economically rational basis;

(7) assure consumer protection and protection against anticompetitive conduct;

(8) regulate providers of services only to the extent they have market power to control the price of services to customers;

(9) encourage cost-based pricing of telecommunications services so that consumers pay a fair price for services that they use; and

(10) subject to Section 3.353 of this Act, develop quality of service standards for local exchange companies as it deems appropriate to place Texas among the leaders in deployment of an advanced telecommunications infrastructure except that the 10 percent limitation specified in Section 3.353 of this Act shall not include the requirements of Subsections (c)(1)-(4) of this section.

(c) Recognizing that it will take time for competition to develop in the local exchange market, the commission shall act, in the absence of competition, to ensure that the following infrastructure goals are achieved by electing companies:

(1) Electing incumbent local exchange companies shall make access to end-to-end digital connectivity available to all customers in their territories by December 31, 1996.

(2) Fifty percent of the local exchange access lines in each electing local exchange company's territory must be served by a digital central office switch by January 1, 2000.

(3) All electing company new central office switches installed in Texas must be digital, or technologically equal to or superior to digital, after September 1, 1995. At a minimum, each new central office switch installed after September 1, 1997, must be capable of providing Integrated Services Digital Network (ISDN) services in a manner consistent with generally accepted national standards.

(4) Electing incumbent local exchange companies' public switched network backbone inter-office facilities must employ broadband facilities capable of at least 45 megabits per second, or at lower bandwidths if evolving technology permits the delivery of video signal at quality levels comparable to a television broadcast signal, by January 1, 2000. This requirement shall not extend to local loop facilities.

(d)(1) An electing company of greater than five million access lines shall also install Common Channel Signaling 7 capability in all central offices by January 1, 2000.

(2) An electing company of greater than five million access lines shall connect all of its serving central offices to their respective LATA tandem central offices with optical fiber or equivalent facilities by January 1, 2000.

(3) An electing company serving more than one million access lines and fewer than five million access lines shall provide digital switching central offices in all exchanges by December 31, 1998.

(e) The commission may consider waivers of Subsections (c)(1)-(4) of this section for electing local exchange companies serving fewer than one million lines, if the local exchange company demonstrates that such investment is not viable economically, after due consideration is given to the public benefits which would result from compliance with such requirements; and, in addition, may consider a temporary extension of any period with respect to Subsections (c)(1)-(4) of this section for electing local exchange companies serving fewer than two million but more than one million lines, if the local exchange company demonstrates that such extension is in the public interest.

(f) The commission may not consider the cost of implementing Subsection (c) or (d) of this section in determining whether an electing company is entitled to a rate increase under this subtitle or increased universal service funds under Section 3.608 of this Act.

Sec. 3.359. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES. (a)(1) It is the intent of this section to establish a telecommunications infrastructure that interconnects public entities described in this section. The interconnection of these entities requires ubiquitous,

broadband, digital services for voice, video, and data within the local serving area. The ubiquitous nature of these connections must also allow individual networks of these entities to interconnect and interoperate across the broadband digital service infrastructure. The delivery of these advanced telecommunications services also will require collaborations and partnerships of public, private, and commercial telecommunications service network providers.

(2) The goal of this section is to interconnect and aggregate the connections to every entity described in this section, within the local serving area. It is further intended that the implementation of the infrastructure as defined within this section connect all the entities requesting the services offered under this section.

(b)(1)(A) On customer request, the electing company shall provide broadband digital service that is capable of providing transmission speeds of up to 45 megabits per second or better for customer applications and other customized or packaged network services (private network services) to an entity described in this section for their private and sole use except as provided in Subsection (d) of this section:

(i) educational institutions, as that term is defined in Section 3.606 of this Act;

(ii) libraries, as that term is defined in Section 3.606 of this Act;

(iii) nonprofit telemedicine centers of academic health centers, public or not-for-profit hospitals, or state-licensed health care practitioners;

(iv) public or not-for-profit hospitals;

(v) projects funded by the Telecommunications Infrastructure Fund described in this Act; or

(vi) any legally constituted consortium or group of entities listed in Subparagraphs (i)-(v) of this paragraph.

(B) Such private network services shall be provided pursuant to customer specific contracts at a rate that is 105 percent of the long run incremental cost, including installation, of the services.

(C) Each such contract shall be filed with the commission but not require the approval of the commission.

(D) An electing company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits per second service for the entities specified in Subsection (b)(1)(A) of this section which shall be distance insensitive and be no higher than 105 percent of the statewide average long run incremental costs, including installation, of the service.

(E) An electing company shall provide point-to-point 45 megabits per second intraLATA services when requested by an entity specified in Subsection (b)(1)(A) of this section pursuant to customer specific contracts except that the interoffice portion of the service, if any, will be recovered on a statewide average distance insensitive basis. The rate for this service shall be no higher than 105 percent of long run incremental cost, including installation, of the service.

(F) An electing local exchange company shall provide an entity described in this section with broadband digital special access service to

interexchange carriers at no higher than 105 percent of the long run incremental cost, including installation, of such service.

(G) On customer request, the electing company shall provide expanded interconnection (virtual colocation) consistent with the rules adopted by the commission pursuant to Section 3.456 of this Act to an entity specified in Subsection (b)(1)(A) of this section at 105 percent of long run incremental cost, including installation. Such entities shall not have to qualify for such expanded interconnection if it is ordered by the commission.

(H) The legislature finds that an entity described in this section warrants preferred rate treatment provided that any such rates cover the long run incremental cost of the services provided.

(I) Notwithstanding any other provision of this Act, an electing local exchange company shall not be subject to a complaint under this section except by an entity specified in this section complaining that the provision of private network services under this section was provided preferentially to a similarly situated customer.

(2) An entity receiving the services provided under this section may not be assessed special construction or installation charges.

(3) An educational institution or a library may elect the rate treatment provided in this section or the discount provided by Section 3.605 of this Act.

(4) Notwithstanding the pricing flexibility authorized by this Act, an electing company's rates for the services provided under this section may not be increased for six years from the date of election except as otherwise provided in customer specific contracts.

(5) On customer request by an educational institution or library in exchanges of an electing company serving more than five million access lines in which toll-free access to the Internet is not available, the local exchange company shall make available a toll-free connection or toll-free dialing arrangement for use by educational institutions or libraries in accessing the Internet in an exchange in which Internet access is available on a toll-free basis. The connection or dialing arrangement shall be provided at no charge to the educational institution or library until Internet access becomes available in the exchange of the requesting educational institution or library. The local exchange company is not required to arrange for Internet access or to pay Internet charges for the requesting educational institution or library.

(6) An electing company shall give priority to serving rural areas, areas designated as critically underserved, medically or educationally, and educational institutions with high percentages of economically disadvantaged students.

(c) The private network services provided pursuant to this section may be interconnected with other similar networks for distance learning, telemedicine, and information sharing purposes.

(d) The private network services provided pursuant to this section may not be shared or resold to other customers except that such services may be used by and shared among the entities described in Subsection (b)(1)(A) of this section. The services provided pursuant to this section may not be required to be resold to other customers at the rates provided in this section; however, the prohibition contained in this subsection is not intended to preclude the

otherwise permitted resale of other services which may be offered by an electing company using the same facilities or a portion thereof, which are used to provide the private network services offered under this section.

(e) For purposes of this section, the term "telemedicine center" means a facility equipped to transmit by video, data, or voice service medical information for the purpose of diagnosis or treatment of illness or disease, owned or operated by a public or not-for-profit hospital including an academic health center or such a facility owned by any state-licensed health care practitioner or group of practitioners and operated on a nonprofit basis.

(f) The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) does not apply to contracts entered into under this section.

SUBTITLE I. INFRASTRUCTURE PLAN FOR RATE OF RETURN COMPANIES

Sec. 3.401. POLICY. It is the policy of the legislature that those incumbent local exchange companies that do not elect to be regulated under Subtitle H of this title should nevertheless have incentives to deploy infrastructure that will benefit the citizens of this state, while maintaining reasonable local rates and universal service.

Sec. 3.402. ELECTION. (a) An incumbent local exchange company serving less than five percent of the access lines in this state that has not elected incentive regulation under Subtitle H of this title may elect for an infrastructure plan under this subtitle by notifying the commission in writing of its election under this section.

(b)(1) For a period of six years after the election date, an electing incumbent local exchange company may not seek an increase in any rate previously established for that company under this Act, except for the charges permitted under Sections 3.304, 3.308, and 3.608 of this Act, and in the following circumstances and only with commission approval that the proposed change is included in this subsection.

(2) On motion of an electing incumbent local exchange company or on its own motion, the commission shall adjust prices for services to reflect changes in Federal Communications Commission separations affecting intrastate net income by 10 percent or more.

(3) A rate group classification occurring as a result of access lines growth shall be allowed by the commission on request of the electing company.

(c) Section 3.354 of this Act applies to a rate change under Subsection (b) of this section.

(d) If, subsequent to the enactment of this subtitle, an incumbent local exchange company notifies the commission in writing of its election to the alternative infrastructure plan under this subtitle, the electing company may not for a period of six years after the election date under any circumstances be subject to any complaint or hearing as to the reasonableness of its rates, its overall revenues, its return on invested capital, or its net income if the electing incumbent local exchange company is complying with its infrastructure commitment under Section 3.403 of this Act, nor may an electing company be subject to a complaint that any particular rate is excessive. However, the company's implementation of the competitive safeguards required by Subtitle J of this title are not excluded from a complaint, hearing, or determination.

Nothing herein restricts any consumer's right to complain to the commission regarding quality of service, the commission's right to enforce quality of service standards, or the consumer's right to complain regarding the application of an ambiguous tariff, and if the commission finds an ambiguity, the commission's right to determine the proper application of the tariff or to determine the proper rate if the tariff is found to not apply, but this does not permit the commission to lower a tariff rate except as specifically provided by this Act, to change its interpretation of a tariff, or to change a tariff so as to extend its application to new classes of customers. The commission may not increase service standards applicable to the provision of local exchange telephone service by an electing company if the increased investment required to comply with the increased standard exceeds in any one year 10 percent of the incumbent local exchange company's average annual intrastate additions in capital investment for the most recent five-year period. In calculating the average, the incumbent local exchange company shall exclude extraordinary investments made during the five-year period.

(e) On application by an electing incumbent local exchange company, the commission may allow a company to withdraw its election under this section but only for good cause. For the purpose of this section, good cause includes only matters that were beyond the control of the incumbent local exchange company.

(f) This section does not prohibit an incumbent local exchange company from making an election under Section 3.352 of this Act at any time, and if the company so elects, the infrastructure commitment made under Section 3.403 of this Act offsets any infrastructure commitment required in connection with the Section 3.352 election.

(g) The rates capped by Subsection (b) of this section as a result of a company's election shall be the rates charged by the company at the date of its election without regard to proceedings pending under Section 1.301 or 3.210 of this Act or under Subchapter G, Chapter 2001, Government Code.

(h) In this section, "election date" means the date on which the commission receives notice of election under this section.

Sec. 3.403. INFRASTRUCTURE COMMITMENT. (a) A company electing under Section 3.402 of this Act shall make an infrastructure commitment in writing to the governor and commission, committing to make the following telecommunications infrastructure investment in this state over a six-year period following the company's election.

(b) The commission shall act to ensure that the following infrastructure goals are achieved by electing companies:

(1) Electing incumbent local exchange companies shall make access to end-to-end digital connectivity available to all customers in their territories by January 1, 2000. "Make available" as used in this subsection shall have the definition contained in 16 T.A.C. Section 23.69.

(2) Fifty percent of the local exchange access lines in each electing local exchange company's territory must be served by a digital central office switch by January 1, 2000.

(3) All electing company new central office switches installed in Texas after September 1, 1995, must be digital.

(4) Electing incumbent local exchange companies' public switched network back-bone inter-office facilities must employ broadband facilities capable of at least 45 megabits per second, or at lower bandwidths if evolving technology permits the delivery of video signal at quality levels comparable to a television broadcast signal, that serve at least 50 percent of the local exchange access lines by January 1, 2000. This requirement shall not extend to local loop facilities.

(5) Electing incumbent local exchange companies shall install Common Channel Signaling 7 capability in all access tandem offices by January 1, 2000.

(6) The 10 percent limitation specified in Section 3.402 shall not include requirements of Subdivisions (1)-(5) of this subsection.

(c)(1) On customer request, the electing company shall provide private broadband services and other customized or packaged network services (private network services) for the private and sole use of the following entities:

(A) educational institutions, as that term is defined in Section 3.605 of this Act;

(B) libraries, as that term is defined in Section 3.606 of this Act;

(C) telemedicine centers of public or not-for-profit hospitals;

(D) nonprofit telemedicine centers of state licensed health care practitioners; or

(E) any legally constituted consortium or group of entities listed in Paragraphs (A)-(D) of this subdivision.

(2) An electing company shall give investment priority to serving rural areas, areas designated as critically underserved, medically or educationally, and educational institutions with high percentages of economically disadvantaged students.

(3) Such private network services shall be provided pursuant to customer specific contracts.

(4) Such contracts shall be offered at 110 percent of the long run incremental cost including installation costs of providing the private network service.

(5) Each such contract shall be filed with the commission but not require the approval of the commission.

(6) The legislature finds that the classes of customers listed in Subdivisions (1)(A)-(D) of this subsection warrant preferred rate treatment provided that any such rates cover the long run incremental cost of the services provided.

(7) Notwithstanding any other provision of this Act, an electing local exchange company shall not be subject to a complaint under this section except by:

(A) educational institutions, as that term is defined in Section 3.605 of this Act;

(B) libraries, as that term is defined in Section 3.606 of this Act;

(C) telemedicine centers of public or not-for-profit hospitals;

(D) nonprofit telemedicine centers of state-licensed health care practioners; or

(E) any legally constituted consortium or group of entities listed in Paragraphs (A)-(D) of this subdivision.

(8) Educational institutions, libraries, telemedicine centers of public or not-for-profit hospitals, and nonprofit telemedicine centers of state-licensed health care practitioners receiving the services provided under this section may not be assessed tariffed special construction or installation charges unless agreed upon by the local exchange company and entities specified in Subdivision (1) of this subsection.

(9) An educational institution or a library may elect this rate treatment or the discount provided by Section 3.605 of this Act.

(10) Notwithstanding the pricing flexibility authorized by this Act, the electing company's rates for this service may not be increased for six years from the date of election.

(11) On request, for 1.544 megabits per second private line or special access service by educational institutions and libraries, that service shall be offered at 110 percent of the long run incremental cost including installation costs. This rate is in lieu of the discount provided by Section 3.605 of this Act.

(12) The customers specified in this section constitute a special class of customer for purposes of the private network for distance learning, telemedicine, and information sharing purposes.

(13) The private network services provided pursuant to this section may be interconnected with other similar networks for distance learning, telemedicine, and information sharing purposes.

(14) The private network services provided pursuant to this section may not be shared or resold to other customers except that they may be used and shared among the entities specified in Subdivision (1) of this subsection. The services provided pursuant to this section may not be required to be resold to other customers at the rates provided in this section; provided, however, the prohibition contained in this subsection is not intended to preclude the otherwise permitted resale of other services which may be offered by an electing company using the same facilities or a portion thereof, which are used to provide the private network services offered under this section.

(d) The commission may consider waivers of requirements listed in Subsections (b)(1)-(5) of this section for electing local exchange companies serving fewer than one million lines if the local exchange company demonstrates that such investment is not viable economically, after due consideration is given to the public benefits which would result from compliance with such requirements.

(e) The commission may not consider the cost of implementing Subsection (b) or (c) of this section in determining whether an electing company is entitled to a rate increase under this subtitle or increased universal service funds under Section 3.608 of this Act.

(f) For purposes of this section:

(1) "Private network services" means the telecommunications services provided to an entity described in Subsection (c)(1)(A) of this section and includes broadband services, customized, and packaged network services and does not limit the local exchange company from providing these services with facilities which are also used to provide other services to other customers.

(2) "Telemedicine center" means a facility equipped to transmit, by video or data service, medical information for the purpose of diagnosis or treatment of illness or disease, owned or operated by a public or not-for-profit hospital, or such a facility owned by any state-licensed health care practioner and operated on a nonprofit basis.

(g) Each electing company shall file a report with the commission each year on the anniversary date of its election that sets forth its progress on its infrastructure commitment. The report shall include:

(1) the institutions requesting service under this section;

(2) the institutions served under this section;

(3) investment and expense in the previous period and cumulative for all periods; and

(4) any other information the commission considers necessary.

SUBTITLE J. COMPETITIVE SAFEGUARDS

Sec. 3.451. COMPETITIVE SAFEGUARDS. (a) To the extent necessary to ensure that competition in telecommunications is fair to all participants and to accelerate the improvement of telecommunications in the state, the commission shall ensure that the rates and regulations of an incumbent local exchange company are not unreasonably preferential, prejudicial, or discriminatory but are equitable and consistent in application.

