

UTILITIES CODE
TITLE 2. PUBLIC UTILITY REGULATORY ACT
SUBTITLE C. TELECOMMUNICATIONS UTILITIES
CHAPTER 53. RATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES.

(a) Except as otherwise provided by this title, the commission may establish and regulate rates of a public utility and may adopt rules for determining:

- (1) the classification of customers and services; and
- (2) the applicability of rates.

(b) A rule or order of the commission may not conflict with a ruling of a federal regulatory body.

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

Sec. 53.002. COMPLIANCE WITH TITLE. A utility may not charge or receive a rate for utility service except as provided by this title.

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

Sec. 53.003. JUST AND REASONABLE RATES. (a) The commission shall ensure that each rate a public utility or two or more public utilities jointly make, demand, or receive is just and reasonable.

(b) A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer.

(c) A public utility may not:

- (1) grant an unreasonable preference or advantage concerning rates to a person in a classification;
- (2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates; or
- (3) establish or maintain an unreasonable difference concerning rates between localities or between classes of service.

(d) In establishing a public utility's rates, the commission may treat as a single class two or more municipalities

that a public utility serves if the commission considers that treatment to be appropriate.

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

Sec. 53.004. EQUALITY OF RATES AND SERVICES. (a) A public utility may not directly or indirectly charge, demand, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable tariff filed under Section 52.251.

(b) A person may not knowingly receive or accept a service from a public utility for a compensation greater or less than the compensation prescribed by the tariff.

(c) This title does not prevent a cooperative corporation from returning to its members net earnings resulting from its operations in proportion to the members' purchases from or through the corporation.

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

Sec. 53.005. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the commission, a public utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

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

Sec. 53.006. BURDEN OF PROOF. (a) In a proceeding involving a proposed rate change, the public utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility proposes the change; or

(2) an existing rate is just and reasonable, if the proposal is to reduce the rate.

(b) In a proceeding in which the rate of an incumbent local exchange company is in issue, the incumbent local exchange company has the burden of proving that the rate is just and reasonable.

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

Sec. 53.007. LIMIT ON 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.

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

SUBCHAPTER B. COMPUTATION OF RATES

Sec. 53.051. ESTABLISHING OVERALL REVENUES. In establishing a public utility's rates, the commission shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.

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

Sec. 53.052. ESTABLISHING REASONABLE RETURN. In establishing a reasonable return on invested capital, the commission shall consider applicable factors, including:

- (1) the quality of the utility's services;
- (2) the efficiency of the utility's operations; and
- (3) the quality of the utility's management.

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

Sec. 53.053. COMPONENTS OF INVESTED CAPITAL. (a) Public utility rates shall be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.

(b) The original cost of property shall be determined at the time the property is dedicated to public use, whether by the utility that is the present owner or by a predecessor.

(c) In this section, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

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

Sec. 53.054. CONSTRUCTION WORK IN PROGRESS. (a) Construction work in progress, at cost as recorded on the public utility's books, may be included in the utility's rate base. The inclusion of construction work in progress is an exceptional form of rate relief that the commission may grant only if the utility demonstrates that inclusion is necessary to the utility's financial integrity.

(b) Construction work in progress may not be included in the rate base for a major project under construction to the extent that the project has been inefficiently or imprudently planned or managed.

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

Sec. 53.055. SEPARATIONS AND ALLOCATIONS. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the commission.

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

Sec. 53.056. DEPRECIATION, AMORTIZATION, AND DEPLETION.

(a) The commission shall establish proper and adequate rates and methods of depreciation, amortization, or depletion for each class of property of a public utility.

(b) On application of a utility, the commission shall establish depreciation rates that promote the use of new technology and infrastructure. In establishing rates under this subsection, the commission shall consider depreciation practices of nonregulated telecommunications providers.

(c) The rates and methods established under this section and the depreciation account required by Section 52.252 shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

(d) Notwithstanding this section, a company electing under Chapter 58 may determine its own depreciation rates and amortizations. The company shall notify the commission of any change in those rates or amortizations.

