

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE C. TELECOMMUNICATIONS UTILITIES

CHAPTER 58. INCENTIVE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. POLICY. Considering the status of competition in the telecommunications industry, it is the policy of this state to:

(1) provide a framework for an orderly transition from the traditional regulation of return on invested capital to a fully competitive telecommunications marketplace in which 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, including urban and rural areas.

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

Sec. 58.002. DEFINITION. In this chapter, "electing company" means an incumbent local exchange company that elects to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter.

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

Sec. 58.003. CUSTOMER-SPECIFIC CONTRACTS. (a) Notwithstanding any other provision of this chapter, but subject to Subsection (b), an electing company may not offer in an exchange a service, or an appropriate subset of a service, listed in Sections 58.051(a)(1)-(4) or Sections 58.151(1)-(4) in a manner that results in a customer-specific contract, unless the other party to the contract is a federal, state, or local governmental entity, until

the earlier of September 1, 2003, or the date on which the commission finds that at least 40 percent of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

(b) The requirements prescribed by Subsection (a) do not apply to an electing company serving fewer than five million access lines after the date on which it completes the infrastructure improvements described in this subsection. The electing company must also notify the commission of the company's binding commitment to make the following infrastructure improvements not later than September 1, 2000:

(1) install Common Channel Signaling 7 capability in each central office; and

(2) connect all of the company's serving central offices to their respective LATA tandem central offices with optical fiber or equivalent facilities.

(c) The commission by rule shall prescribe appropriate subsets of services.

(d) An electing company may file with the commission a request for a finding under this section. The filing must include information sufficient for the commission to perform a review and evaluation in relation to the particular exchange and the particular service or appropriate subset of a service for which the electing company wants to offer customer-specific contracts. The commission must grant or deny the request not later than the 60th day after the date the electing company files the request.

(e) The commitments described by Subsection (b) do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.

(f) This section does not preclude an electing company from offering a customer-specific contract to the extent allowed by this

title as of August 31, 1999.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 33, eff. Sept. 1, 1999.

Sec. 58.004. PACKAGING, TERM AND VOLUME DISCOUNTS, AND PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer in an exchange a service listed in Sections 58.151(1)-(4) as a component of a package of services or as a promotional offering until the company makes the reduction in switched access service rates required by Section 58.301(2) unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(b) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer a volume or term discount on any service listed in Sections 58.151(1)-(4) until September 1, 2000, unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(c) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may offer in an exchange a service listed in Sections 58.051(a)(1)-(4) as a component of a package of services, as a promotional offering, or with a volume or term discount on and after September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 34, eff. Sept. 1, 1999.

#### SUBCHAPTER B. ELECTION OF INCENTIVE REGULATION

Sec. 58.021. ELECTION. (a) An incumbent local exchange company may elect to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter by notifying the commission in writing of its election.

(b) The notice must include a statement that the company

agrees to:

(1) limit until September 1, 2005, any increase in a rate the company charges for basic network services as prescribed by Subchapter C; and

(2) fulfill the infrastructure commitment prescribed by Subchapters F and G.

(c) Except as provided in Subsection (d), an election under this chapter remains in effect until the legislature eliminates the incentive regulation authorized by this chapter and Chapter 59.

(d) The commission may allow an electing company serving fewer than five million access lines to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause.

(e) In this section, "good cause" includes only matters beyond the control of the company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 35, eff. Sept. 1, 1999.

Sec. 58.022. CHAPTER CONTROLS. This chapter governs the regulation of an electing company's telecommunications services regardless of whether the company is a dominant carrier.

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

Sec. 58.023. SERVICE CLASSIFICATION. On election, the services provided by an electing company are classified into two categories:

(1) basic network services governed by Subchapter C; and

(2) nonbasic services governed by Subchapter E.

(3) Renumbered (2) by Acts 1999, 76th Leg., ch. 1212, Sec. 36, eff. Sept. 1, 1999

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 36, eff. Sept. 1, 1999.

Sec. 58.024. SERVICE RECLASSIFICATION. (a) The commission may reclassify a basic network service as a nonbasic service.

(b) The commission shall establish criteria for determining whether a service should be reclassified. The criteria must include consideration of the:

- (1) availability of the service from other providers;
- (2) effect of the reclassification on service subscribers; and
- (3) nature of the service.

(c) The commission may not reclassify a service until:

- (1) each competitive safeguard prescribed by Subchapters B-H, Chapter 60, is fully implemented; or
- (2) for a company that serves more than five million access lines in this state, the date on which the Federal Communications Commission determines in accordance with 47 U.S.C. Section 271 that the company or any of its affiliates may enter the interLATA telecommunications market in this state.