(b) Section 3.352(d) of this Act does not prevent the commission from enforcing this subtitle.

(c) The commission has exclusive jurisdiction to implement competitive safeguards.

Sec. 3.452. UNBUNDLING. (a) An incumbent local exchange company shall, at a minimum, unbundle its network to the extent ordered by the Federal Communications Commission.

(b) Before the adoption of the pricing rules required by Section 3.457 of this Act, the commission shall hold a hearing and adopt an order on the issue of requiring further unbundling of local exchange company services.

(c) The commission may order further unbundling only after considering the public interest and competitive merits of further unbundling. The commission may proceed by rulemaking or, if requested by a party, shall proceed by evidentiary hearing.

(d) Following unbundling, the commission may assign the unbundled components to the appropriate Basket according to the purposes and intents of those Baskets.

Sec. 3.453. RESALE. (a) An incumbent local exchange company serving one million or more access lines or electing the incentive regulation plan under Subtitle H of this title shall file a usage sensitive loop resale tariff by September 1, 1995. An incumbent local exchange company serving fewer than one million access lines or not electing under Subtitle H of this title shall file a resale tariff within 60 days of the date on which a certificate of operating authority or service provider certificate of operating authority is granted under Subtitle F of this title.

(b) "Loop" resale as used in this section means the purchase of the local distribution channel or "loop" facility from the incumbent local exchange company for the purpose of resale to end user customers.

(c) The commission shall conduct any proceeding it determines appropriate to determine the rates, terms, and conditions for this tariff within 180 days of filing. The commission may:

(1) only approve a usage sensitive rate that recovers the total long run incremental cost of the loop on an unseparated basis, plus an appropriate contribution to joint and common costs; and

(2) only permit a holder of a certificate of convenience or necessity, certificate of operating authority, or service provider certificate of operating authority to purchase from the resale tariff, except as provided by Subsection (f)(1) of this section.

(d) On September 1, 1995, a provider of telecommunications service may not impose any restriction on the resale or sharing of any service for which it is not a dominant provider nor, as to any incumbent local exchange company electing alternative regulation under Subtitle H of this title, for any service entitled to regulatory treatment under Basket III as described by Section 3.356 of this Act.

(e) A holder of a certificate of operating authority or service provider certificate of operating authority has the reciprocal obligation to permit local exchange companies to resell its existing loop facilities at its regularly published rates if the local exchange company has no loop facilities and has a request for service.

(f)(1) The commission shall eliminate all resale prohibitions in an electing incumbent local exchange company's tariffs on:

(A) completion of the commission's costing and pricing rulemaking;

(B) completion of rate rebalancing of the incumbent local exchange company rates required by Section 3.457 of this Act; and

(C) removal of all prohibitions on incumbent local exchange companies providing interLATA service.

(2) The commission shall eliminate all resale prohibitions in the tariffs of an electing company of five million access lines or more on removal of all prohibitions and restrictions on such company's provision of interLATA service.

(3) When the commission eliminates the resale prohibitions under this subsection, it shall continue to prohibit the resale of local exchange or directory assistance flat rate services as a substitute for usage sensitive services. If the commission finds that the rate for a particular service or function will, as a result of the costing and pricing proceeding, be less than the cost of providing the service or function and that the difference in rate and cost will not be recovered from the universal service fund, the service may be offered for resale only to the same class of customer as sold to by the incumbent local exchange company. In any event, after resale prohibitions are removed, residence service may not be resold to business customers.

(g) Nothing herein alters resale or sharing arrangements presently permitted in incumbent local exchange company tariffs existing on September 1, 1995, or tariffs proposed by an incumbent local exchange company serving more than five million access lines in this state that are filed on or before May 1, 1995.

Sec. 3.454. IMPUTATION. (a) Not later than December 1, 1996, the commission shall adopt rules governing imputation of the price of a service.

(b) Imputation is a regulatory policy the commission shall apply to prevent

an incumbent local exchange company from selling a service or function to another telecommunications utility at a price that is higher than the rate the incumbent local exchange company implicitly includes in services it provides to its retail customers.

(c) The commission may require imputation only of the price of a service that is:

(1) not generally available from a source other than the incumbent local exchange company; and

(2) necessary for the competitor to provide its competing services.

(d) The commission may not require imputation of the price to a local exchange telephone service while the price is capped under Subtitle H or I of this title.

(e) The price of switched access service shall be imputed to the price of each service for which switched access service is a component until switched access service is competitively available.

(f) The commission may not require imputation on a rate-element-by-element basis but only on a service-by-service basis.

(g) For a service provided under a customer specific contract for which imputation may be required under Subsection (c) of this section, the commission may not require imputation on a rate-element-by-element basis but only on a service-by-service basis within the contract.

(h) The incumbent local exchange company shall demonstrate that the price it charges for its retail service recovers the costs of providing the service. For purposes of this subsection, the costs of providing the service is defined as the sum of:

(1) specifically tariffed premium rates for the noncompetitive services or service functions, or elements of these noncompetitive services or service functions (or their functional equivalent) that are used to provide the service;

(2) the total service long run incremental costs of the competitive services or service functions that are used;

(3) any costs, not otherwise reflected in Subdivision (1) or (2) of this subsection, that are specifically associated with the provision of the service or group of services; and

(4) any cost or surcharge associated with an explicit subsidy that is applied to all providers of the service for the purpose of promoting universal service.

(i) The commission may waive an imputation requirement for any public interest service such as 9-1-1 service and dual party relay service if the commission determines that the waiver is in the public interest.

Sec. 3.455. Telecommunications Number Portability. (a) Because a uniform national number plan is valuable and necessary to the state, the commission by rule shall adopt guidelines governing telecommunications number portability and the assignment of telephone numbers in a competitively neutral manner. The commission rules may not be inconsistent with the rules and regulations of the Federal Communications Commission regarding telecommunications number portability.

(b) In this Act, "telecommunications number portability" means the ability of a user of telecommunications services, to the extent technically feasible, to

retain an existing telephone number without impairing the quality, reliability, or convenience of service when changing from one provider of telecommunications service to another provider.

(c) As an interim measure, the commission shall adopt reasonable mechanisms to allow consumers to retain their telephone numbers. At a minimum, these mechanisms shall include the use of call forwarding functions and direct inward dialing for those purposes. An incumbent local exchange company with one million access lines or more shall file tariffs before November 1, 1995, and the commission, before March 1, 1996, shall determine reasonable rates to be charged for call forwarding functions, direct inward dialing, and any other mechanism the commission determines should be used as an interim number portability measure by a new entrant. An incumbent local exchange company with fewer than one million access lines where a certificate of operating authority or a service provider certificate of operating authority has been granted shall file tariffs within 60 days after the date of a bona fide request, and the commission, within 60 days after the date the tariffs are filed, shall determine reasonable rates to be charged for call forwarding functions, direct inward dialing, and any other mechanism the commission determines should be used as an interim number portability measure by a new entrant.

Sec. 3.456. Expanded Interconnection. (a) Not later than September 1, 1996, the commission shall adopt rules for expanded interconnection that:

(1) are consistent with the rules and regulations of the Federal Communications Commission relating to expanded interconnection;

(2) treat intrastate private line services as special access service; and

(3) provide that if an incumbent local exchange company is required to provide expanded interconnection to another local exchange company, the second local exchange company shall, in a like manner, provide expanded interconnection to the first company.

(b) This section does not prohibit the commission from completing a proceeding pending on April 1, 1995, that addresses expanded interconnection.

Sec. 3.457. COSTING AND PRICING. (a)(1) The commission shall complete a pricing rulemaking and adopt a pricing rule by April 1, 1997. Companies subject to that rule shall file cost studies and necessary supporting data not later than November 1, 1996, unless specific waivers are authorized.

(2) The commission has 85 days after the date a cost study is submitted to administratively approve it or to order that changes be made, except that the review process may be suspended for 30 days upon motion of the presiding examiner or for good cause shown by any party that demonstrates a justiciable interest. Such request must be made within the first 45 days of the review process. If the commission delegates approval of the cost study to an administrative law judge or hearings examiner, the judge or examiner has 85 days, or 115 days if suspended, to administratively approve it or to order that changes be made. The commission may not conduct a contested case to approve a cost study submitted under this section.

(3) Any party may appeal to the commission an administrative determination by an administrative law judge or hearings examiner under Subdivision (2) of this subsection within five days after the date of notification of the determination. The commission shall rule on the appeal within 30 days after the date it receives the appeal.

(4) If the commission or an administrative law judge or hearings examiner orders a cost study to be changed, the judge or examiner shall order the company to make those changes within a period that is commensurate with the complexity of the study and the need to complete the cost studies in a timely manner.

(5) The parties shall be permitted expedited discovery after a cost study is submitted. The commission shall fairly evaluate the comments or pleadings filed by any party regarding the cost study.

(b) In adopting the pricing rule, the commission shall:

(1) ensure that prices for monopoly services remain affordable;

(2) ensure that prices for competitive services may not be:

(A) unreasonably preferential, prejudicial, or discriminatory;

(B) subsidized either directly or indirectly by noncompetitive services; or

(C) predatory or anticompetitive; and

(3) require that each service recover the appropriate cost, including appropriate joint and common costs, of any and all facilities and functions used to provide that service.

(c) The commission shall allow an incumbent local exchange company that is not a Tier 1 local exchange company as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 local exchange company.

Sec. 3.458. INTERCONNECTION. (a) "Interconnection" for the purposes of this section means the termination of local intraexchange traffic of another local exchange company or holder of a service provider certificate of operating authority within the local calling area of the terminating local exchange company or certificate holder for calls that originate and terminate in this state. The provisions of this section do not govern rates for the existing termination of cellular or interexchange traffic.

(b) The commission shall require all providers of telecommunications services to maintain interoperable networks. Telecommunications providers shall negotiate network interconnectivity, charges, terms, and conditions, and in that event the commission shall approve the interconnection rates. The commission may resolve disputes filed by a party to those negotiations.

(c) In the absence of a mutually agreed compensation rate negotiated under Subsection (b) of this section, each carrier shall reciprocally terminate the other carrier's traffic at no charge for the first nine months after the date on which the first call is terminated between the carriers.

(d) The commission shall, within the nine-month period prescribed by Subsection (c) of this section, complete a proceeding to establish reciprocal interconnection rates, terms, and conditions. The commission shall establish reciprocal interconnection rates, terms, and conditions based solely on the commission proceeding. In establishing the initial interconnection rate, the commission may not require cost studies from the new entrant. Not earlier than three years after the date on which the first call is terminated between the carriers, the commission may, if the commission receives a complaint, require cost studies by a new entrant for the purpose of establishing interconnection rates.

(e) The incumbent local exchange company may adopt the interconnection rates approved for a larger incumbent local exchange company without the commission requirement of additional cost justification. If an incumbent local exchange company does not adopt the interconnection rates of a larger company, or negotiates under Subsection (b) of this section, the company is governed by Subsections (c) and (d) of this section. If the incumbent local exchange company adopts the interconnection rates of another incumbent local exchange company, the new entrant may adopt those rates as the new entrant's interconnection rates. If the incumbent local exchange company elects to file its own tariff, the new entrant must also file its own interconnection tariff.

(f) The commission may make generic rules and set policies governing interconnection arrangements. The commission may establish rules that are responsive to changes in federal law or developments in the local exchange market.

(g) The commission may not use interconnection rates under this section as a basis to alter interconnection rates for other services.

(h) The commission has exclusive jurisdiction over any holder of a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority for the determination of rates, terms, and conditions for interconnection.

Sec. 3.459. INCUMBENT LOCAL EXCHANGE COMPANY REQUIREMENTS. (a) An incumbent local exchange company may not unreasonably:

(1) discriminate against another provider by refusing access to the local exchange;

(2) refuse or delay interconnections to another provider;

(3) degrade the quality of access provided to another provider;

(4) impair the speed, quality, or efficiency of lines used by another provider;

(5) fail to fully disclose in a timely manner on request all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or

(6) refuse or delay access by any person to another provider.

(b) This section may not be construed to require an incumbent local exchange company to provide expanded interconnection as that term is defined by the Federal Communications Commission.

(c) Nothing in this Act shall require the commission to change the rate treatment for Bulletin Board Systems in residences established by the commission in Docket No. 8387 nor is anything in this Act intended to regulate or tax Bulletin Board Systems or Internet Service Providers or to require any changes in the rates charged to these entities under existing tariffs, provided they only provide enhanced or information services and not telecommunications services.

Sec. 3.460. COMMISSION AUTHORITY. (a) The commission has all authority necessary to establish procedures with respect to the policies stated in Sections 3.451, 3.452, 3.453, 3.454, 3.455, 3.456, 3.457, and 3.458 of this Act and to resolve any disputes arising under those policies.

(b) The commission has the authority to and shall adopt procedures for the

processing of proceedings under Sections 3.452 and 3.453 of this Act, including the authority to limit discovery and, except for the office, align parties having similar positions for purposes of cross-examination. In adopting procedures under this section and in resolving disputes, the commission shall consider the impact on consumers, competitors, and the incumbent local exchange company. The commission may not implement, by order or rule, any requirement that is contrary to any applicable federal rule or law.

Sec. 3.461. APPLICATIONS AND RULES. The obligations prescribed by Sections 3.452, 3.453, 3.455, 3.456, and 3.458 of this Act may not, until September 1, 1998, be applied to incumbent local exchange companies serving fewer than 31,000 access lines. After September 1, 1998, the obligations prescribed by Sections 3.452, 3.453, and 3.456 of this Act may be applied only on a bona fide request from a certified telecommunications utility. In applying these rules to these incumbent local exchange companies, the commission may modify the rules as it finds in the public interest.

Sec. 3.462. REVIEW OF IMPLEMENTATION. The provisions of Sections 3.452, 3.454, and 3.457 of this Act do not initially apply to incumbent local exchange companies that as of September 1, 1995, have 31,000 or more access lines in this state but fewer than one million access lines in this state. The obligations prescribed by those sections may be applied to such companies only on a bona fide request from a holder of a certificate of operating authority or service provider certificate of operating authority. In applying these rules to these incumbent local exchange companies, the commission may modify the rules as it finds in the public interest.

Sec. 3.463. INFRASTRUCTURE SHARING. (a) The commission shall prescribe rules that require a local exchange company to share public switched network infrastructure and technology with a requesting local exchange company that lacks economies of scale or scope, for the purpose of enabling that requesting company to provide telecommunications services in the geographic areas to which the requesting company is designated as the sole carrier of last resort.

(b) The rules governing the sharing:

(1) may not require a local exchange company to make a decision that is uneconomic or adverse to the public;

(2) shall permit, but not require, joint ownership and operation of public switched network infrastructure and services by or among the local exchange companies sharing infrastructure; and

(3) shall establish conditions that promote cooperation between local exchange companies.

SUBTITLE K. BROADCASTER SAFEGUARDS

Sec. 3.501. CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI). (a) In this section:

(1) "Specific customer proprietary network information" (specific CPNI) means:

(A) information that relates to the quantity, technical configuration, type, destination, or amount of use of voice or data telecommunications services subscribed to by any customer of a telecommunications utility, but excluding wireless telecommunications providers,

and is made available to the utility by the customer solely by virtue of the utility-customer relationship;

(B) information contained in the bills relating to telecommunications services received by a customer of a telecommunications utility; and

(C) any other information concerning the customer as is available to the telecommunications utility by virtue of the customer's use of the telecommunications utility service. The term does not include subscriber list information.

(2) "Subscriber list information" means any information that:

(A) identifies the listed names of subscribers of a telecommunications utility or those subscribers' telephone numbers, addresses, or primary advertising classifications, or any combination of those listed names, numbers, addresses, or classifications; and

(B) the telecommunications utility or an affiliate has published or accepted for future publication.

(b) Except as preempted by the Federal Communications Commission, a telecommunications utility may not use specific CPNI for commercial purposes other than the sale, provision, or billing and collection of telecommunications or enhanced services. Nothing herein prohibits the use of specific CPNI with the customer's consent or the provision of specific CPNI to an affiliate telecommunications provider.

(c) Not later than September 1, 1996, the commission shall adopt rules that are consistent with rules on this subject adopted by the Federal Communications Commission. Rules adopted under this section shall:

(1) require each telecommunications utility to notify each subscriber annually, through means approved by the commission, of the subscriber's right to reject the utility's use of specific CPNI for purposes of marketing other services;

(2) in the event the Federal Communications Commission adopts new CPNI rules that no longer preempt a state's authority to adopt inconsistent rules, the commission shall institute a proceeding regarding the appropriate use of CPNI by all telecommunications utilities, provided that any rule, policy, or order adopted by the commission may not be discriminatory in its application to telecommunications utilities; and

(3) require each telecommunications utility, if the utility makes nonproprietary aggregate CPNI available to its affiliates, to make that information available on the same terms and conditions to unaffiliated entities.