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

Sec. 53.057. NET INCOME; DETERMINATION OF REVENUES AND EXPENSES. (a) A public utility's net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the commission.

(b) The commission shall determine revenues and expenses in a manner consistent with this subchapter.

(c) The commission may adopt reasonable rules with respect to whether an expense is allowed for ratemaking purposes.

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

Sec. 53.058. CONSIDERATION OF PAYMENT TO AFFILIATE. (a) Except as provided by Subsection (b), the commission may not allow as capital cost or as expense a payment to an affiliate for:

(1) cost of a service, property, right, or other item;

or

(2) interest expense.

(b) The commission may allow a payment described by Subsection (a) only to the extent that the commission finds the payment is reasonable and necessary for each item or class of items as determined by the commission.

(c) A finding under Subsection (b) must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) except as provided by Subsection (d), a finding that the price to the utility is not higher than the prices charged by the supplying affiliate to:

(A) its other affiliates or divisions for the same item or class of items; or

(B) a nonaffiliated person within the same market area or having the same market conditions.

(d) A finding under this section is not required as to the prices charged by the supplying affiliate to its other affiliates or divisions if the supplying affiliate computed its charges to the utility in a manner consistent with Federal Communications Commission rules.

(e) If the commission finds that the affiliate expense for the test period is unreasonable, the commission shall:

(1) determine the reasonable level of the expense;
and

(2) include that expense in determining the utility's cost of service.

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

Sec. 53.059. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the commission shall:

(1) balance equitably the interests of present and future customers; and

(2) apportion accordingly the benefits between consumers and the public utility.

(b) If a public utility retains a portion of the investment tax credit, that portion shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

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

Sec. 53.060. COMPUTATION OF INCOME TAX; CONSOLIDATED RETURN. (a) Unless it is shown to the satisfaction of the commission that it was reasonable to choose not to consolidate returns, a public utility's income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from that return, if:

(1) the utility is a member of an affiliated group eligible to file a consolidated income tax return; and

(2) it is advantageous to the utility to do so.

(b) The amount of income tax that a consolidated group of which a public utility is a member saves, because the consolidated return eliminates the intercompany profit on purchases by the utility from an affiliate, shall be applied to reduce the cost of the property or service purchased from the affiliate.

(c) The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be

applied as a reduction in the rate-based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.

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

Sec. 53.061. ALLOWANCE OF CERTAIN EXPENSES. (a) The commission may not allow as a cost or expense for ratemaking purposes:

- (1) an expenditure for legislative advocacy; or
- (2) an expenditure described by Section 52.254 that the commission determines to be not in the public interest.

(b) The commission may allow as a cost or expense reasonable charitable or civic contributions not to exceed the amount approved by the commission.

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

Sec. 53.062. CONSIDERATION OF CERTAIN EXPENSES. The commission may not consider for ratemaking purposes:

(1) an expenditure for legislative advocacy, made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) an expenditure for costs of processing a refund or credit under Section 53.110; or

(3) any other expenditure, including an executive salary, advertising expense, legal expense, or civil penalty or fine the commission finds to be unreasonable, unnecessary, or not in the public interest.

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

Sec. 53.063. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing a public utility's rates, the commission may not consider a profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

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

Sec. 53.064. SELF-INSURANCE. (a) A public utility may self-insure all or part of the utility's potential liability or catastrophic property loss, including windstorm, fire, and explosion losses, that could not have been reasonably anticipated and included under operating and maintenance expenses.

(b) The commission shall approve a self-insurance plan under this section if the commission finds that:

- (1) the coverage is in the public interest;
- (2) the plan, considering all costs, is a lower cost alternative to purchasing commercial insurance; and
- (3) ratepayers will receive the benefits of the savings.

(c) In computing a utility's reasonable and necessary expenses under this subchapter, the commission, to the extent the commission finds is in the public interest, shall allow as a necessary expense money credited to a reserve account for self-insurance. The commission shall determine reasonableness under this subsection:

- (1) from information provided at the time the self-insurance plan and reserve account are established; and
- (2) on the filing of a rate case by a utility that has a reserve account.

