

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE C. TELECOMMUNICATIONS UTILITIES

CHAPTER 51. GENERAL PROVISIONS

Sec. 51.001. POLICY. (a) Significant changes have occurred in telecommunications since the law from which this title is derived was originally adopted. Communications providers, including providers not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol providers, have made investments in this state and broadened the range of communications choices available to consumers. To encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure, rules, policies, and principles must be reformulated to reduce regulation of incumbent local exchange companies, ensure fair business practices, and protect the public interest.

(b) It is the policy of this state to:

(1) promote diversity of telecommunications providers and interconnectivity;

(2) encourage a fully competitive telecommunications marketplace; and

(3) maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates.

(c) The policy goals described by Subsection (b) are best achieved by legislation that modernizes telecommunications regulation by:

(1) guaranteeing the affordability of basic telephone service in a competitively neutral manner; and

(2) fostering free market competition in the telecommunications industry.

(d) The technological advancements, advanced telecommunications infrastructure, and increased customer choices for telecommunications services generated by a truly competitive market play a critical role in Texas' economic future by raising living standards for Texans through:

- (1) enhanced economic development; and
- (2) improved delivery of education, health, and other public and private services.

(e) The strength of competitive forces varies widely between markets, products, and services. It is the policy of this state to require the commission to take action necessary to enhance competition by adjusting regulation to match the degree of competition in the marketplace to:

- (1) reduce the cost and burden of regulation; and
- (2) protect markets that are not competitive.

(f) It is the policy of this state to ensure that high quality telecommunications services are available, accessible, and usable by an individual with a disability, unless making the services available, accessible, or usable would:

- (1) result in an undue burden, including unreasonable cost or technical infeasibility; or
- (2) have an adverse competitive effect.

(g) It is the policy of this state to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at prices that are reasonably comparable to prices charged for similar services in urban areas.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 1, eff. September 1, 2011.

Sec. 51.002. DEFINITIONS. In this subtitle:

- (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 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 determines after a hearing is a basic local telecommunications service.

(2) "Dominant carrier" means a provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within a certificated exchange area on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition, with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

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

(3-a) "Internet Protocol enabled service" means a service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.

(4) "Local exchange company" means a

telecommunications utility that has a certificate of convenience and necessity or a certificate of operating authority to provide in this state:

- (A) local exchange telephone service;
- (B) basic local telecommunications service; or
- (C) switched access service.

(5) "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, service connection charges, and directory assistance services 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 or 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 offered as a separate service and not as a component of basic local telecommunications service;
- (I) dedicated or virtually dedicated access services; or
- (J) any other service the commission determines is not a "local exchange telephone service."

(6) "Long run incremental cost" has the meaning assigned by 16 T.A.C. Section 23.91 or its successor.

(7) "Pricing flexibility" includes:

(A) customer specific contracts;  
(B) packaging of services;  
(C) volume, term, and discount pricing;  
(D) zone density pricing, with a zone to be defined as an exchange; and

(E) other promotional pricing.

(8) "Public utility" or "utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(9) "Separation" means the division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(10) "Telecommunications provider":

(A) means:

(i) a certificated telecommunications utility;

(ii) a shared tenant service provider;

(iii) a nondominant carrier of telecommunications services;

(iv) a provider of commercial mobile service as defined by Section 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 (Public Law 103-66), except that the term does not include these entities for the purposes of Chapter 17, 55, or 64;

(v) a telecommunications entity that provides central office based PBX-type sharing or resale arrangements;

(vi) an interexchange telecommunications carrier;

(vii) a specialized common carrier;

(viii) a reseller of communications;

(ix) a provider of operator services;

(x) a provider of customer-owned pay telephone service; or

(xi) a person or entity determined by the commission to provide telecommunications services to customers in this state; and

(B) does not mean:

(i) a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services; or

(ii) a state agency or state institution of higher education, or a service provided by a state agency or state institution of higher education.

(11) "Telecommunications utility" means:

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by Section 55.081, unless the provider is a subscriber to customer-owned pay telephone service; and

(G) a separated affiliate or an electronic

publishing joint venture as defined in Chapter 63.

(12) "Tier 1 local exchange company" has the meaning assigned by the Federal Communications Commission.

(13) "Voice over Internet Protocol service" means a service that:

(A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;

(B) requires a broadband connection from the user's location; and

(C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 4, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 651, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 2, eff. September 1, 2011.

Sec. 51.003. APPLICABILITY. Except as otherwise expressly provided by this title, this title does not apply to:

(1) a company that as its only form of business:

(A) is a telecommunications manager; or

(B) administers central office based or customer based PBX-type sharing/resale arrangements;

(2) telegraph services;

(3) television or radio stations;

(4) community antenna television services; or

(5) a provider of commercial mobile service as defined by Section 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 (Public Law 103-66), other than conventional rural radio-telephone services provided by a wire-line telephone company under the Public Mobile Service rules

of the Federal Communications Commission (47 C.F.R. Part 22).  
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.004. PRICING FLEXIBILITY. (a) A discount or other form of pricing flexibility may not be:

(1) unreasonably preferential, prejudicial, or discriminatory; or

(2) predatory or anticompetitive.

(b) This title does not prohibit a volume discount or other discount based on a reasonable business purpose. A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(c) This title allows an offer based on a reasonable business purpose, including an offer made at any time to a selected customer or a group of customers in response to a competitor's offer or a former customer's acceptance of a competitor's offer if the price of the offer meets the requirements of Section [52.0584](#), [58.063](#), or [59.031](#).

(d) An offer made under Subsection (c) must be made in compliance with Chapter [304](#), Business & Commerce Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 32, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.39, eff. April 1, 2009.

Sec. 51.005. ASSISTANCE TO MUNICIPALITY. On request of a municipality, the commission may advise and assist the municipality with respect to a question or proceeding arising under this title. Assistance provided by the commission may include aid to a municipality on a matter pending before the commission or a court, such as making a staff member available as a witness or otherwise providing evidence to the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.006. MUNICIPAL PARTICIPATION IN RATEMAKING



PROCEEDINGS. (a) The governing body of a municipality participating in a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and

(2) assist the governing body with litigation before the commission or a court.

(b) The public utility in the ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (a) to the extent the commission determines is reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.007. MUNICIPAL STANDING IN CERTAIN CASES. (a) A municipality has standing in each case before the commission that relates to a utility providing service in the municipality.

(b) A municipality's standing is subject to the right of the commission to:

(1) determine standing in a case involving a retail service area dispute that involves two or more utilities; and

(2) consolidate municipalities on an issue of common interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.008. JUDICIAL REVIEW. A municipality is entitled to judicial review of a commission order relating to a utility providing services in the municipality as provided by Section [15.001](#).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title, including Section [53.201](#), may be construed as in any way limiting the right of a public utility to pass through a municipal fee, including an increase in a municipal fee.

(b) A public utility that traditionally passes through municipal fees shall promptly pass through any municipal fee reduction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.010. COMMISSION INVESTIGATION OF SALE, MERGER, OR CERTAIN OTHER ACTIONS. (a) The commission, not later than the 180th day after the date a public utility reports to the commission under Section 14.101, shall complete an investigation under that section and enter a final order.

(b) If a final order is not entered as required by Subsection (a), the commission is considered to have determined that the action taken by the public utility is consistent with the public interest.

(c) Section 14.101 does not apply to:

(1) a company that receives a certificate of operating authority or a service provider certificate of operating authority under Chapter 54; or

(2) a company electing under Chapter 58.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.