(d) The commission may not implement any rules regarding CPNI applicable to an incumbent local exchange company having 100,000 or fewer access lines in service in this state that are more burdensome to the company than the CPNI rules of the Federal Communications Commission, except that this prohibition does not apply to uses of CPNI that are unrelated to telecommunications services or products.

Sec. 3.502. AUDIO VIDEO. (a) In this Act:

(1) "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station as defined by the Federal Communications Commission under Section 602, Communications Act of 1934 (47 U.S.C. Section 522).

(2) "Audio programming" means programming provided by or generally considered comparable to programming provided by an AM or FM broadcast station. However, the term does not include any audio-related services of the type offered by the incumbent local exchange company as of September 1, 1995.

(b) An incumbent local exchange company may not provide audio or video programming in this state. However, nothing herein prohibits a separate corporate affiliate of an incumbent local exchange company from providing audio or video programming.

(c) A separate corporate affiliate of an incumbent local exchange company providing audio or video programming:

(1) shall obtain telecommunications services from its affiliate incumbent local exchange company at tariffed rates, or if those services are not provided under a tariff, at the fair market value or, in the event there is no fair market value or that value is less than long run incremental cost (LRIC), then the rate is equal to the service's LRIC;

(2) shall purchase, use, rent, or access information, services, space, or devices that are not telecommunications services from its affiliate incumbent local exchange company consistent with the affiliate transaction rules promulgated by the Federal Communications Commission then in effect, provided that in no case shall those transactions be valued at less than the greater of net book value or fair market value, whichever is applicable;

(3) shall maintain books, records, and accounts that are separate from those of an incumbent local exchange company, which books, records, and accounts shall be kept in accordance with generally accepted accounting principles;

(4) shall prepare financial statements that are not consolidated with those of an incumbent local exchange company, provided, however, that financial statements and consolidated tax returns may be prepared that consolidate the operation of the separate corporate affiliate with a parent company and its other subsidiaries;

(5) may not incur debt in a manner that would permit a creditor on default to have recourse to the assets of the incumbent local exchange company;

(6) may not use the names, trademarks, or service marks of the incumbent local exchange company, but this does not prohibit the use of those names or marks if they are used in common with the parent, affiliate, or owner of the incumbent local exchange company;

(7) shall perform its marketing and sales functions and operation in compliance with Open Network Architecture and the affiliate transaction rules promulgated by the Federal Communications Commission then in effect;

(8) may not have any directors, officers, or employees in common with the incumbent local exchange company; and

(9) shall maintain a separate corporate entity from the incumbent local exchange company.

(d) As to its separate affiliate providing video or audio programming, an incumbent local exchange company:

(1) may not develop a rate for a telecommunications service or deploy a telecommunications service to primarily benefit its separate affiliate for the

affiliate's video or audio programming unless that rate or service is available on a nondiscriminatory basis to all purchasers;

(2) may not be unreasonably preferential in the deployment of telecommunications services for its separate affiliates' audio or video programming;

(3) may not enter into customer specific contracts for the provision of tariffed telecommunications services with its separate affiliate unless substantially the same terms and conditions of the contract are generally available to nonaffiliated interests;

(4) shall maintain and file with the commission copies of all contracts or arrangements between the incumbent local exchange company and the separate affiliate and report the contract amount for each cash and noncash transaction with the separate affiliate, including payments for costs of any goods and services or any property right or thing or for interest expense;

(5) may not transfer assets to the separate affiliate unless those assets are priced no lower than assets that are available in an arm's-length transaction to third parties;

(6) shall value any assets that are transferred to a separate affiliate at the greater of net book or fair market value;

(7) shall value any assets that are transferred to it by its separate affiliate at the lesser of net book value or fair market value except instances where Federal Communications Commission or commission rules or regulations permit in-arrears payment for tariffed telecommunications services or the investment by an affiliate of dividends or profits derived from the incumbent local exchange company;

(8) shall comply with all applicable Federal Communications Commission cost and other accounting rules;

(9) may not have any directors, officers, or employees in common with the separate affiliate;

(10) may not own any property in common with the separate affiliate; and

(11) shall provide, if it offers telecommunications equipment or services to audio and video programming providers, those services:

(A) at just and reasonable rates that are tariffed, so long as the commission rules require those tariffs, under nondiscriminatory terms and conditions; and

(B) if the equipment and services are not subject to regulation, on similar terms and conditions to all video or audio programming providers.

(e) In addition to the requirements and prohibitions prescribed by Subsection (d) of this section, an incumbent local exchange company shall, if it offers billing and collection services to nonaffiliated audio and video programming providers, provide those services under nondiscriminatory terms and conditions. Nothing herein requires an incumbent local exchange company to offer billing and collection service to nonaffiliated programmers, and an incumbent local exchange company may exclude certain classes of programmers from its billing and collection services.

(f) An incumbent local exchange company shall have a compliance audit

performed every three years by an independent accounting firm. The audit shall be conducted for the purpose of determining whether the incumbent local exchange company, during the preceding three years, is in compliance with all of the requirements imposed by this section regarding the incumbent local exchange company. The independent accounting firm shall file the report with the commission. If the report concludes that the incumbent local exchange company is not in compliance with any portion of this section, the commission shall institute appropriate action against the incumbent local exchange company. The report shall be considered commercial or financial information that is confidential by statute under Chapter 552, Government Code.

(g) Except as otherwise specifically provided by this Act, the commission's jurisdiction over affiliates of incumbent local exchange companies that are audio and video programmers is limited to the requirements of this section and does not extend to subjects not specifically provided herein.

(h) This section does not apply to an incumbent local exchange company having 100,000 or fewer total access lines in service in this state.

(i) A company to which this section applies may petition the commission for a waiver from any of the requirements imposed herein. The commission shall grant the waiver if it is in the public interest to do so, taking into account whether the need for the restriction still exists in the market involved. The commission may revoke any waiver granted if it is shown that conditions under which the waiver was granted have materially changed and it is in the public interest to do so.

Sec. 3.503. ADVERTISING. (a) Advertising agency services include the functions generally performed by a general advertising agency, including advertising development, advertising purchase, advertising consultation, advertising copywriting, and advertising research.

(b) An incumbent local exchange company may not sell advertising agency services to nonaffiliates in this state. Nothing herein prohibits a local exchange company from:

(1) any activities to promote or sell telecommunications services and equipment, including voice, data, video dial tone, video programming, audio programming, cellular, interactive media, software, and other related services and equipment; or

(2) any activities that seek to enhance or promote the use of the telecommunications network.

(c) A separate corporate affiliate of an incumbent local exchange company may engage in advertising agency activities, but in the conduct of that business a separate corporate affiliate:

(1) shall maintain books, records, and accounts that are separate from those of an incumbent local exchange company, which books, records, and accounts shall be kept in accordance with generally accepted accounting principles;

(2) shall prepare financial statements that are not consolidated with those of an incumbent local exchange company provided, however, that financial statements and consolidated tax returns may be prepared that consolidate the operation of the separate corporate affiliate with a parent company and its other subsidiaries;

(3) may not incur debt in a manner that would permit a creditor on default to have recourse to the assets of the incumbent local exchange company;

(4) may not have any directors, officers, or employees in common with the incumbent local exchange company;

(5) shall maintain a separate corporate entity from the incumbent local exchange company; and

(6) may not use the names, trademarks, or service marks of the incumbent local exchange company, but this does not prohibit the use of those names or marks where they are used in common with the parent, affiliate, or owner of the incumbent local exchange company.

(d) Except as provided by Subsection (b) of this section, an incumbent local exchange company that has an affiliate that provides advertising agency services on behalf of nonaffiliates in this state may not jointly market that affiliate's advertising agency services in connection with telecommunications services and equipment provided by the incumbent local exchange company. This prohibition does not apply to advertising in telephone directories in whatever form disseminated.

(e) Nothing herein prevents the incumbent local exchange company from providing telephone solicitation services for charitable organizations.

(f) This section does not apply to an incumbent local exchange company having 100,000 or fewer total access lines in service in this state.

(g) A company to which this section applies may petition the commission for a waiver from any of the requirements imposed herein. The commission shall grant the waiver if it is in the public interest to do so, taking into account whether the need for the restriction still exists in the market involved. The commission may revoke any waiver granted if it is shown that conditions under which the waiver was granted have materially changed and it is in the public interest to do so.

Sec. 3.504. VIDEO CARRIAGE. (a) Subject to a programmer operating as a common channel manager under the provisions of Subsection (c) of this section, each incumbent local exchange company that provides telecommunications services that are used in the transmission of video programming directly to subscribers or that enables customers to access video programming shall permit local full-power, FCC-licensed broadcast stations, to the extent capacity permits, access to these telecommunications services at tariffed rates or, if those services are not provided under a tariff, on similar terms and conditions as other video programmers that provide similar programming. The incumbent local exchange company shall transmit the signals delivered to it by the local broadcast station without material degradation, and the quality offered may not be less than that made available to other video programmers.

(b) Each incumbent local exchange company that provides telecommunications services that are used in the transmission of video programming directly to subscribers or to enable customers to access video programming:

(1) may not unreasonably discriminate among programming providers with respect to transmission of their signals;

(2) may not delete, change, or alter any copyright identification transmitted as part of the programming signal; and

(3) shall, if it provides a "video dial tone service" with a level one gateway, as that term is defined by the Federal Communications Commission, make available to programmers a menu or programming guide on which programmers may display a listing of the stations required to be carried by the programmer under Subsection (c) of this section.

(c) To the extent that federal law and Federal Communications Commission rules and orders permit, a programmer operating as a common channel manager that purchases for commercial purposes 50 or more analog channels on a local exchange video dial tone level one platform over which video programming is made available to subscribers, shall make available to subscribers local full-power, Federal Communications Commission-licensed television stations, provided that retransmission is granted under Subsection (d) of this section. A programmer subject to this section shall be required to make available up to six television stations, except that in markets that contain a county having a population of more than one million, the programmer shall be required to make available up to nine full-power, Federal Communications Commission-licensed local broadcast stations. The programmer shall make the selection of the broadcast channels to be carried under this section.

(d) A Federal Communications Commission-licensed television station seeking carriage under Subsection (c) of this section shall grant retransmission consent to the programmer and to the incumbent local exchange company. However, nothing in this Act requires a programmer or incumbent local exchange company to provide monetary payment or other valuable consideration in exchange for that carriage.

(e) This section does not apply to an incumbent local exchange company having 100,000 or fewer total access lines in service in this state or to a programmer on the video dial tone platform of that incumbent local exchange company.

(f) A company to which this section applies may petition the commission for a waiver from any of the requirements imposed herein. The commission shall grant the waiver if it is in the public interest to do so, taking into account whether the need for the restriction still exists in the market involved. The commission may revoke any waiver granted if it is shown that conditions under which the waiver was granted have materially changed and it is in the public interest to do so.

(g) Except as otherwise specifically provided by this Act, the commission's jurisdiction over affiliates of incumbent local exchange companies that are video programmers is limited to the requirements of this section and does not extend to subjects not specifically provided herein.

(h) This section expires August 31, 1999.

Sec. 3.505. AUDIO CARRIAGE. (a) To the extent that federal law and Federal Communications Commission rules and orders permit, and consistent with technical specifications, a programmer operating as a common channel manager that makes available for commercial purposes to subscribers 12 or more channels of audio programming similar to broadcasts of Federal Communications Commission-licensed radio stations on an incumbent local exchange company's level one video dial tone platform shall make available to subscribers local Federal Communications Commission-licensed radio

stations, provided that retransmission is granted under Subsection (b) of this section. A programmer subject to this subsection may not be required to make available more than one-third of its analog audio channels to radio stations. The programmer shall make the selection of the radio stations to be carried under this section.

(b) A local Federal Communications Commission-licensed radio station seeking carriage under Subsection (a) of this section shall grant retransmission consent to the programmer and the incumbent local exchange company. However, nothing in this Act requires a programmer or incumbent local exchange company to provide monetary payment or other valuable consideration in exchange for that carriage.

(c) This section does not apply to an incumbent local exchange company having 100,000 or fewer total access lines in service in this state or to a programmer on the video dial tone platform of that incumbent local exchange company.

(d) A company to which this section applies may petition the commission for a waiver from any of the requirements imposed herein. The commission shall grant the waiver if it is in the public interest to do so, taking into account whether the need for the restriction still exists in the market involved. The commission may revoke any waiver granted if it is shown that conditions under which the waiver was granted have materially changed and it is in the public interest to do so.

(e) Except as otherwise specifically provided by this Act, the commission's jurisdiction over affiliates of incumbent local exchange companies that are video programmers is limited to the requirements of this section and does not extend to subjects not specifically provided herein.

(f) This section expires August 31, 1999.

Sec. 3.506. APPLICATION OF SUBTITLE. This subtitle does not apply to a cable company.

SUBTITLE L. ELECTRONIC PUBLISHING

Sec. 3.551. DEFINITIONS. In this subtitle:

(1) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with an incumbent local exchange company. The term does not include a separated affiliate.

(2) "Basic telephone service" means any wireline telephone exchange service, or wireline telephone exchange facility, provided by an incumbent local exchange company in a telephone exchange area, other than a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and a commercial mobile service provided by an affiliate that is required by the Federal Communications Commission to be a corporate entity separate from the local exchange company.

(3) "Basic telephone service information" means network and customer information of an incumbent local exchange company and other information acquired by an incumbent local exchange company as a result of its engaging in the provision of basic telephone service.

(4) "Control" has the meaning provided by 17 C.F.R. Section

240.12b—2, the regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) or any successor provision to that section.

(5)(A) "Electronic publishing" means the dissemination, provision, publication, or sale to an unaffiliated entity or person, using an incumbent local exchange company's basic telephone service, of:

(i) news;

(ii) entertainment (other than interactive games);

(iii) business, financial, legal, consumer, or credit material;

(iv) editorials;

(v) columns;

(vi) sports reporting;

(vii) features;

(viii) advertising;

(ix) photos or images;

(x) archival or research material;

(xi) legal notices or public records;

(xii) scientific, educational, instructional, technical, professional, trade, or other literary materials; or

(xiii) other like or similar information.

(B) "Electronic publishing" does not include the following network services:

(i) information access, as that term is defined by the modification of final judgment;

(ii) the transmission of information as a common carrier;

(iii) the transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, that do not affect the presentation of those electronic publishing services to users;

(iv) voice storage and retrieval services, including voice messaging and electronic mail services;

(v) level 2 gateway services as those services are defined by the Federal Communications Commission's Second Report and Order, Recommendation to Congress and Second Further Notice of Proposed Rulemaking in CC Docket No. 87-266 dated August 14, 1992;

(vi) data processing services that do not involve the generation or alteration of the content of information;

(vii) transaction processing systems that do not involve the generation or alteration of the content of information;

(viii) electronic billing or advertising of an incumbent local exchange company's regulated telecommunications services;

(ix) language translation;

(x) conversion of data from one format to another;

(xi) the provision of information necessary for the management, control, or operation of a telephone company telecommunications system;

(xii) the provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising;

(xiii) caller identification services;

(xiv) repair and provisioning databases for telephone company operations;

(xv) credit card and billing validation for telephone company operations;

(xvi) 911-E and other emergency assistance databases;

(xvii) any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information;

(xviii) any upgrades to these network services that do not involve the generation or alteration of the content of information;

(xix) full motion video entertainment on demand; and

(xx) video programming as defined by Section 602, Communications Act of 1934 (47 U.S.C. Section 522).

(6) "Electronic publishing joint venture" means a joint venture owned by an incumbent local exchange company or affiliate that engages in the provision of electronic publishing that is disseminated by means of that incumbent local exchange company's or any of its affiliates' basic telephone service.

(7) "Entity" means any organization, and includes a corporation, partnership, sole proprietorship, association, and joint venture.

(8) "Inbound telemarketing" means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

(9) "Own," with respect to an entity, means to have a direct or indirect equity interest, or the equivalent, of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

(10) "Separated affiliate" means a corporation under common ownership or control with an incumbent local exchange company that does not own or control an incumbent local exchange company and is not owned or controlled by an incumbent local exchange company and that engages in the provision of electronic publishing that is disseminated by means of the incumbent local exchange company's or any of its affiliates' basic telephone service.

(11) "Incumbent local exchange company" means, for purposes of this subtitle only, a company serving more than five million access lines in this state and subject to the modification of final judgment or any entity owned or controlled by that corporation, or any successor or assign of that corporation. The term does not include an electronic publishing joint venture owned by that corporation or entity and permitted by Section 3.559.

Sec. 3.552. Electronic Publishing. (a) An incumbent local exchange company or an affiliate may not engage in the provision of electronic publishing that is disseminated by means of the incumbent local exchange company's or any of its affiliates' basic telephone service.

(b) Nothing in this subtitle prohibits a separated affiliate or electronic publishing joint venture from engaging in the provision of electronic publishing or any other lawful service in any area.