(d) After a reserve account for self-insurance is established, the commission shall:

- (1) determine whether the account has a surplus or shortage under Subsection (e); and
- (2) subtract any surplus from or add any shortage to the utility's rate base.

(e) A surplus in the reserve account exists if the charges against the account are less than the money credited to the account. A shortage in the reserve account exists if the charges against the account are greater than the money credited to the account.

(f) The commission shall adopt rules governing self-insurance under this section.

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

Sec. 53.065. INTEREXCHANGE SERVICES; RATES OF INCUMBENT

LOCAL EXCHANGE COMPANY. (a) An incumbent local exchange company's rates for interexchange telecommunications services must be statewide average rates except as ordered by the commission after application and hearing.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(2), eff. September 1, 2011.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 21 (S.B. 983), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 21(2), eff. September 1, 2011.

SUBCHAPTER C. GENERAL PROCEDURES FOR RATE CHANGE PROPOSED BY
UTILITY

Sec. 53.101. DEFINITION. In this subchapter, "major change" means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2-1/2 percent. The term does not include an increase in rates that the commission allows to go into effect or the utility makes under an order of the commission after hearings held with public notice.

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

Sec. 53.102. STATEMENT OF INTENT TO CHANGE RATES. (a) A utility may not change its rates unless the utility files a statement of its intent with the commission at least 35 days before the effective date of the proposed change.

(b) The utility shall also mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality.

(c) The statement of intent must include:

(1) proposed revisions of tariffs; and

(2) a detailed statement of:

(A) each proposed change;

(B) the effect the proposed change is expected to

have on the revenues of the utility;

(C) each class and number of utility consumers affected; and

(D) any other information required by the commission's rules.

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

Sec. 53.103. NOTICE OF INTENT TO CHANGE RATES. (a) The utility shall:

(1) publish, in conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(2) mail notice of the proposed change to any other affected person as required by the commission's rules.

(b) The commission may waive the publication of notice requirement prescribed by Subsection (a) in a proceeding that involves only a rate reduction for each affected ratepayer. The applicant shall give notice of the proposed rate change by mail to each affected utility customer.

(c) The commission by rule shall define other proceedings for which the publication of notice requirement prescribed by Subsection (a) may be waived on a showing of good cause. A waiver may not be granted in a proceeding involving a rate increase to any class or category of ratepayer.

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

Sec. 53.104. EARLY EFFECTIVE DATE OF RATE CHANGE. (a) For good cause shown, the commission may allow a rate change, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 53.102; and

(2) under conditions the commission prescribes, subject to suspension as provided by this subchapter.

(b) The utility shall immediately revise its tariffs to include the change.

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

Sec. 53.105. DETERMINATION OF PROPRIETY OF CHANGE; HEARING. (a) If a tariff changing rates is filed with the commission, the commission shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the change, enter on a hearing to determine the propriety of the change.

(b) The commission shall hold a hearing in every case in which the change constitutes a major change. The commission may, however, use an informal proceeding if the commission does not receive a complaint before the 46th day after the date notice of the change is filed.

(c) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

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

Sec. 53.106. REGIONAL HEARING. The commission shall hold a regional hearing at an appropriate location in a case in which the commission determines it is in the public interest to hear testimony at a regional hearing for inclusion in the record.

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

Sec. 53.107. PREFERENCE TO HEARING. The commission shall:

(1) give preference to a hearing under this subchapter and to deciding questions arising under this subchapter and Subchapter E over any other question pending before it; and

(2) decide the questions as quickly as possible.

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

Sec. 53.108. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision, the commission, after delivering to the utility a written statement of the commission's reasons, may

suspend the rate change for not longer than 150 days after the date the rate change would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a) shall be extended two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the commission does not make a final determination concerning a rate change before expiration of the suspension period, the commission is considered to have approved the change. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

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

Sec. 53.109. TEMPORARY RATES. (a) The commission may establish temporary rates to be in effect during the suspension period under Section 53.108.

(b) If the commission does not establish temporary rates, the rates in effect when the suspended tariff was filed continue in effect during the suspension period.