(c) Nothing in this subtitle prohibits an incumbent local exchange company or affiliate from engaging in the provision of any lawful service other than electronic publishing in any area or from engaging in the provision of electronic publishing that is not disseminated by means of the incumbent local exchange company's or any of its affiliates' basic telephone service.

Sec. 3.553. SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS. A separated affiliate or electronic publishing joint venture:

(1) shall maintain books, records, and accounts that are separate from those of the incumbent local exchange company and from any affiliate and that record in accordance with generally accepted accounting principles all transactions, whether direct or indirect, with the incumbent local exchange company;

(2) may not incur debt in a manner that would permit a creditor on default to have recourse to the assets of the incumbent local exchange company;

(3) shall prepare financial statements that are not consolidated with those of the incumbent local exchange company or an affiliate, provided that consolidated statements may also be prepared;

(4) shall file with the commission annual reports in a form substantially equivalent to the Form 10-K required by regulations of the Securities and Exchange Commission;

(5) after September 1, 1996, may not hire:

(A) as corporate officers, sales and marketing management personnel whose responsibilities at the separated affiliate or electronic publishing joint venture will include the geographic areas where the incumbent local exchange company provides basic telephone service;

(B) network operations personnel whose responsibilities at the separated affiliate or electronic publishing joint venture would require dealing directly with the incumbent local exchange company; or

(C) any person who was employed by the incumbent local exchange company during the year preceding the date of hire, except that the requirements of this paragraph do not apply to persons subject to a collective bargaining agreement that gives those persons rights to be employed by a separated affiliate or electronic publishing joint venture of the local exchange company;

(6) may not provide any wireline telephone exchange service in any telephone exchange area in which an incumbent local exchange company with which it is under common ownership or control provides basic telephone exchange service except on a resale basis;

(7) may not use the name, trademarks, or service marks of an existing incumbent local exchange company except for names, trademarks, or service

marks that were used in common with the entity that owns or controls the incumbent local exchange company;

(8) shall have performed annually by March 31, or any other date prescribed by the commission, a compliance review:

(A) that is conducted by an independent entity that is subject to professional, legal, and ethical obligations for the purpose of determining compliance during the preceding calendar year with any provision of this subtitle that imposes a requirement on the separated affiliate or electronic publishing joint venture; and

(B) the results of which are maintained by the separated affiliate for a period of five years subject to review by any lawful authority; and

(9) shall within 90 days after the date of receiving a review described by Subdivision (8) of this subsection, file a report of any exceptions and corrective action with the commission and allow any person to inspect and copy the report subject to reasonable safeguards to protect any proprietary information contained in the report from being used for purposes other than to enforce or pursue remedies under this subtitle.

Sec. 3.554. INCUMBENT LOCAL EXCHANGE COMPANY REQUIREMENTS. (a) An incumbent local exchange company under common ownership or control with a separated affiliate or electronic publishing joint venture:

(1) may not provide a separated affiliate any facilities, services, or basic telephone service information unless it makes those facilities, services, or information available to unaffiliated entities on request and on the same terms and conditions;

(2) shall carry out transactions with a separated affiliate in a manner equivalent to the manner that unrelated parties would carry out independent transactions and not based on the affiliation;

(3) shall carry out transactions with a separated affiliate, that involve the transfer of personnel, assets, or anything of value, in accordance with written contracts or tariffs that are filed with the commission and made publicly available;

(4) shall carry out transactions with a separated affiliate in a manner that is auditable in accordance with generally accepted auditing standards;

(5) shall value any assets that are transferred to a separated affiliate at the greater of net book cost or fair market value;

(6) shall value any assets that are transferred to the incumbent local exchange company by its separated affiliate at the lesser of net book cost or fair market value;

(7) may not, except for instances where Federal Communications Commission or commission rules or regulations permit in-arrears payment for tariffed telecommunications services or the investment by an affiliate of dividends or profits derived from an incumbent local exchange company, provide debt or equity financing directly or indirectly to a separated affiliate;

(8) shall comply fully with all applicable Federal Communications Commission and commission cost allocation and other accounting rules;

(9) shall have performed annually by March 31, or any other date prescribed by the commission, a compliance review:

(A) that is conducted by an independent entity that is subject to professional, legal, and ethical obligations for the purpose of determining compliance during the preceding calendar year with any provision of this subtitle that imposes a requirement on the incumbent local exchange company; and

(B) the results of which are maintained by the incumbent local exchange company for a period of five years subject to review by any lawful authority; and

(10) shall within 90 days after the date of receiving a review described by Subdivision (9) of this subsection, file a report of any exceptions and corrective action with the commission and allow any person to inspect and copy the report subject to reasonable safeguards to protect any proprietary information contained in the report from being used for purposes other than to enforce or pursue remedies under this subtitle.

(b) If the incumbent local exchange company provides facilities or services for telecommunication, transmission, billing and collection, or expanded interconnection to any electronic publisher, including a separated affiliate, for use with or in connection with the provision of electronic publishing that is disseminated by means of the incumbent local exchange company's or any of its affiliates' basic telephone service, the incumbent local exchange company shall provide to all other electronic publishers the same type of facilities and services on request, on the same terms and conditions or as required by the Federal Communications Commission or the commission, and unbundled and individually tariffed to the smallest extent that is technically feasible and economically reasonable to provide.

(c) The incumbent local exchange company shall provide network access and interconnections for basic telephone service to electronic publishers at any technically feasible and economically reasonable point within the incumbent local exchange company's network and at just and reasonable rates that are tariffed, so long as rates for those services are subject to regulation, and that are not higher on a per unit basis than those charged for those services to any other electronic publisher or any separated affiliate engaged in electronic publishing.

(d) If prices for network access and interconnection for basic telephone service are no longer subject to regulation, the incumbent local exchange company shall provide electronic publishers those services on the same terms and conditions as a separated affiliate receives those services.

(e) If any basic telephone service used by electronic publishers ceases to require a tariff, the incumbent local exchange company shall provide electronic publishers with that service on the same terms and conditions as a separated affiliate receives that service.

(f) The incumbent local exchange company shall provide reasonable advance notification at the same time and on the same terms to all affected electronic publishers of information if the information is within any one or more of the following categories:

(1) information necessary for the transmission or routing of information by an interconnected electronic publisher;

(2) information necessary to ensure the interoperability of an electronic publisher's and the incumbent local exchange company's networks; or

(3) information that relates to changes in basic telephone service network design and technical standards that may affect the provision of electronic publishing.

(g) The incumbent local exchange company may not directly or indirectly provide anything of monetary value to a separated affiliate unless in exchange for consideration at least equal to the greater of its net book cost or fair market value, except the investment by an affiliate of dividends or profits derived from an incumbent local exchange company.

(h) The incumbent local exchange company may not:

(1) discriminate in the presentation or provision of any gateway for electronic publishing services or any electronic directory of information services that is provided over the incumbent local exchange company's basic telephone service;

(2) have any directors, officers, or employees in common with a separated affiliate;

(3) own any property in common with a separated affiliate;

(4) perform hiring or training of personnel on behalf of a separated affiliate;

(5) perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that the company provides under tariff or contract subject to the provisions of this subtitle; or

(6) perform research and development on behalf of a separated affiliate.

Sec. 3.555. CUSTOMER PROPRIETARY NETWORK INFORMATION. Consistent with Section 232, Communications Act of 1934, as amended, and Section 3.501 of this Act, an incumbent local exchange company or an affiliate may not provide to an electronic publisher, including a separated affiliate or electronic publishing joint venture, customer proprietary network information for use with or in connection with the provision of electronic publishing that is disseminated by means of the incumbent local exchange company's or any of its affiliates' basic telephone service that is not made available by the incumbent local exchange company or affiliate to all electronic publishers on the same terms and conditions.

Sec. 3.556. COMPLIANCE WITH SAFEGUARDS. An incumbent local exchange company or affiliate, including a separated affiliate, may not act in concert with another incumbent local exchange company or any other entity to knowingly and wilfully violate or evade the requirements of this subtitle.

Sec. 3.557. INCUMBENT LOCAL EXCHANGE COMPANY DIVIDENDS. Nothing in this subtitle prohibits an affiliate from investing dividends derived from an incumbent local exchange company in its separated affiliate, and Sections 3.560 and 3.561 of this Act do not apply to that investment.

Sec. 3.558. JOINT MARKETING. Except as provided by Section 3.559 of this Act, an incumbent local exchange company may not carry out:

(1) any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; or

(2) any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

Sec. 3.559. PERMISSIBLE JOINT ACTIVITIES. (a) An incumbent local exchange company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if those services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, those services shall be made available to all electronic publishers on request, on nondiscriminatory terms, at compensatory prices, and subject to regulations of the commission to ensure that the incumbent local exchange company's method of providing telemarketing or referral and its price structure do not competitively disadvantage any electronic publishers regardless of size, including those that do not use the incumbent local exchange company's telemarketing services.

(b) An incumbent local exchange company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher, provided that the incumbent local exchange company provides only facilities, services, and basic telephone service information as authorized by this subtitle, and provided that the incumbent local exchange company does not own that teaming or business arrangement.

(c) An incumbent local exchange company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with an entity that is not an incumbent local exchange company, affiliate, or separated affiliate to provide electronic publishing services, provided that the incumbent local exchange company or affiliate has not more than a 50 percent direct or indirect equity interest, or the equivalent, or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of an incumbent local exchange company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with a small, local electronic publisher, the commission for good cause shown may authorize the incumbent local exchange company or affiliate to have a larger equity interest, revenue share, or voting control, but not to exceed 80 percent. An incumbent local exchange company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to the joint venture.

Sec. 3.560. TRANSACTIONS RELATED TO THE PROVISION OF ELECTRONIC PUBLISHING BETWEEN AN INCUMBENT LOCAL EXCHANGE COMPANY AND ANY AFFILIATE. (a) Any provision of facilities, services, or basic telephone service information, or any transfer of assets, personnel, or anything of commercial or competitive value, from an incumbent local exchange company to an affiliate related to the provision of electronic publishing shall be:

(1) recorded in the books and records of each entity;

(2) auditable in accordance with generally accepted auditing standards; and

(3) done in accordance with written contracts or tariffs filed with the commission.

(b) A transfer of assets directly related to the provision of electronic publishing from an incumbent local exchange company to an affiliate shall be valued at the greater of net book cost or fair market value. A transfer of assets related to the provision of electronic publishing from an affiliate to the incumbent local exchange company shall be valued at the lesser of net book cost or fair market value.

(c) An incumbent local exchange company may not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing that are not made available to unaffiliated companies on the same terms and conditions.

Sec. 3.561. TRANSACTIONS RELATED TO THE PROVISION OF ELECTRONIC PUBLISHING BETWEEN AN AFFILIATE AND A SEPARATED AFFILIATE. (a) Any facilities, services, or basic telephone service information provided, or any assets, personnel, or anything of commercial or competitive value transferred, from an incumbent local exchange company to an affiliate as described by Section 3.560 of this Act and then provided or transferred to a separated affiliate shall be:

(1) recorded in the books and records of each entity;

(2) auditable in accordance with generally accepted auditing standards; and

(3) done in accordance with written contracts or tariffs filed with the commission.

(b) A transfer of assets directly related to the provision of electronic publishing from an incumbent local exchange company to an affiliate as described by Section 3.560 of this Act and then transferred to a separated affiliate shall be valued at the greater of net book cost or fair market value. A transfer of assets related to the provision of electronic publishing from a separated affiliate to an affiliate and then transferred to the incumbent local exchange company as described by Section 3.560 of this Act shall be valued at the lesser of net book cost or fair market value.

(c) An affiliate may not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing that are not made available to unaffiliated companies on the same terms and conditions.

Sec. 3.562. OTHER ELECTRONIC PUBLISHERS. (a) Except as provided by Section 3.559(c) of this Act:

(1) an incumbent local exchange company may not have any officers, employees, property, or facilities in common with an entity whose principal business is publishing of which a part is electronic publishing; and

(2) an officer or employee of an incumbent local exchange company may not serve as a director of an entity whose principal business is publishing of which a part is electronic publishing.

(b) For the purposes of Subsection (a) of this section, an incumbent local exchange company or an affiliate that owns an electronic publishing joint venture may not be deemed to be engaged in the electronic publishing business solely because of that ownership.

(c) Except as provided by Section 3.559(c) of this Act, an incumbent local exchange company may not carry out:

(1) any marketing or sales for an entity that engages in electronic publishing; or

(2) any hiring of personnel, purchasing, or production, for an entity that engages in electronic publishing.

(d) Except as provided by Section 3.559(c) of this Act, the incumbent local exchange company may not provide any facilities, services, or basic telephone service information to an entity that engages in electronic publishing, for use with or in connection with the provision of electronic publishing that is disseminated by means of the incumbent local exchange company's or any of its affiliates' basic telephone service, unless equivalent facilities, services, or information are made available on equivalent terms and conditions to all.

Sec. 3.563. PRIVATE RIGHT OF ACTION. (a) A person claiming that an act or practice of an incumbent local exchange company, affiliate, or separated affiliate constitutes a violation of this subtitle may file a complaint with the commission or bring suit for the recovery of damages, and the incumbent local exchange company, affiliate, or separated affiliate shall be liable if the incumbent local exchange company does, or causes to be done, any act, matter, or thing in violation of this subtitle. The incumbent local exchange company shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any violation of the provisions of this subtitle, together with a reasonable counsel or attorney's fees to be fixed by the court in every case of recovery, which attorney's fees shall be taxed and collected as part of the costs of the case. Damages may not be awarded for a violation that is discovered by a compliance review as required by Section 3.553(8) or 3.554(a)(9) of this Act and corrected within 90 days.

(b) In addition to the provisions of Subsection (a) of this section, a person claiming that any act or practice of an incumbent local exchange company, affiliate, or separated affiliate constitutes a violation of this subtitle may make application to the commission for an order to cease and desist that violation or may make application in any state district court for an order enjoining those acts or practices or for an order compelling compliance with that requirement.

Sec. 3.564. ANTITRUST LAWS. Nothing in this subtitle may be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

Sec. 3.565. TRANSITION. An electronic publishing service being offered to the public by an incumbent local exchange company or affiliate on the date of enactment of this subtitle shall have one year from that date of enactment to comply with the requirements of this subtitle.

Sec. 3.566. SUNSET. The provisions of this subtitle do not apply to conduct occurring after June 30, 2001.

SUBTITLE M. INFORMATION TECHNOLOGY SERVICES

Sec. 3.581. DEFINITIONS. In this subtitle:

(1) "Management consulting" means the development, refinement, and coordination of strategies to support a client's business direction, positively impact business performance, and improve operating results, in areas such as business planning, operations, information technology, marketing, finance, and human resources.

(2) "Systems development" means the creation, migration, or

improvement of computer systems, including hardware and software, to meet specific business needs or to take advantage of changes in information technology.

(3) "Systems integration" means the acquisition, installation, and integration of hardware, software, communications, and related support components and services.

(4) "Systems management" means the ongoing management and operation of information technology components and may range from specialized systems applications to an enterprise's entire information technology function, including facilities and personnel.

(5) "Process management" means the ongoing responsibility for direction and operation of one or more business processes within an enterprise in areas such as administration, finance, human resources, operations, and sales and marketing.

Sec. 3.582. PROVISION OF INFORMATION TECHNOLOGY SERVICES THROUGH SEPARATE AFFILIATE. (a) Except for services and products provided on September 1, 1995, a local exchange company serving more than five million access lines in this state may not provide the following customized business products or services to customers with 50 or more access lines in this state:

(1) management consulting, except for consulting relating exclusively to telecommunications;

(2) information technology process or systems development;

(3) information technology process or systems integration; or

(4) information technology process or systems management.

(b) This section does not prohibit an affiliate of the local exchange company from providing any of the products or services described by Subsection (a) of this section in accordance with Sections 3.583 and 3.584 of this Act or prohibit a local exchange company from providing those products or services to itself. The local exchange company may also provide those services to an affiliate if neither the local exchange company nor any of its affiliates are engaged in providing those products or services to unaffiliated third parties.

(c) The prohibitions prescribed by Subsection (b) of this section do not prohibit a local exchange company from:

(1) providing mass market and consumer market products and services directly to customers with fewer than 50 access lines in this state that use or rely on the use of information services, information systems, or information technology or processes; or

(2) selling or leasing billing and collection services, local area networks, wide area networks, or any other telecommunications service.

Sec. 3.583. SEPARATE AFFILIATE REQUIREMENTS. (a) An affiliate of the local exchange company providing a service described by Section 3.582(a) of this Act shall:

(1) operate independently from the local exchange company in the provision of its services;

(2) maintain its own books of accounts; and

(3) have separate officers, directors, and employees who may not also

serve as officers, directors, or employees of the local exchange company, except that an officer of a corporate parent or holding company may serve as a director of the local exchange company and as a director of any other of the parent's subsidiaries that are in existence on September 1, 1995, or of any new subsidiary or affiliate established after September 1, 1995, that does not engage in the provision of a service described by Section 3.582(a) of this Act.

(b) All transactions between the local exchange company and the affiliate providing a service described by Section 3.582(a) of this Act shall be conducted on an "arms length" basis with respect to the acquisition of that service from the affiliate.

(c) The local exchange company shall maintain and keep available for inspection by the commission copies of all contracts or arrangements between the company and an affiliate relating to the local exchange company's acquisition of a service described by Section 3.582(a) of this Act from the affiliate. The local exchange company's records must show each cash or noncash transaction with the affiliate for that service, including the payments for goods and services or any property right.

(d) The local exchange company and an affiliate engaged in a service described by Section 3.582(a) of this Act may not jointly own or share in the use of any property.

Sec. 3.584. ADDITIONAL COMPETITIVE SAFEGUARDS. (a) A local exchange company may not discriminate between an affiliate providing a service described by Section 3.582(a) of this Act and any other person in the provision or procurement of goods, services, facilities, or information or in the establishment of standards.

(b) A local exchange company or its affiliate may not use revenues from local exchange telephone service or from local-exchange-company-provided access services to subsidize the provision of a service described by Section 3.582(a) of this Act.

(c) This section does not prohibit the investment by an affiliate of dividends or profits derived from a local exchange company or the development of a product or service described by Section 3.582(a) of this Act by an affiliate of a local exchange company for the local exchange company if the investment or development complies with Section 3.583 of this Act.

SUBTITLE N. TELECOMMUNICATIONS SERVICE ASSISTANCE PROGRAM; UNIVERSAL SERVICE FUND

Sec. 3.601 [~~3.351~~]. TEL-ASSISTANCE SERVICE. 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. 3.602 [~~3.352~~]. ELIGIBILITY FOR TEL-ASSISTANCE SERVICE; BURDEN OF PROOF; BILLING. (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 subtitle 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. 3.603 [~~3.353~~]. TEL-ASSISTANCE SERVICES; BILLING; RATES. (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. 3.604 [~~3.354~~]. STATEWIDE TELECOMMUNICATIONS RELAY ACCESS SERVICE FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED. (a) The commission shall adopt and enforce rules establishing a statewide telecommunications relay access service for the hearing-impaired and speech-impaired using specialized communications equipment such as telecommunications devices for the deaf (TDD) and operator translations. The purpose of this section is to provide for the uniform and coordinated provision of the service on a statewide basis by one telecommunications carrier.

(b) Commission rules relating to a statewide telecommunications relay access service for the hearing-impaired and speech-impaired shall provide that:

(1) the service shall provide the hearing-impaired and speech-impaired with access to the telecommunications network in Texas equal to that provided other customers;

(2) the service shall consist of the following:

(A) switching and transmission of the call;

(B) verbal and print translations by either live or automated

means between hearing-impaired and speech-impaired individuals who use TDD equipment or similar automated devices and others who do not have such equipment; and

(C) other service enhancements proposed by the carrier and approved by the commission;

(3) the calling or called party shall bear no charge for calls originating and terminating within the same local calling area;

(4) the calling or called party shall bear one-half of the total charges established by contract with the commission for intrastate interexchange calls;

(5) as specified in its contract with the commission, charges related to providing the service which are not borne by a calling or called party pursuant to Subdivisions (3) and (4) of this subsection shall be funded from the universal service fund;

(6) local exchange companies may not impose interexchange carrier access charges on calls which make use of this service and which originate and terminate in the same local calling area;

(7) local exchange companies shall provide billing and collection services in support of this service at just and reasonable rates; and

(8) if the commission orders a local exchange company to provide for a trial telecommunications relay access service for the hearing-impaired or speech-impaired, all pertinent costs and design information from this trial shall be available to the general public.

(c) The commission shall allow telecommunications utilities to recover their universal service fund assessment related to this service through a surcharge which the utility may add to its customers' bills. The commission shall specify how the amount of the surcharge is to be determined by each utility. If a utility chooses to impose the surcharge, the bill shall list the surcharge as the "universal service fund surcharge."

(d) The commission shall set the appropriate assessments for the funding of the service by all telecommunications utilities. In setting the appropriate assessments, the commission shall consider the aggregate calling pattern of the users of the service and all other factors found appropriate and in the public interest by the commission. The commission shall review the assessments annually and adjust the assessments as found appropriate hereunder.

(e) The commission shall select the telecommunications carrier which will provide the statewide telecommunications relay access service for the hearing-impaired and speech-impaired. In awarding the contract for this service, the commission shall make a written award of the contract to the offerer whose proposal is the most advantageous to the state, considering price, the interests of the hearing-impaired and speech-impaired community in having access to a high quality and technologically advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to competing offerers. The commission's evaluation of the proposals shall include:

(1) charges for the service;

(2) service enhancements proposed by the offerers;

(3) technological sophistication of the network proposed by the offerers; and

(4) the proposed commencement date for the service.

(f) The telecommunications carrier providing the service shall be compensated for providing such service at rates, terms, and conditions established in its contract with the commission. This compensation may include a return on the investment required to provide the service and compensation for unbillable and uncollectible calls placed through the service, provided that compensation for unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the commission.

(g) The advisory committee to assist the commission in administering this section is composed of the following persons appointed by the commission:

(1) two deaf persons recommended by the Texas Association of the Deaf;

(2) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

(3) one hearing-impaired person recommended by the American Association of Retired Persons;

(4) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(5) one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;

(6) two representatives of telecommunications utilities, one representing a nonlocal exchange utility and one representing a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(7) two persons, at least one of whom is deaf, with experience in providing relay services recommended by the Texas Commission for the Deaf and Hearing-Impaired; and

(8) two public members recommended by organizations representing consumers of telecommunications services.

(h) The commission shall appoint advisory committee members based on recommended lists of candidates submitted in accordance with Subdivision (6) of Subsection (g) of this section. The advisory committee shall monitor the establishment, administration, and promotion of the statewide telecommunications relay access service and advise the commission in pursuing a service which meets the needs of the hearing-impaired and speech-impaired in communicating with other users of telecommunications services. The terms of office of each member of the advisory committee shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. The members of the advisory committee shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties. The commission shall reimburse members of the advisory committee in accordance with this subsection and shall provide clerical and staff support to the advisory committee, including a secretary to record the committee meetings. The commission's costs associated with the advisory committee shall be reimbursed from the universal service fund.

Sec. 3.605 [~~3.355~~]. DISTANCE LEARNING ACTIVITIES BY EDUCATIONAL INSTITUTIONS AND INFORMATION SHARING PROGRAMS BY LIBRARIES; REDUCED RATES. (a) The commission by

rule shall require a dominant carrier to file a tariff containing a reduced rate for a telecommunications service the commission finds is directly related to a distance learning activity that is or could be conducted by an educational institution in this state or an information sharing program that is or could be conducted by a library in this state.

(b) The commission rules shall specify:

(1) the telecommunications services that qualify under this section;

(2) the process by which an educational institution or library qualifies for a reduced rate;

(3) the date by which a dominant carrier shall file a tariff;

(4) guidelines and criteria by which the services and reduced rates shall further the goals stated in Subsection (d) of this section; and

(5) any other requirements, terms, and conditions that the commission determines to be in the public interest.

(c) A tariff filing by a dominant carrier under this section:

(1) shall concern only the implementation of this section;

(2) is not a rate change under Section 3.211 of this Act; and

(3) does not affect any of the carrier's other rates or services.

(d) The services and reduced rates shall be designed to:

(1) encourage the development and offering of distance learning activities by educational institutions or information sharing programs of libraries;

(2) meet the distance learning needs identified by the educational community and the information sharing needs identified by libraries; and

(3) recover the long-run incremental costs of providing the services, to the extent those costs can be identified, so as to avoid subsidizing educational institutions or libraries.

(e) The commission is not required to determine the long-run incremental cost of providing a service before approving a reduced rate for the service. Until cost determination rules are developed and the rates established under this section are changed as necessary to ensure proper cost recovery, the reduced rates established by the commission shall be equal to 75 percent of the otherwise applicable rate. After the commission develops cost determination rules for telecommunications services generally, it shall ensure that a reduced rate approved under this section recovers service-specific long-run incremental costs and avoids subsidization.

(f) An educational institution, library, or dominant carrier may at any time request the commission to:

(1) provide for a reduced rate for a service directly related to a distance learning activity or an information sharing program that is not covered by commission rules;

(2) change a rate;

(3) amend a tariff; or

(4) amend a commission rule.

(g) If the commission determines that a change requested under Subsection (f) is appropriate, it shall make the requested change.

(h) In this section:

(1) "Distance learning" means instruction, learning, and training that

is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(2) "Educational institution" means and includes:

(A) accredited primary or secondary schools owned or operated by state and local governmental entities or private entities;

(B) institutions of higher education as defined by Section 61.003, Education Code;

(C) private institutions of higher education accredited by a recognized accrediting agency as defined by Section 61.003(13), Education Code;

(D) the Central Education Agency, its successors and assigns;

(E) regional education service centers established and operated pursuant to Sections 11.32 and 11.33, Education Code; and

(F) the Texas Higher Education Coordinating Board, its successors and assigns.

(3) "Library" means a "public library" or "regional library system" as those terms are defined by Section 441.122, Government Code, or a library operated by an institution of higher education or a school district.

Sec. 3.606. TELECOMMUNICATIONS INFRASTRUCTURE FUND. (a) In this section:

(1) "Board" means the Telecommunications Infrastructure Fund Board.

(2) "Fund" means the telecommunications infrastructure fund.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code, and also includes a "private or independent institution of higher education" as defined by Section 61.003, Education Code.

(4) "Library" means a "public library," or "regional library system" as those terms are defined by Section 441.122, Government Code, or a library operated by an institution of higher education or a school district.

(5) "School district" has the meaning assigned by Section 19.001, Education Code.

(6) "Private network services" means the telecommunications services provided to an entity described in Section 3.359(b)(1)(A) of this Act and includes broadband services, customized, and packaged network services and does not limit the local exchange company from providing these services with facilities which are also used to provide other services to other customers.

(7) "Public, not-for-profit hospital" or "public not-for-profit health care facility" means a rural or regional hospital or entity such as a rural health clinic which is supported by local or regional tax levies or is, under federal definition, a certified not-for-profit health corporation.

(8) "Telemedicine" means consultive, diagnostic, or other medical services delivered via telecommunications technologies to rural or underserved public, not-for-profit hospitals and primary health care facilities in collaboration with an academic health center and associated teaching hospitals or tertiary centers. Telemedicine includes, but is not limited to, interactive video consultation, teleradiology, telepathology, and distance education for working health care professionals.

(b) The board shall administer the fund. The board consists of nine

members. Three members are appointed by the governor, three members are appointed by the lieutenant governor, and three members are appointed by the governor from a list of individuals submitted by the speaker of the house of representatives. Members of the board serve for staggered, six-year terms, with three members' terms expiring on August 31 of each odd-numbered year. The governor shall designate the presiding officer of the board.

(c) The governor and the lieutenant governor, in making their appointments to the board, and the speaker of the house of representatives, in compiling the list of recommended persons, shall attempt to select members who are representative of, but not limited to, urban and rural school districts, institutions of higher education, libraries, and the public. A person may not serve on the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(d) Members of the board serve without pay but are entitled to reimbursement for their actual expenses incurred in attending meetings of the board or in attending to other work of the board if approved by the chairman of the board.

(e) The board is subject to Chapters 551 and 2001, Government Code. The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory board and this section expire September 1, 2006.

(f) The board is authorized to employ any personnel as reasonably necessary to perform duties delegated by the board, and the board may also enter into contracts as are necessary with state agencies or private entities to perform its duties.

(g) The board may appoint any committees as it determines may assist it in performing its duties under this section.

(h) The fund administered by the board is financed by an annual assessment on all telecommunications providers doing business in this state. Each telecommunications provider shall pay the annual assessment in accordance with the ratio that the annual taxable telecommunications receipts reported by that provider under Chapter 151, Tax Code, bears to the total annual taxable telecommunications receipts reported by all telecommunications providers under Chapter 151, Tax Code.

(i) For the fiscal year beginning September 1, 1995, and for the 10 fiscal years immediately following, the comptroller shall assess and collect from telecommunications providers a total annual amount of $150 million. The amount shall be assessed and collected in each year without respect to whether all of the funds previously collected have been disbursed or spent due to lack of demand or otherwise.

(j) The comptroller may require telecommunications providers to provide any reports and information as are needed to fulfill the duties of the comptroller provided by this section. Any information provided to the comptroller by a telecommunications provider under this section is confidential and exempt from disclosure under Chapter 552, Government Code.

(k) All amounts collected by the comptroller from telecommunications providers under Subsection (h) of this section shall be deposited in the fund

in the state treasury and may be appropriated solely for use by the board consistent with the purposes of this section. Sections 403.094 and 403.095, Government Code, do not apply to the fund.

(l) From funds appropriated to the board, the comptroller shall issue warrants as requested by the board in accordance with the purposes of this section, including warrants to grantees of the board in amounts certified by the board to the comptroller.

(m) In addition to any appropriated funds, the board may accept gifts, grants, and donations and use them for the purposes of this section.

(n) The board shall use the fund to award grants and loans, including grants for installation costs, if applicable, on a competitive basis to rural and urban school districts, regional education service centers, institutions of higher education, and libraries recommended to the board by the Central Education Agency, the Texas Higher Education Coordinating Board, or the Texas State Library and Archives Commission.

(o) The board may award grants to projects and proposals that:

(1) provide equipment and infrastructure needed for distance learning, information sharing programs of libraries, and telemedicine services;

(2) develop and implement the initial or prototypical delivery of courses and other distance learning material;

(3) train teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;

(4) develop curricula and instructional material especially suited for delivery by telecommunications;

(5) provide electronic information; or

(6) establish or carry out information sharing programs.

(p) The board may award loans to projects and proposals to acquire equipment needed for distance learning and telemedicine projects.

(q) In awarding grants and loans, the board shall give priority to projects and proposals that:

(1) represent collaborative efforts involving multiple schools, universities, or libraries;

(2) contribute matching funds from other sources;

(3) show promise of becoming self-sustaining;

(4) help users of information learn new ways to acquire and use information through telecommunications;

(5) extend specific educational information and knowledge services to groups not previously served, especially those in rural and remote areas;

(6) result in more efficient or effective learning than through conventional teaching;

(7) improve the effectiveness and efficiency of health care delivery; or

(8) take advantage of distance learning opportunities in rural and urban school districts with disproportionate numbers of at-risk youths or with high dropout rates.

(r) The Texas Higher Education Coordinating Board, the Central Education Agency, and the Texas State Library and Archives Commission shall adopt policies and procedures in consultation with the board that are designed to aid the board in achieving the purposes of this section.

(s) In distributing funds to public schools, the board shall take into account the relative property wealth per student of the recipient school districts and recognize the unique needs of rural communities.

Sec. 3.607 [~~3.356~~]. RECOVERY OF LOST REVENUES. 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. 3.608 [~~3.357~~]. UNIVERSAL SERVICE FUND. (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 telecommunications service [~~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, to reimburse the telecommunications carrier providing the statewide telecommunications relay access service for the hearing-impaired and speech-impaired as authorized in Section 3.604 [~~3.354~~] of this Act, and to reimburse the Texas Department of Human Services and the commission for costs incurred in implementing the provisions of this subtitle.

(b)(1) For local exchange companies serving fewer than one million access lines, in addition to the authority described by Subsection (a) of this section, the commission may adopt any mechanisms necessary to maintain reasonable rates for local exchange telephone service and shall establish rules that would expand the universal service fund in the circumstances prescribed by this subsection.

(2) In the event of a commission order, rule, or policy, the effect of which is to reduce the amount of the high cost assistance fund, except an order entered in an individual company revenue requirements proceeding, the commission shall implement a mechanism through the universal service fund to replace the reasonably projected reduction in revenues caused by that regulatory action.

(3) In the event of a Federal Communications Commission order, rule, or policy, the effect of which is to change the federal universal service fund revenues of a local exchange company or change costs or revenues assigned to the intrastate jurisdiction, the commission shall implement a mechanism, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, to replace the reasonably projected change in revenues caused by the regulatory action.

(4) In the event of a commission change in its policy with respect to intraLATA "1+" dialing access, the commission shall implement a mechanism, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, to replace the reasonably projected reduction in contribution caused by the action. Contribution for purposes of this subdivision equals average intraLATA long distance message telecommunications service (MTS) revenue, including intraLATA toll pooling and associated impacts, per minute less average MTS cost per minute less the average contribution from switched access times the projected change in intraLATA "1+" minutes of use.

(5) In the event of any other governmental agency issuing an order,

rule, or policy, the effect of which is to increase costs or decrease revenues of the intrastate jurisdiction, the commission shall implement a mechanism through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, to replace the reasonably projected increase in costs or decrease in revenues caused by that regulatory action.