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

Sec. 53.110. BONDED RATES. (a) A utility may put a changed rate into effect by filing a bond with the commission if:

(1) the 150-day suspension period has been extended under Section 53.108(b); and

(2) the commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(b) The bonded rate may not exceed the proposed rate.

(c) The bond must be:

(1) payable to the commission in an amount, in a form, and with a surety approved by the commission; and

(2) conditioned on refund.

(d) The utility shall refund or credit against future bills:

(1) money collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on that money, at the current interest rate as determined by the commission.

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

Sec. 53.111. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the commission finds the rates are unreasonable or in violation of law, the commission shall:

(1) enter an order establishing the rates the utility shall charge or apply for the service in question; and

(2) serve a copy of the order on the utility.

(b) The rates established in the order shall be observed thereafter until changed as provided by this title.

(c) This section does not apply to a company electing under Chapter 58 or 59 except as otherwise provided by those chapters or by Chapter 60.

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

Sec. 53.112. EXPIRATION OF SUSPENSION; EFFECT ON CERTAIN RATES. (a) Notwithstanding Section 53.111(a), if the commission does not make a final determination concerning an incumbent local exchange company's rate change before expiration of the 150-day suspension period, the rates finally approved by the commission take effect on and the incumbent local exchange company is entitled to collect those rates from the date the 150-day suspension period expired.

(b) A surcharge or other charge necessary to effectuate this section may not be recovered over a period of less than 90 days from the date of the commission's final order.

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

Sec. 53.113. FCC-APPROVED TARIFFS FOR SWITCHED-ACCESS SERVICE. (a) An incumbent local exchange company may file with the commission tariffs for switched-access service that have been approved by the Federal Communications Commission. The tariffs must include all rate elements in the company's interstate access tariff other than end-user charges.

(b) Not later than the 60th day after the date a company files tariffs under Subsection (a), the commission shall order the rates and terms to be the incumbent local exchange company's

intrastate switched-access rates and terms if, on review, the tariffs contain the same rates and terms, excluding end-user charges, as approved by the Federal Communications Commission. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

Sec. 53.151. UNREASONABLE OR VIOLATIVE EXISTING RATES. (a) If the commission, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a public utility for a service are unreasonable or in violation of law, the commission shall:

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

(2) serve a copy of the order on the utility.

(b) The rates established under Subsection (a) constitute the legal rates of the public utility until changed as provided by this title.

(c) This section does not apply to a company electing under Chapter 58 or Chapter 59 except as otherwise provided by those chapters.

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

Sec. 53.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. If a public utility does not produce or generate the service that it distributes, transmits, or furnishes to the public for compensation but obtains the service from another source, the commission may investigate the cost of that production or generation in an investigation of the reasonableness of the utility's rates.

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

SUBCHAPTER E. COST RECOVERY AND RATE ADJUSTMENTS

Sec. 53.201. AUTOMATIC ADJUSTMENT FOR CHANGE IN COSTS PROHIBITED. The commission may not establish a rate or tariff that

authorizes a utility to automatically adjust and pass through to the utility's customers a change in the utility's costs.

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

SUBCHAPTER F. REGULATORY POLICY FOR SMALL INCUMBENT LOCAL EXCHANGE COMPANIES AND COOPERATIVES

Sec. 53.251. GENERAL POLICY. Regulatory policy should recognize that:

(1) there are differences between small and large incumbent local exchange companies;

(2) there are a large number of customer-owned telephone cooperatives and small, locally owned investor companies; and

(3) it is appropriate to provide incentives and flexibility to allow an incumbent local exchange company that serves a rural area to:

(A) provide existing services; and

(B) introduce new technology and new services in a prompt, efficient, and economical manner.

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

Sec. 53.252. ADOPTION OF CERTAIN POLICIES. Notwithstanding any other provision of this title, the commission shall consider and may adopt policies to:

(1) provide for evaluation of the overall reasonableness of the rates of a rural or small incumbent local exchange company or cooperative not more frequently than once every three years;

(2) permit consideration of future construction plans and operational changes in evaluating the reasonableness of the rates of a rural or small incumbent local exchange company or cooperative; or

(3) allow a rural or small incumbent local exchange company or cooperative to:

(A) provide required information by report or by other means, as necessary, including a required rate filing

package, in substantially less burdensome and complex form than is required of a larger incumbent local exchange company;

(B) change depreciation and amortization rates, if customer rates are not affected, after notice to the commission, subject to commission review in a proceeding under Subchapter C or Subchapter D;

(C) adopt for a new service the rates for the same or a substantially similar service offered by a larger incumbent local exchange company, without additional cost justification; and

(D) submit to the commission, instead of a management audit otherwise required by law, policy, or rule, financial audits regularly performed by an independent auditor or required and performed as a result of the company's or cooperative's participation in a federal or state financing or revenue-sharing program.

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

SUBCHAPTER G. SPECIAL PROCEDURES FOR SMALL LOCAL EXCHANGE COMPANIES
AND COOPERATIVES

Sec. 53.301. DEFINITION. (a) In this subchapter, "minor change" means a change, including the restructuring of rates of existing services, that:

(1) decreases the rates or revenues of an incumbent local exchange company; or

(2) together with any other rate change or approved tariff changes in the 12 months preceding the effective date of the proposed change, increases the company's total regulated intrastate gross annual revenues by not more than five percent.

(b) With regard to a change to a basic local access line rate, a "minor change" does not include a change that, together with any other change to the basic local access line rate that took effect during the 12 months preceding the effective date of the proposed change, results in an increase of more than 50 percent.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 118 (H.B. [2680](#)), Sec. 1, eff.

September 1, 2011.

Sec. 53.302. APPLICABILITY. This subchapter does not apply to an incumbent local exchange company that is a cooperative corporation partially deregulated under Subchapter H.

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

Sec. 53.303. PROVISIONS NOT EXCLUSIVE. This subchapter does not prohibit:

(1) an incumbent local exchange company from filing for a new service or rate change under another section of this title; or

(2) the commission from conducting a review under Subchapter D.

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

Sec. 53.304. PROCEDURE TO OFFER CERTAIN SERVICES OR MAKE MINOR CHANGES. (a) An incumbent local exchange company may offer an extended local calling service, a packaged service, or a new or promotional service on an optional basis or make a minor change in its rates or tariffs if the company:

(1) is a cooperative corporation or has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in this state;

(2) files with the commission and the office notice, as prescribed by Subsection (b), not later than the 10th day before the effective date of the proposed change;

(3) provides notice as prescribed by Section 53.305; and

(4) files with the commission affidavits verifying that notice as prescribed by Section 53.305 was provided.

(b) The notice must include:

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

(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 (a)(3);

(5) the number of access lines the company and each affiliate have 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.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 118 (H.B. 2680), Sec. 2, eff. September 1, 2011.

Sec. 53.305. NOTICE TO AFFECTED CUSTOMERS. (a) A company shall provide notice of a proposed change to affected customers in the manner prescribed by the commission.

(b) Notice must:

(1) be provided not later than the 10th day before the effective date of the proposed change; and

(2) include:

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

(B) the effective date of the proposed change;

(C) an explanation of the customer's right to petition the commission for a review under Section 53.306, including the number of persons required to petition before a commission review will occur;

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

(E) 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

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

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 118 (H.B. 2680), Sec. 3, eff. September 1, 2011.

Sec. 53.306. COMMISSION REVIEW OF PROPOSED CHANGE. (a) The commission shall review a proposed change filed under this subchapter if:

(1) the commission receives complaints relating to the proposed change signed by a number of affected local service customers equal at least to the lesser of 1,500 or five percent of those 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 subchapter; or

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

(b) The commission may suspend a tariff proposed under this subchapter during the review.

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

Sec. 53.307. COMPLIANCE WITH PRINCIPLES; REDUCED RATES. A rate established under this subchapter must be in accordance with the rate-setting principles of this chapter, except that a company may provide to its board members, officers, employees, or agents free or reduced rates for services.