(6) A revenue requirement showing is not required with respect to disbursements from the universal service fund under Subsection (a) or (b) of this section. Those disbursements shall be implemented promptly and efficiently so that telecommunications providers and local exchange companies do not experience unnecessary cash flow changes as a result of these changes in governmental policy.

(c) 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 providers [~~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 provider [~~utility~~] or subject a telecommunications provider [~~utility~~] to unreasonable prejudice or disadvantage. The charge shall be paid in accordance with procedures approved by the commission.

(d) [~~(c)~~] The commission shall:

(1) establish, in a manner that assures reasonable rates for basic local telecommunications [~~exchange~~] service, eligibility criteria and review procedures, including a method for administrative review, it finds necessary for funding of and distribution from [~~participation in~~] the universal service fund;

(2) determine which local exchange companies meet the eligibility criteria, which, at a minimum, include the requirement to offer service to every consumer within its certificated area and render continuous and adequate service within the area or areas, in compliance with the commission's quality of service requirements;

(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 commission incurred in implementing and administrating the provisions of this subtitle; and

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

(e) [~~(d)~~] The commission shall adopt rules for the implementation and administration of the universal service fund.

(f) [~~(e)~~] The commission may do all things necessary and convenient to implement and administer the universal service fund, including require local exchange companies and other telecommunications providers to provide any reports and information needed to assess contributions to the fund. All reports and information are confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 3.609 [~~3.358~~]. INTERACTIVE MULTIMEDIA COMMUNICATIONS.

(a) The commission shall permit a local exchange company that provides interactive multimedia communications services to establish rates at levels necessary, using sound ratemaking principles, to recover costs associated with providing the services. Unless determined by the commission to be in the public interest, a local exchange company may not establish rates under this subsection that are less than the local exchange company's long-run incremental costs of providing the interactive multimedia communications services.

(b) In this section, "interactive multimedia communications" has the meaning assigned by Section 14.0451(a), Education Code, as added by Chapter 868, Acts of the 73rd Legislature, Regular Session, 1993.

Sec. 3.610 [~~3.359~~]. SEVERABILITY. If this subtitle conflicts with another provision of this Act, this subtitle prevails.

SUBTITLE O [~~I~~]. AUTOMATIC DIAL ANNOUNCING DEVICES

Sec. 3.651 [~~3.401~~]. DEFINITIONS. In this subtitle:

(1) "Automated dial announcing device" or "ADAD" means automated equipment used for telephone solicitation or collection that is capable:

(A) of storing telephone numbers to be called or that has a random or sequential number generator capable of producing numbers to be called; and

(B) alone or in conjunction with other equipment, of conveying a prerecorded or synthesized voice message to the number called without the use of a live operator.

(2) "LEC" means a local exchange company, as that term is defined by Section 3.002 [~~3.001~~] of this Act.

Sec. 3.652 [~~3.402~~]. EXEMPTIONS. This subtitle does not apply to the use of an ADAD to make a telephone call:

(1) relating to an emergency or a public service under a program developed or approved by the emergency management coordinator of the county in which the call was received; or

(2) made by a public or private primary or secondary school system to locate or account for a truant student.

Sec. 3.653 [~~3.403~~]. REQUIREMENTS FOR OPERATION OF ADAD. (a) A person may not operate an ADAD to make a telephone call if the device plays a recorded message when a connection is completed to a telephone number unless:

(1) the person has obtained a permit from the commission and given written notice specifying the type of device to each telecommunications utility over whose system the device is to be used;

(2) the device is not used for random number dialing or to dial numbers determined by successively increasing or decreasing integers;

(3) the message states during the first 30 seconds of the call the nature of the call, the identity of the person, company, or organization making the call, and the telephone number from which the call was made, provided, however, that if an ADAD is used for debt collection purposes and the use complies with applicable federal law and regulations, and the ADAD is used by a live operator for automatic dialing or hold announcement purposes, the use complies with this subdivision;

(4) the device disconnects from the called person's line not later than

30 seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator introduces the call and receives the oral consent of the called person before beginning a prerecorded or synthesized voice message; [~~and~~]

(5) the device, when used for solicitation purposes, has a message shorter than one minute or has the technical capacity to recognize a telephone answering device on the called person's line and terminates the call within one minute; and

(6) for calls terminating in this state, the device is not used to make a call:

(A) before noon or after 9 p.m. on a Sunday or before 9 a.m. or after 9 p.m. on a weekday or a Saturday, if the device is used for solicitation; or

(B) at an hour at which collection calls would be prohibited under the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.), if the device is used for collection purposes.

(b) In addition to the requirements prescribed by Subsection (a) of this section, if during the call a cross-promotion or reference to a pay-per-call information service is made, the call shall include:

(1) a statement that a charge will be incurred by a caller who makes a call to a pay-per-call information services telephone number;

(2) the amount of the flat-rate or cost-per-minute charge that will be incurred or the amount of both if both charges will be incurred; and

(3) the estimated amount of time required to receive the entire information offered by the service during a call.

(c) In this section, "pay-per-call information service" means a service that allows a caller to dial a specified "900" or "976" number to call a service that routinely delivers, for a predetermined and sometimes time-sensitive fee, a prerecorded or live message or interactive program.

Sec. 3.654 [~~3.404~~]. INVESTIGATION OF COMPLAINTS; VIOLATIONS; DISCONNECTION OF SERVICE. (a) The commission shall investigate complaints relating to the use of an ADAD and enforce this subtitle.

(b) If the commission or a court determines that a person has violated this subtitle, the commission or court shall require a telecommunications utility to disconnect service to the person. The telecommunications utility may reconnect service to the person only on a determination by the commission that the person will comply with this subtitle. The utility shall give notice to the person using the device of its intent to disconnect service not later than the third day before the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given on the day before the date of disconnection.

(c) A telecommunications utility may, without an order by the commission or a court, disconnect or refuse to connect service to a person using or intending to use an ADAD if the utility determines that the device would cause or is causing network harm.

Sec. 3.655 [~~3.405~~]. APPLICATION FOR PERMIT TO OPERATE ADAD. (a) An application for a permit to use one or more ADADs must be made using the form prescribed by the commission and must be accompanied by a fee in

a reasonable amount computed to cover the enforcement cost to the commission, but not to exceed $500, as determined by the commission. A permit is valid for one year after its effective date. Subject to Subsection (c) of this section, a permit may be renewed annually by making the filing required by this section and paying a filing fee of not more than $100, as determined by the commission. The proceeds of the fees shall be deposited to the credit of the general revenue fund.

(b) Each application for the issuance or renewal of a permit under this section must contain the telephone number of each ADAD that will be used and the physical address from which the ADAD will operate. If the telephone number of an ADAD or the physical address from which the ADAD operates changes, the owner or operator of the ADAD shall notify the commission by certified mail of each new number or address not later than the 48th hour before the hour at which the ADAD will begin operating with the new telephone number or at the new address. If the owner or operator of an ADAD fails to notify the commission as required by this subsection within the period prescribed by this subsection, the permit is automatically invalid.

(c) In determining if a permit should be issued or renewed, the commission shall consider the compliance record of the owner or operator of the ADAD. The commission may deny an application for the issuance or renewal of a permit because of the applicant's compliance record.

(d) The commission shall provide to an LEC on request a copy of a permit issued under this section and of any changes relating to the permit.

(e) An LEC that receives a complaint relating to the use of an ADAD shall send the complaint to the commission. The commission by rule shall prescribe the procedures and requirements for sending a complaint to the commission.

Sec. 3.656 [~~3.406~~]. VIOLATIONS; PENALTIES. (a) A person who owns or operates an ADAD and who operates the ADAD without a valid permit or with an expired permit or who operates the ADAD in violation of this subtitle or a commission rule or order is subject to an administrative penalty of not more than $1,000 for each day or portion of a day during which the ADAD was operating in violation of this section.

(b) The administrative penalty authorized by this section is civil in nature and is cumulative of any other penalty provided by law.

(c) The commission by rule shall prescribe the procedures for assessing an administrative penalty under this section. The procedures shall require proper notice and hearing in accordance with Chapter 2001, Government Code.

(d) A person may appeal the final order of the commission under Chapter 2001, Government Code, using the substantial evidence rule on appeal.

(e) The proceeds of administrative penalties collected under this section shall be deposited to the credit of the general revenue fund.

Sec. 3.657 [~~3.407~~]. REVOCATION OF PERMIT; OFFENSES. (a) The commission may revoke a permit issued under this subtitle for failure to comply with this subtitle.

(b) A person commits an offense if the person owns or operates an ADAD that the person knows is operating in violation of this subtitle. An offense under this subsection is a Class A misdemeanor.

Sec. 3.658 [~~3.408~~]. RULEMAKING AUTHORITY. The commission may

adopt any rules necessary to carry out its powers and duties under this subtitle.

Sec. 3.659 [~~3.409~~]. COMPLIANCE WITH CONSUMERS' REQUESTS NOT TO BE CALLED. Every telephone solicitor operating in this state who makes consumer telephone calls subject to Section 37.02 of the Business & Commerce Code shall implement in-house systems and procedures so that every effort is made not to call consumers who ask not to be called again. The commission is granted all necessary power and authority to enforce the provisions of this section.

Sec. 3.660 [~~3.410~~]. NOTICE TO CONSUMER OF PROVISIONS OF CHAPTER 37 OF THE BUSINESS & COMMERCE CODE AND SECTION 3.659 [~~3.409~~]. The commission by rule shall require that a local exchange company or telephone cooperative inform its customers of the provisions of Chapter 37 of the Business & Commerce Code and Section 3.659 [~~3.409~~] of this Act by:

(1) inserting the notice annually in the billing statement mailed to a customer; or

(2) publishing the notice in the consumer information pages of its local telephone directory.

SECTION 49. (a) Subchapter D, Chapter 74, Property Code, is amended by adding Section 74.3011 to read as follows:

Sec. 74.3011. DELIVERY OF MONEY TO RURAL SCHOLARSHIP FUND. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a local telephone exchange company may deliver reported money to a scholarship fund for rural students instead of delivering the money to the state treasurer as prescribed by Section 74.301.

(b) A local telephone exchange company may deliver the money under this section only to a scholarship fund established by one or more local telephone exchange companies in this state to enable needy students from rural areas to attend college, technical school, or another postsecondary educational institution.

(c) A local telephone exchange company shall file with the state treasurer a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered to a scholarship fund under this section must be filed with the local telephone exchange company that delivered the money. The local telephone exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the scholarship fund is located in accordance with Section 74.506.

(e) The state treasurer shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship fund; and

(3) filing of a claim.

(f) In this section, "local telephone exchange company" means a telecommunications utility certificated to provide local exchange service within the state and that is a telephone cooperative or has fewer than 50,000 access lines in service in this state.

(g) During a state fiscal year, the total amount of money that may be transferred by all local telephone exchange companies under this section may not exceed $400,000. The state treasury shall keep a record of the total amount of money transferred annually. When the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the treasury shall notify each local telephone exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.

(b) Section 74.3011, Property Code, as added by this Act, applies only to money that a local telephone exchange company would otherwise be required to deliver to the state treasurer on or after the effective date of this Act. Money that was required to be delivered to the state treasurer before the effective date of this Act is governed by the law in effect when the money was required to be delivered, and that law is continued in effect for that purpose.

SECTION 50. (a) Subchapter D, Chapter 74, Property Code, is amended by adding Section 74.3012 to read as follows:

Sec. 74.3012. DELIVERY OF MONEY TO URBAN SCHOLARSHIP FUND. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a local exchange company may deliver reported money to a scholarship fund for urban students instead of delivering the money to the state treasurer as prescribed by Section 74.301.

(b) A local exchange company may deliver the money under this section only to a scholarship fund established by one or more local exchange companies in this state to enable needy students from urban areas to attend college, technical school, or another postsecondary educational institution.

(c) A local exchange company shall file with the state treasurer a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered to a scholarship fund under this section must be filed with the local exchange company that delivered the money. The local exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the scholarship fund is located in accordance with Section 74.506.

(e) The state treasurer shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship fund; and

(3) filing of a claim.

(f) In this section, "local exchange company" means a telecommunications utility certificated to provide local exchange telephone service within the state and that has 50,000 or more access lines in service in this state and is not a telephone cooperative.

(g) During the 1995-1996 fiscal year, the total amount of money that may be transferred by all local exchange companies under this section may not exceed $400,000. During each subsequent state fiscal year, the total amount of

money that may be transferred by all local exchange companies under this section may not exceed the total amount of money transferred to rural scholarship funds under Section 74.3011 during the previous state fiscal year. The state treasury shall keep a record of the total amount of money transferred annually. If the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the treasury shall notify each local exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.

(b) Section 74.3012, Property Code, as added by this Act, applies only to money that a local exchange company would otherwise be required to deliver to the state treasurer on or after the effective date of this Act. Money that was required to be delivered to the state treasurer before the effective date of this Act is governed by the law in effect when the money was required to be delivered, and that law is continued in effect for that purpose.

SECTION 51. As soon as possible after the effective date of this Act, the governor and lieutenant governor shall appoint the members of the Telecommunications Infrastructure Fund Board created by Section 3.606, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, as added by this Act. The governor shall appoint two members with terms expiring on August 31, 1997, two members with terms expiring on August 31, 1999, and two members with terms expiring on August 31, 2001. The terms of the members appointed from the list provided by the speaker of the house of representatives must be staggered so that the terms of one-third of those appointees expire every odd-numbered year. The lieutenant governor shall appoint one member with a term expiring on August 31, 1997, one member with a term expiring on August 31, 1999, and one member with a term expiring on August 31, 2001.

SECTION 52. All laws or parts of laws in conflict with this Act are repealed effective September 1, 1995.

SECTION 53. (a) This Act takes effect September 1, 1995.

(b) Section 3.2555, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, as added by this Act, applies only to a franchise or contract entered into or amended on or after September 1, 1995. A franchise or contract entered into before September 1, 1995, and not amended on or after that date is governed by the law in effect when the contract was entered into or last amended, and that law is continued in effect for that purpose.

(c) Sections 3.304(a)(2) and (3), Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, as amended by this Act, apply only to a petition filed on or after April 15, 1995. A petition filed before April 15, 1995, is governed by the law in effect when the petition was filed, and that law is continued in effect for that purpose.

SECTION 54. 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.

Senate Amendment No. 1

Amend **CSHB 2128** by adding a new appropriately numbered section to read as follows:

SECTION ____ The Public Utility Regulatory Act, as enacted by **SB 319**, 74th Legislature, Regular Session, is amended by adding a new section 1.407 to read as follows:

Section 1.407. HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The commission, upon notice and hearing, has the authority to require each utility subject to regulation under the Public Utility Regulatory Act to make an effort to overcome the underuse of historically underutilized businesses.

(b) The commission shall require each utility subject to regulation under Public Utility Regulatory Act to prepare and submit to the commission a comprehensive annual report detailing its use of historically underutilized businesses.

(c) In this section "historically underutilized business" has the same meaning as in Section 481.101, Government Code.

(d) The rules adopted under this section may not be used to discriminate against any citizen on the basis of sex, race, color, creed or national origin.

(e) This section does not create a new cause of action, either public or private.

Senate Amendment No. 2

Amend **CSHB 2128** by striking the second sentence of Section 3.251(d), Public Utility Regulatory Act of 1995, as added by SECTION 22 of the bill (senate committee printing, page 16, lines 65 and 66), and substituting the following:

In addition, a municipality or municipal electric system may not offer for sale to the public, either directly or indirectly through a telecommunications provider, a service for which a certificate is required or any non-switched telecommunications service to be used to provide connections between customers' premises within the exchange or between a customer's premises and a long distance provider serving the exchange.

Senate Amendment No. 3

Amend **CSHB 2128**, Section 19, by striking subsection (c) at pg. 16, lines 47-52 and substituting the following:

(c) Effective as of the time all local exchange companies are allowed by federal law to provide interLATA telecommunications services, the commission shall ensure that customers may designate a provider of their choice to carry their "0+" and "1+" dialed intraLATA calls and that equal access in the public network is implemented such that the provider may carry such calls.

Senate Amendment No. 4

Amend SECTION 25, **CSHB 2128**, as follows:

(1) At page 19, line 62, strike "for" and substitute "to obtain" in Section 3.2532(b).

(2) At page 19, line 68, add "and from the applicant" between "companies" and "such".

Senate Amendment No. 5

Amend SECTION 24, **CSHB 2128**, Section 3.2531(i) as follows:

At page 19, line 4 change "five" to "one"

Amend SECTION 29, **CSHB 2128**, Section 3.2571(2) as follows:

At page 23, line 66, insert between the words "when" and "the build-out" the following phrase:

"a competitor for basic local telecommunications service provides such service in an area where"

Amend SECTION 45, **CSHB 2128**, Section 3.453(f)(2) as follows:

At page 43, line 31-32, strike the phrase "and restrictions" between "prohibitions" and "on".