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

Sec. 53.308. FEES AND ASSESSMENTS. The commission may prescribe and collect a fee or assessment from incumbent local exchange companies necessary to recover the cost to the commission and to the office of activities carried out and services provided under:

- (1) this subchapter;
- (2) Section 53.112;
- (3) Subchapter H; and
- (4) Section 55.004.

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

SUBCHAPTER H. PARTIAL DEREGULATION AVAILABLE TO CERTAIN
COOPERATIVE CORPORATIONS

Sec. 53.351. PROVISIONS NOT EXCLUSIVE. (a) This subchapter does not:

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

(2) affect the application of a provision of this title not directly related to:

(A) establishing rates; or

(B) the authority of the commission to require a cooperative to file a report required under this title or the commission's rules.

(b) Notwithstanding any other provision of this subchapter, the commission may conduct a review under Subchapter D.

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

Sec. 53.352. PARTIAL DEREGULATION BY BALLOT. (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 incumbent local exchange company may include the ballot in a bill or send the ballot separately. The ballot shall be printed to permit voting for or against the proposition: "Authorizing the partial deregulation of the (name of the cooperative)."

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

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

Sec. 53.353. VOTING PROCEDURES. The commission by rule shall prescribe the voting procedures a cooperative must use under this subchapter.

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

Sec. 53.354. PROCEDURE TO OFFER CERTAIN SERVICES OR MAKE CERTAIN CHANGES. After the initial balloting, a 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) files a statement of intent under Section 53.355;
- (2) provides notice of the proposed action to each customer and municipality as prescribed by Section 53.356; and
- (3) files with the commission affidavits verifying that notice was provided as prescribed by Section 53.357.

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

Sec. 53.355. STATEMENT OF INTENT. (a) A cooperative must file a statement of intent to use this subchapter with the commission and the office not later than the 61st day before the effective date of the proposed change.

(b) The statement must include:

- (1) a copy of a resolution, signed by a majority of the members of the cooperative's board of directors, approving the proposed action and authorizing the filing of the statement of intent;
- (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 Section 53.356.

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

Sec. 53.356. NOTICE TO AFFECTED PERSONS. (a) The cooperative shall provide to each affected customer or party, including a municipality, at least two notices of the proposed

action by bill insert or by individual notice.

(b) The cooperative shall provide:

(1) the first notice not later than the 61st day before the effective date of the proposed action; and

(2) the last notice not later than the 31st day before the effective date of the proposed action.

(c) A notice prescribed by this section 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:

(A) obtain a copy of the proposed tariff from the cooperative; and

(B) petition the commission for a review under Section 53.358;

(4) a statement of 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

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

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

Sec. 53.357. FILING OF AFFIDAVITS VERIFYING NOTICE. Not later than the 15th day before the effective date of a proposed action, the cooperative shall file with the commission affidavits that verify that the cooperative provided each notice required by Section 53.356.

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

Sec. 53.358. COMMISSION REVIEW OF PROPOSED ACTION. (a) The commission shall review a proposed action filed under this subchapter if:

(1) the commission receives, not later than the 45th day after the date the first notice is provided under Section 53.356, complaints relating to the proposed action:

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

(B) 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;

(2) the cooperative does not comply with the procedural requirements of this subchapter; or

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

(b) If the commission conducts a review of the proposed action under this section before the action's effective date, the commission may suspend the proposed action during the review.

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

Sec. 53.359. REVERSAL OF DEREGULATION BY BALLOT. (a) A cooperative that is partially deregulated under this subchapter may vote to reverse the deregulation by sending a ballot to each cooperative member.

(b) The cooperative's board of directors may order reballoting on its own motion. If the board receives a written request for that action from at least 10 percent of its members, the board shall reballot not later than the 60th day after the date the board receives that request.

(c) The cooperative may include the ballot in a bill or send the ballot separately. The ballot shall be printed to permit voting for or against the proposition: "Reversing the partial deregulation of the (name of the cooperative)."

(d) The partial deregulation is reversed if a majority of the ballots returned to the cooperative not later than the 45th day after the date the ballots are mailed favor reversal.

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