Senate Amendment No. 6

Amend **CSHB 2128** as follows:

(1) In Section 3.2555(c)(1), Public Utility Regulatory Act of 1995, as added by SECTION 28 of the bill, strike "prevent a telecommunications" and substitute "prevent such a telecommunications".

(2) In Section 3.2555(c)(2), Public Utility Regulatory Act of 1995, as added by SECTION 28 of the bill, strike "one or more telecommunications" and substitute "one or more such telecommunications".

(3) In Section 3.2555(c)(3), Public Utility Regulatory Act of 1995, as added by SECTION 28 of the bill, strike "tenant or a telecommunications" and substitute "tenant or such a telecommunications".

Senate Amendment No. 7

Amend SECTION 45, **CSHB 2128** as follows:

(1) At page 32, at the end of line 12, add the following sentence to Section 3.352(d):

Notwithstanding any other provision of this Act, the commission may not reduce the rates for switched access services for any company electing under this Subtitle before the expiration of the cap on basic network services.

(2) At page 40, at the end of line 14, add the following sentence to Section 3.402(g):

Notwithstanding any other provision of this Act, the commission may not reduce the rates for switched access services for any company electing under this Subtitle before the expiration of the cap under Subsection (b) of this section.

Senate Amendment No. 8

Amend **CSHB 2128** in Section 3.359, Public Utility Regulatory Act of 1995, as added by SECTION 48 of the bill, by adding a new Subsection (g) to read as follows:

(g) The commission may not consider the cost of implementing Subsection (b), (c), or (d) of this section in determining whether an electing company is entitled to a rate increase under this subtitle or increased universal service funds under Section 3.608 of this Act.

Senate Amendment No. 9

Amend SECTION 45, **CSHB 2128** as follows:

(1) At page 33, line 31, of Section 3.353(d)(2), strike the following phrase: "other than price changes"

(2) At page 33, line 37, add the following sentence to Section 3.353(e): Following the four year cap, rate increases to basic network services may only be made with commission approval subject to the provisions of this Act, and to the extent consistent with achieving universal affordable service.

Senate Amendment No. 10

Amend **CSHB 2128** in Section 3.453(c)(2), Public Utility Regulatory Act of 1995, as added by SECTION 48 of the bill (senate committee printing, page 43, line 4), by striking "except as provided by Subsection (f)(1)" and substituting "except as provided by Subsection (f)(1) or (f)(2)".

Senate Amendment No. 11

Amend SECTION 45, **CSHB 2128**, Section 3.608(b)(1) as follows:

At page 68, line 26, strike the word "one" and insert the word "five".

Senate Amendment No. 12

Amend **CSHB 2128** by striking Section 3.606, Public Utility Regulatory Act of 1995, as added by SECTION 48 of the bill (Senate committee printing page 65, line 63 through page 68, line 7) and substituting the following:

Sec. 3.606. TELECOMMUNICATIONS INFRASTRUCTURE FUND. (a) In this section:

(1) "Board" means the Telecommunications Infrastructure Fund Board.

(2) "Fund" means the telecommunications infrastructure fund.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code, and also includes a "private or independent institution of higher education" as defined by Section 61.003, Education Code.

(4) "Library" means a "public library," or "regional library system" as those terms are defined by Section 441.122, Government Code, or a library operated by an institution of higher education or a school district.

(5) "School district" has the meaning assigned by Section 19.001, Education Code.

(6) "Private network services" means the telecommunications services provided to an entity described in Section 3.359(b)(1)(A) of this Act and includes broadband services, customized, and packaged network services and does not limit the local exchange company from providing these services with facilities which are also used to provide other services to other customers.

(7) "Public, not-for-profit hospital" or "public not-for-profit health care facility" means a rural or regional hospital or entity such as a rural health clinic which is supported by local or regional tax levies or is, under federal definition, a certified not-for-profit health corporation.

(8) "Telemedicine" means consultive, diagnostic, or other medical services delivered via telecommunications technologies to rural or underserved public, not-for-profit hospitals and primary health care facilities in collaboration with an academic health center and associated teaching hospitals or tertiary

centers. Telemedicine includes, but is not limited to, interactive video consultation, teleradiology, telepathology, and distance education for working health care professionals.

(9) "Commercial mobile service provider" means a provider of commercial mobile service under Sections 153(n) and 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993.

(b) The legislature finds that commercial mobile service providers benefit from the public telecommunications network by the ability to originate and terminate calls that transverse mobile and cellular network and that they will benefit by virtue of the advancement of the public telecommunications network through projects funded under this section. Therefore, it is the policy of this state that commercial mobile service providers contribute an appropriate amount to the telecommunications infrastructure fund.

(c) The board shall administer the fund, including the two accounts in the fund. The board consists of nine members. Three members are appointed by the governor, three members are appointed by the lieutenant governor, and three members are appointed by the governor from a list of individuals submitted by the speaker of the house of representatives. Members of the board serve for staggered, six-year terms, with three members' terms expiring on August 31 of each odd-numbered year. The governor shall designate the presiding officer of the board.

(d) The governor and the lieutenant governor, in making their appointments to the board, and the speaker of the house of representatives, in compiling the list of recommended persons, shall attempt to select members who are representative of, but not limited to, urban and rural school districts, institutions of higher education, libraries, and the public. A person may not serve on the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(e) Members of the board serve without pay but are entitled to reimbursement for their actual expenses incurred in attending meetings of the board or in attending to other work of the board if approved by the chairman of the board.

(f) The board is subject to Chapters 551 and 2001, Government Code. The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory board and this section expire September 1, 2006.

(g) The board is authorized to employ any personnel as reasonably necessary to perform duties delegated by the board, and the board may also enter into contracts as are necessary with state agencies or private entities to perform its duties.

(h) The board may appoint any committees as it determines may assist it in performing its duties under this section.

(i) The board shall prepare an annual report detailing the revenues deposited to the credit of the fund, including each account, and summarizing the grants and loans made from each account. Not later than January 15 of each year, the board shall submit the report for the preceding year to the

governor and to each standing committee in the senate and house of representatives that has jurisdiction over public or higher education.

(j) The fund is composed of the telecommunications utilities account and the commercial mobile service providers account. The telecommunications utilities account is financed by an annual assessment on all telecommunications utilities doing business in this state. Each telecommunications utility shall pay the annual assessment in accordance with the ratio that the annual taxable telecommunications receipts reported by that telecommunications utility under Chapter 151, Tax Code, bears to the total annual taxable telecommunications receipts reported by all telecommunications utilities under Chapter 151, Tax Code.

(k) The commercial mobile service providers account is financed by an annual assessment on all commercial mobile service providers doing business in this state. Each commercial mobile service provider shall pay the annual assessment in accordance with the ratio that the annual taxable telecommunications receipts reported by that provider under Chapter 151, Tax Code, bears to the total annual taxable telecommunications receipts reported by all commercial mobile service providers under Chapter 151, Tax Code.

(l) For the fiscal year beginning September 1, 1995, and for the nine fiscal years immediately following that year, for a total of 10 years, the comptroller shall assess and collect a total annual amount of $75 million from telecommunications utilities and a total annual amount of $75 million from commercial mobile service providers. The amounts assessed against both the telecommunications utilities and the commercial mobile service providers shall be assessed and collected in each year without respect to whether all of the funds previously collected and deposited in either or both accounts have been disbursed or spent due to lack of demand or otherwise.

(m) The comptroller may require telecommunications utilities and commercial mobile service providers to provide any reports and information as are needed to fulfill the duties of the comptroller provided by this section. Any information provided to the comptroller by a telecommunications utility or commercial mobile service provider under this section is confidential and exempt from disclosure under Chapter 552, Government Code.

(n) All amounts collected by the comptroller from telecommunications utilities under Subsection (l) of this section shall be deposited to the credit of the telecommunications utilities account in the telecommunications infrastructure fund in the state treasury. All amounts collected by the comptroller from commercial mobile service providers under Subsection (l) of this section shall be deposited to the credit of the commercial mobile service providers account in the telecommunications infrastructure fund in the state treasury. Money in the fund may be appropriated only for a use consistent with the purposes of this section. Sections 403.094 and 403.095, Government Code, do not apply to the fund or either account.

(o) From funds appropriated to the board, the comptroller shall issue warrants as requested by the board in accordance with the purposes of this section, including warrants to grantees of the board in amounts certified by the board to the comptroller.

(p) In addition to any appropriated funds, the board may accept gifts, grants, and donations and use them for the purposes of this section.

(q) The board shall use money in the telecommunications utilities account to award grants and loans in accordance with this section to fund equipment

purchases, including computers, printers, computer labs, and video equipment, for public schools and for intracampus and intercampus wiring to enable those public schools to use the equipment. The board shall use money in the commercial mobile service providers account for any purpose authorized by this section, including equipment purchases, wiring, material, program development, training, installation costs, or any statewide telecommunications network.

(r) Subject to the limitations prescribed by Subsection (q) of this section, the board may award grants to projects and proposals that:

(1) provide equipment and infrastructure needed for distance learning, information sharing programs of libraries, and telemedicine services;

(2) develop and implement the initial or prototypical delivery of courses and other distance learning material;

(3) train teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;

(4) develop curricula and instructional material especially suited for delivery by telecommunications;

(5) provide electronic information; or

(6) establish or carry out information sharing programs.

(s) Subject to the limitations prescribed by Subsection (q) of this section, the board may award loans to projects and proposals to acquire equipment needed for distance learning and telemedicine projects.

(t) In awarding grants and loans in accordance with this section, the board shall give priority to projects and proposals that:

(1) represent collaborative efforts involving multiple schools, universities, or libraries;

(2) contribute matching funds from other sources;

(3) show promise of becoming self-sustaining;

(4) help users of information learn new ways to acquire and use information through telecommunications;

(5) extend specific educational information and knowledge services to groups not previously served, especially those in rural and remote areas;

(6) result in more efficient or effective learning than through conventional teaching;

(7) improve the effectiveness and efficiency of health care delivery; or

(8) take advantage of distance learning opportunities in rural and urban school districts with disproportionate numbers of at-risk youths or with high dropout rates.

(u) The Texas Higher Education Coordinating Board, the Central Education Agency, and the Texas State Library and Archives Commission shall adopt policies and procedures in consultation with the board that are designed to aid the board in achieving the purposes of this section.

(v) In distributing funds to public schools, the board shall take into account the relative property wealth per student of the recipient school districts and recognize the unique needs of rural communities.

Senate Amendment No. 13

Amend Section 3.2555 of PURA by adding a new subsection (i) to read as follows:

(i) This section does not require a public or private owner to enter into a contract with one or more telecommunications utilities for the provision of shared tenant services on a property.

Senate Amendment No. 14

Amend **CSHB 2128** in Section 3.359(b)(1)(A)(i), Public Utility Regulatory Act of 1995, as added by SECTION 48 of the bill (Senate committee printing page 37, line 40), by striking "Section 3.606" and substituting "Section 3.605".

SB 482 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Berlanga submitted the conference committee report on **SB 482**.

Representative Berlanga moved to adopt the conference committee report on **SB 482**.

A record vote was requested.

The motion prevailed by (Record 428): 68 Yeas, 65 Nays, 1 Present, not voting.

Yeas — Alexander; Alonzo; Alvarado; Bailey; Berlanga; Bosse; Conley; Counts; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dutton; Edwards; Ehrhardt; Farrar; Giddings; Goolsby; Greenberg; Gutierrez; Hawley; Hilderbran; Hirschi; Holzheauser; Hudson; Hunter, T.; Johnson; Jones, D.; Jones, J.; King; Lewis, G.; Longoria; Luna; Maxey; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Oakley; Oliveira; Patterson; Pickett; Place; Puente; Rangel; Raymond; Rhodes; Rodriguez; Romo; Saunders; Seidlits; Serna; Solis; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Willis; Wilson; Wolens; Yarbrough; Zbranek.

Nays — Allen; Averitt; Black; Brady; Brimer; Carona; Chisum; Clemons; Combs; Cook; Corte; Crabb; Craddick; Culberson; Delisi; Denny; Driver; Eiland; Elkins; Finnell; Goodman; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hilbert; Hill; Horn; Howard; Hunter, B.; Jackson; Janek; Kamel; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; McCall; Moffat; Mowery; Nixon; Ogden; Park; Pitts; Rabuck; Ramsay; Reyna; Rusling; Shields; Siebert; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Telford; Walker; West; Wohlgemuth; Woolley; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Dear; Hernandez; Hochberg; Sadler; Williamson.

Absent — Carter; Coleman; Dukes; Duncan; Gallego; Glaze; Gray; Hightower; Junell; Marchant; Price.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 428. I intended to vote no.

Counts

When Record No. 428 was taken, I was temporarily out of the house chamber. I would have voted yes.

Gray

I was shown voting yes on record No. 428. I intended to vote no.

B. Turner

RULES SUSPENDED

Representative Brimer moved to suspend the 5-day posting rule to allow the Committee on Business and Industry to consider **SB 1214**.

The motion prevailed without objection.

Representative Smithee moved to suspend the 5-day posting rule to allow the Committee on Insurance to consider **SB 1361** and **SB 1618**.

The motion prevailed without objection.

Representative Hightower moved to suspend the 5-day posting rule to allow the Committee on Corrections to consider **SB 569**.

The motion prevailed without objection.

Representative Brady moved to suspend the 5-day posting rule to allow the Committee on Business and Industry to consider **SB 1334**.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Judicial Affairs, on recess today, speakers committee room.

Public Health, on recess today, Desk 138.

Civil Practices, on recess today, Desk 32.

Corrections, on recess today, Desk 45, to consider **SB 569**.

Insurance, on recess today, Desk 24, to consider **SB 1361, SB 1514,** and **SB 1618**.

Natural Resources, on recess today.

Higher Education, on recess today, Desk 118, to consider **SB 585** and **SCR 135**.

Conference committee on **HB 1863**, today, E2.010, Capitol Extension.

RECESS

Representative Uher moved that the house recess until 2 p.m. today.

The motion prevailed without objection.

The house accordingly, at 12:10 p.m., recessed until 2 p.m. today.

AFTERNOON SESSION

The house met at 2 p.m. and was called to order by the speaker.

(Speaker pro tempore in the chair)

HR 947 - ADOPTED

Representative Serna moved to suspend all necessary rules to take up and consider at this time **HR 947**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Serna,

HR 947, Commending the Riverside High School boys' basketball team.

The resolution was adopted without objection.

HR 946 - ADOPTED

Representative Goolsby moved to suspend all necessary rules to take up and consider at this time **HR 946**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Goolsby,

HR 946, Honoring Rick Clements, the outgoing president of the Texas Association of Insurance Agents.

The resolution was adopted without objection.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend a meeting of the conference committee on HB 1:

Ogden on motion of Rangel.

HR 948 - ADOPTED

Representative De La Garza moved to suspend all necessary rules to take up and consider at this time **HR 948**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By De La Garza,

HR 948, Congratulating Cristina Salinas on being named a state winner in the Rising Star Project competition.

The resolution was adopted without objection.

LOCAL BILLS CALENDAR ON SECOND READING

The following bills were laid before the house, read second time, and passed to third reading (members registering votes are shown following the caption):

HB 1856, A bill to be entitled An Act relating to the creation of municipal courts of record in White Settlement.

HB 3173, A bill to be entitled An Act relating to the powers and duties of the Bastrop County Water Control and Improvement District No. 2 relating to the administration of a road utility district in Bastrop County.

CSHB 3181, A bill to be entitled An Act relating to the private practice of law by a judge of a statutory county court of Hidalgo County.

HB 3186, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the El Paso County Municipal Utility District No. 2.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Yost, Representative Serna offered the following committee amendment to the bill:

Amend **HB 3186** as follows:

1. In Section 3, make the following changes:
   a. On page 2, line 4, change "09" to "07"; and
   b. On page 3, line 22, change "W" to "E".
2. In Section 6, add new subsections (c), (d) and (e) to read as follows:

(c) The powers, authority, functions, and duties of the district, along with any outstanding bonded indebtedness of the district, will be assumed by a political subdivision which may annex the territory included in Section 3 of this Act as provided for by Chapter 43, Local Government Code.

(d) Any facilities to be constructed or acquired by the district must have the plans and specifications therefor approved by the El Paso Water Utilities Public Service Board, which approval shall not be unreasonably withheld or delayed. The El Paso Water Utilities Public Service Board shall have the right to either inspect or to act as the construction manager for the district's facilities to ensure that the facilities meet the applicable standards of the Public Service Board. The Public Service Board shall be paid a reasonable fee by the district for such services consistent with fees charged for similar services provided by the Public Service Board on similar utility construction contracts.

(e) This Act shall not diminish or affect the City of El Paso's extraterritorial jurisdiction or its rights under any applicable provisions of the Texas Local Government Code.

3. In Section 7, delete old subsections (b)-(f) and add new subsection (b) to read as follows:

(b) Temporary directors appointed in this Act shall serve until permanent directors are elected under Section 9 of this Act. Until permanent directors are elected and qualified to hold office, the temporary directors shall exercise all rights, powers, privileges, authority, functions and duties conferred upon the District by general law, including Chapters 50 and 54, Water Code.

4. Strike Section 8 and substitute the following:

SECTION 8. APPOINTMENT OF TEMPORARY OFFICERS. (a) The following persons are hereby appointed as the temporary directors of the district:

1. Brad Bauma, El Paso County, Texas
2. Martin Lettunich, El Paso County, Texas
3. Reecie Lutich, El Paso County, Texas
4. L.J. Shamaley, El Paso County, Texas
5. Phil Lane, El Paso County, Texas

(b) The temporary directors shall take the oath of office and execute bonds to qualify for holding their office as soon as possible after the effective date of this Act.

5. Strike Section 9 and substitute the following:

SECTION 9. CONFIRMATION AND INITIAL ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect five initial directors as provided by Chapter 54 Water Code. Also at that election, the board may submit to the voters propositions to authorize issuance of bonds, a maintenance tax, and a tax to make payments under a contract.

(b) Section 41.001(a), Election Code does not apply to an election held as provided by this section.

6. Strike Section 10 and renumber subsequent sections accordingly.

Amendment No. 1 was adopted without objection.

HB 3187, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the El Paso County Municipal Utility District No. 1.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Yost, Representative Serna offered the following committee amendment to the bill:

Amend **HB 3187** as follows:

1. In Section 3, page 2, line 19, change the letter "E" to "W".

2. In Section 6, add new subsections (c), (d) and (e) to read as follows:

(c) The powers, authority, functions, and duties of the district, along with any outstanding bonded indebtedness of the district, will be assumed by a political subdivision which may annex the territory included in Section 3 of this Act as provided for by Chapter 43, Local Government Code.

(d) Any facilities to be constructed or acquired by the district must have the plans and specifications therefor approved by the El Paso Water Utilities Public Service Board, which approval shall not be unreasonably withheld or delayed. The El Paso Water Utilities Public Service Board shall have the right to either inspect or to act as the construction manager for the district's facilities to ensure that the facilities meet the applicable standards of the Public Service Board. The Public Service Board shall be paid a reasonable fee by the district for such services consistent with fees charged for similar services provided by the Public Service Board on similar utility construction contracts.

(e) This Act shall not diminish or affect the City of El Paso's extraterritorial jurisdiction or its rights under any applicable provisions of the Texas Local Government Code.

3. In Section 7, delete old subsections (b)-(f) and add new subsection (b) toread as follows:

(b) Temporary directors appointed in this Act shall serve until permanent directors are elected under Section 9 of this Act. Until permanent directors are elected and qualified to hold office, the temporary directors shall exercise all rights, powers, privileges, authority, functions and duties conferred upon the District by general law, including Chapters 50 and 54, Water Code.

4. Strike Section 8 and substitute the following:

SECTION 8. APPOINTMENT OF TEMPORARY DIRECTORS. (a) The following persons are hereby appointed as the temporary directors of the district:

1. Gerry Caldwell, El Paso County, Texas
2. Tony Bos, El Paso County, Texas

3. Steve Hicks, El Paso County, Texas
4. John Troeger, El Paso County, Texas
5. Teen Lettunich, El Paso County, Texas

(b) The temporary directors shall take the oath of office and execute bonds to qualify for holding their office as soon as possible after the effective date of this Act.

5. Strike Section 9 and substitute the following:

SECTION 9. CONFIRMATION AND INITIAL ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect five initial directors as provided by Chapter 54 Water Code. Also at that election, the board may submit to the voters propositions to authorize issuance of bonds, a maintenance tax, and a tax to make payments under a contract.

(b) Section 41.001(a), Election Code does not apply to an election held as provided by this section.

6. Strike Section 10 and renumber subsequent sections accordingly.

Amendment No. 1 was adopted without objection.

HB 3192, A bill to be entitled An Act relating to the appointment and terms of office of the directors of the Gulf Coast Water Authority.

HB 3215, A bill to be entitled An Act relating to the board of directors of the Harris-Galveston Coastal Subsidence District.

HB 3221, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Culberson County Underground Water Conservation District.

HB 3222, A bill to be entitled An Act relating to the creation of municipal courts of record in River Oaks.

CSHB 3230, A bill to be entitled An Act relating to the creation, administration, powers, duties, operations, functions, and financing of the TGP Water Authority.

CSSB 240 (Denny - House Sponsor), A bill to be entitled An Act relating to the statutory county courts and statutory probate court in Denton County.

SB 375 (Grusendorf - House Sponsor), A bill to be entitled An Act relating to the creation of municipal courts of record in Pantego.

SB 916 (Kuempel - House Sponsor), A bill to be entitled An Act relating to the Comal County Juvenile Board.

SB 1622 (Black - House Sponsor), A bill to be entitled An Act relating to the creation of the County Court at Law No. 3 of Bell County.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Goodman, Representative Black offered the following committee amendment to the bill:

Amend **SB 1622** by adding a new Section 2 to read as follows and renumbering subsequent sections:

SECTION 2. Section 25.0162, Government Code, is amended by adding a new Subsection (a) to read as follows:

Sec. 25.0162. Bell County Court at Law Provisions. (a) The judge of County Court at Law No. 3 of Bell County is prohibited from being assigned under Chapter 74 of the Government Code as a visiting judge in Bexar, Dallas, Ector, Fort Bend, Harris, Jefferson, Lubbock, Midland, Tarrant or Travis counties.

Amendment No. 1 was adopted without objection.

CONSENT BILLS CALENDAR ON SECOND READING

The following bills were laid before the house, read second time, and passed to third reading (members registering votes are shown following the caption):

SB 21 (Saunders - House Sponsor), A bill to be entitled An Act relating to the State Cemetery.

CSSB 49 (Naishtat - House Sponsor), A bill to be entitled An Act relating to the offense of the unauthorized placement of a child for adoption.

Amendment No. 1

Representative Naishtat offered the following amendment to **CSSB 49**:

Amend **CSSB 49** to read as follows:

On page 1, between lines 21 and 22, insert the following new Section 2, and renumber the subsequent sections appropriately:

SECTION 2. Section 42.076, Human Resources Code, is amended by adding a new subsection (d) to read as follows:

(d) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the processional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without assistance of the professional.

Amendment No. 1 was adopted without objection.

SB 59 (Giddings - House Sponsor), A bill to be entitled An Act relating to removal of restrictions on investment of certain funds in businesses doing business in South Africa.

CSSB 161 (Naishtat - House Sponsor), A bill to be entitled An Act relating to adoption services.

SB 187 (Pitts - House Sponsor), A bill to be entitled An Act relating to fees on conviction to reimburse the state and political subdivisions for overtime pay for peace officers who testify at trial. (Telford recorded voting no)

SB 223 (Greenberg - House Sponsor), A bill to be entitled An Act relating to providing notice to victims of domestic violence before releasing the offender.

SB 237 (Swinford - House Sponsor), A bill to be entitled An Act relating to the regulation of nonagricultural public warehouses.

SB 248 (Woolley - House Sponsor), A bill to be entitled An Act relating to the seizure and disposition of certain property under the Parks and Wildlife Code.

SB 251 (R. Cuellar - House Sponsor), A bill to be entitled An Act relating to the handling and marketing of citrus fruits and vegetables and to the produce recovery fund.

SB 264 (Van de Putte - House Sponsor), A bill to be entitled An Act relating to jury service by deaf or hard of hearing persons. (Telford recorded voting no)

SB 271 (Ramsay - House Sponsor), A bill to be entitled An Act relating to the applicant-violator system of the Texas Surface Coal Mining and Reclamation Act.

SB 346 (Thompson - House Sponsor), A bill to be entitled An Act relating to funds used to compensate victims of crime.

Amendment No. 1

Representative Hartnett offered the following amendment to the bill:

Amend **SB 346** on page 1, between lines 16 and 17, by inserting the following:

(c) Notwithstanding Subsections (a) and (b), a juror reimbursement donation program established before January 1, 1995, may solicit juror donations and provide all funds collected in the name of that program to the charities served by that program on January 1, 1995.

Amendment No. 1 was adopted without objection.

SB 393 (Torres - House Sponsor), A bill to be entitled An Act relating to the definition of a liquefied natural gas system.

SB 524 (Oliveira - House Sponsor), A bill to be entitled An Act relating to the civil liability of certain primary and secondary military schools.

SB 542 (Oliveira - House Sponsor), A bill to be entitled An Act relating to allowing certain counties to cancel certain platted subdivisions if the land has not been developed and is likely to be developed as a colonia.

SB 686 (Ramsay - House Sponsor), A bill to be entitled An Act relating to the administration of the alcoholic beverage tax stamp program.

SB 691 (Gallego - House Sponsor), A bill to be entitled An Act relating to the appointment of an acting county judge.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Thompson, Representative Rodriguez offered the following committee amendment to the bill:

Amend **SB 691** by striking Section 2 on page 1, line 16, and renumbering Section 3 as Section 2.

Amendment No. 1 was adopted without objection.

SB 706 (Kuempel - House Sponsor), A bill to be entitled An Act relating to the wearing of seat belts by certain vehicle operators and passengers.

SB 774 (Greenberg, Naishtat, Combs, Maxey, and Dukes - House Sponsors), A bill to be entitled An Act relating to participation in, contributions to, and benefits and administration of retirement systems for firefighters in certain municipalities.

SB 810 (Gutierrez - House Sponsor), A bill to be entitled An Act relating to the certification of Texas agricultural products and production processes by the Department of Agriculture; authorizing the imposition of fees; and providing penalties.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Swinford, Representative Gutierrez offered the following committee amendment to the bill:

Amend **SB 810** as follows:

On page 1, line 18, strike "a private" and add "an".

On page 1, line 19, strike "accredited" and substitute "registered".

On page 3, line 14, strike "ACCREDITATION" and substitute "REGISTRATION".

On page 3, line 15, strike "accredit" and substitute "register".

On page 3, line 16, strike "accreditation" and substitute "registration".

On page 3, line 20, strike "accreditation" and substitute "registration".

On page 3, line 21, strike "accreditation" and substitute "registration".

On page 3, line 24, strike "accreditation" and substitute "registration".

On page 4, line 3, strike "accreditation" and substitute "registration".

On page 4, line 6, strike "accreditation" and substitute "registration".

On page 4, line 23, strike "or".

On page 4, line 25, strike "." and substitute "; or".

On page 4, amend Section 18.005 by adding a new subdivision: "(3) certified by an organic certifying agent recognized under department rule."

On page 5, line 11, strike "accreditation" and substitute "registration".

On page 5, line 17, strike "ACCREDITATION" and substitute "REGISTRATION".

On page 5, line 20, strike "accreditation" and substitute "registration".

On page 5, line 22, strike "accreditation" and substitute "registration".

Amendment No. 1 was adopted without objection.

SB 831 (Van de Putte - House Sponsor), A bill to be entitled An Act relating to the lease of property by the Department of Transportation to institutions of higher education.

SB 938 (Luna - House Sponsor), A bill to be entitled An Act relating to the terms of court of the 319th District Court.

SB 980 (Oakley - House Sponsor), A bill to be entitled An Act relating to the operation on highways of vehicles that are equipped with monitoring devices used in conjunction with mobile navigational systems.

SB 981 (H. Cuellar - House Sponsor), A bill to be entitled An Act relating to the registration of foreign commercial motor vehicles, trailers, and semitrailers.

Amendment No. 1

On behalf of Representative Siebert, Representative H. Cuellar offered the following amendment to the bill:

Amend **SB 981** by striking SECTION 2 of the bill (house committee printing, page 5, lines 2-8) and substituting the following:

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. 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.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative H. Cuellar offered the following amendment to the bill:

Amend **SB 981**, in SECTION 1 of the bill (senate engrossment, page 4, line 25 through page 5, line 1), by striking proposed Section 7, Article 6675a-6c, Vernon's Texas Civil Statutes.

Amendment No. 2 was adopted without objection.

SB 988 (Maxey - House Sponsor), A bill to be entitled An Act relating to state employee donations to sick leave pools.

CSSB 993 (Maxey, Combs, Naishtat, Dukes, and Greenberg - House Sponsors), A bill to be entitled An Act relating to the use by the City of Austin of certain real property designated for a public purpose.

SB 1067 (S. Turner - House Sponsor), A bill to be entitled An Act relating to assignment pay for police officers in certain municipalities.

SB 1146 (R. Cuellar - House Sponsor), A bill to be entitled An Act relating to citrus fruit maturity standards.

SB 1150 (Driver - House Sponsor), A bill to be entitled An Act relating to continuing education of insurance adjusters by reciprocity.

SB 1223 (T. Hunter - House Sponsor), A bill to be entitled An Act relating to establishing the Center for Ports and Waterways. (Finnell and Heflin recorded voting no)

SB 1223 - STATEMENT BY REPRESENTATIVE T. HUNTER

This bill is not to create a new entity or agency.

T. Hunter

SB 1282 (Saunders - House Sponsor), A bill to be entitled An Act relating to the authority of the School Land Board to dedicate permanent school fund land for public uses in exchange for nonmonetary consideration. (Shields recorded voting no)

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today to attend a meeting of the conference committee on HB 1:

Junell on motion of Oliveira.

Gallego on motion of Oliveira.

Coleman on motion of Oliveira.

The following member was granted leave of absence for the remainder of today because of illness:

Wohlgemuth on motion of Rhodes.

LOCAL AND CONSENT BILLS CALENDARS - (consideration continued)

SB 1420 (H. Cuellar - House Sponsor), A bill to be entitled An Act relating to temporary registration permits for commercial motor vehicles.

Amendment No. 1

On behalf of Representative H. Cuellar, Representative Rodriguez offered the following amendment to the bill:

Amend **SB 1420**, in SECTION 1 of the bill (Senate Engrossment, page 4, lines 5 and 6), by striking proposed Section 8, Article 6675a-6d, Vernon's Texas Civil Statutes.

Amendment No. 1 was adopted without objection.

Amendment No. 2

On behalf of Representative H. Cuellar, Representative Rodriguez offered the following amendment to the bill:

Amend **SB 1420** by striking SECTION 2 of the bill (house committee printing, page 4, lines 7-13) and substituting the following:

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. 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.

Amendment No. 2 was adopted without objection.

SB 1486 was withdrawn.

SB 1512 (Seidlits - House Sponsor), A bill to be entitled An Act relating to the implementation of an automated highway-railroad grade crossing enforcement system demonstration project.

Amendment No. 1

Representative Seidlits offered the following amendment to the bill:

Amend **SB 1512** as follows:

(1) On page 2, strike lines 7-13 and substitute "(b) The Department of Public Safety, the Railroad Commission of Texas, and each county and municipality in this state shall cooperate with the department in the implementation of this Act.";

(2) On page 2, line 21, strike "committee described by Section 2(b) of this Act" and substitute "department";

(3) On page 2, line 26, strike "committee" and substitute "department".

Amendment No. 1 was adopted without objection.

SB 1513 (Alexander - House Sponsor), A bill to be entitled An Act relating to certain special stops required of motor vehicles at railroad crossings; creating offenses and providing penalties.

Amendment No. 1

Representative Alexander offered the following amendment to the bill:

Amend SECTION 1 of **SB 1513** as follows:

(1) On page 1, strike lines 13-15 and substitute "(1) a [~~(a)A~~] clearly visible railroad [~~electric or mechanical~~] signal warns [~~device giving warning~~] of the [~~immediate~~] approach of a railroad train;";

(2) On page 1, line 22, after the semicolon, add "or";

(3) On page 2, line 1, strike "(E) a railroad sign or signal; or".

(4) On page 2, line 5, strike "or"

Amendment No. 1 was adopted without objection.

(Hochberg now present)

SB 1530 (Hochberg - House Sponsor), A bill to be entitled An Act relating to the rate of the county hotel occupancy tax.

RESOLUTIONS CALENDAR

The chair laid before the house the following resolutions on committee report:

By Uher,

HCR 166, Encouraging the Department of Public Safety to include additional information regarding alcohol and drug abuse in the Texas Drivers Handbook.

The resolution was adopted without objection.

SCR 95 (Kuempel - House Sponsor), Declaring the Mexican free-tailed bat the "Official Flying Mammal" of the State of Texas.

The resolution was adopted without objection. (Finnell recorded voting no)

RULES SUSPENDED

Representative Brimer moved to suspend the 5-day posting rule to allow the Committee on Business and Industry to consider **SB 662**.

The motion prevailed without objection.

ADJOURNMENT

Representative Carona moved that the house adjourn until 2:50 p.m.

The motion prevailed without objection.

The house accordingly, at 2:46 p.m., adjourned until 2:50 p.m.

BLANK Page 2732