(d) The commission may reclassify a service subject to the following conditions:

- (1) the electing company must file a request for a service reclassification including information sufficient for the commission to perform a review and evaluation under Subsection (b);
- (2) the commission must grant or deny the request not later than the 60th day after the date the electing company files the request for service reclassification; and
- (3) there is a rebuttable presumption that the request for service reclassification by the electing company should be granted if the commission finds that there is a competitive alternative provider serving customers through means other than total service resale.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 37, eff. Sept. 1, 1999.

Sec. 58.025. COMPLAINT OR HEARING. (a) An electing company is not, under any circumstances, subject to a complaint, hearing, or determination regarding the reasonableness of the company's:

- (1) rates;
- (2) overall revenues;

- (3) return on invested capital; or
- (4) net income.

(b) This section does not prohibit a complaint, hearing, or determination on an electing company's implementation and enforcement of a competitive safeguard required by Chapter 60. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.026. CONSUMER COMPLAINTS REGARDING TARIFFS. (a) This chapter does not restrict:

- (1) a consumer's right to complain to the commission about the application of an ambiguous tariff; or
- (2) the commission's right to determine:
  - (A) the proper application of that tariff; or
  - (B) the proper rate if that tariff does not apply.

(b) This section does not permit the commission to:

- (1) lower a tariff rate except as specifically provided by this title;
- (2) change the commission's interpretation of a tariff; or
- (3) extend the application of a tariff to a new class of customers.

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

Sec. 58.027. CONSUMER COMPLAINTS REGARDING SERVICES; ENFORCEMENT OF STANDARDS. This chapter does not restrict:

- (1) a consumer's right to complain to the commission about quality of service; or
- (2) the commission's right to enforce a quality of service standard.

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

#### SUBCHAPTER C. BASIC NETWORK SERVICES

Sec. 58.051. SERVICES INCLUDED.

(a) Unless reclassified under Section 58.024, the following services are basic network services:

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

(2) residential tone dialing service;

(3) lifeline and tel-assistance service;

(4) service connection for basic residential services;

(5) direct inward dialing service for basic residential services;

(6) private pay telephone access service;

(7) call trap and trace service;

(8) access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service;

(9) mandatory residential extended area service arrangements; and

(10) mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements.

(a-1) Notwithstanding Subsection (a) and Section [58.151](#), basic network services include residential caller identification services if the customer to whom the service is billed is at least 65 years of age.

(b) Electing companies shall offer each basic network service as a separately tariffed service in addition to any packages or other pricing flexibility offerings that include those basic network services.

(c) At the election of the affected incumbent local exchange company, the price for basic network service shall also include the fees and charges for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

(d) A nonpermanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service:

(1) is considered a part of basic network service;

(2) may not be aggregated under Subsection (c); and

(3) continues to be transitioned in accordance with commission orders and substantive rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 18, eff. September 7, 2005.

Sec. 58.052. REGULATION OF SERVICES. (a) Except as provided by Subchapter E, Chapter 52, basic network services of an electing company are regulated:

(1) in accordance with this chapter; and

(2) to the extent not inconsistent with this chapter, in accordance with:

(A) Subtitle A;

(B) Chapters 51, 54, 60, 62, and 63;

(C) Chapter 52, except for Subchapter F;

(D) Subchapters C, D, and E, Chapter 53;

(E) Chapter 55, except for:

(i) Subchapters F and G; and

(ii) Sections 55.001, 55.002, 55.003, and 55.004;

(F) Sections 53.001, 53.003, 53.004, 53.006, 53.065, 55.005, 55.006, 55.009, and 55.010; and

(G) commission rules and procedures.

(b) The commission must approve a change in the terms of the tariff offering of a basic network service.

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

Sec. 58.053. INVESTMENT LIMITATION ON SERVICE STANDARDS.

(a) The commission may not raise a service standard applicable to the provision of local exchange telephone service by an electing company if the increased investment required to comply with the raised standard in any year exceeds 10 percent of the company's average annual intrastate additions in capital investment for the most recent five-year period.

(b) In computing the average under Subsection (a), the



company shall exclude:

(1) extraordinary investments made during the five-year period; and

(2) investments required by Section 58.203.

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

Sec. 58.054. RATES CAPPED. (a) As a condition of election under this chapter, an electing company shall commit to not increasing a rate for a basic network service on or before the fourth anniversary of its election date.

(b) The rates an electing company may charge on or before that fourth anniversary are the rates charged by the company on June 1, 1995, or, for a company that elects under this chapter after September 1, 1999, the rates charged on the date of its election, without regard to a proceeding pending under:

(1) Section 15.001;

(2) Subchapter D, Chapter 53; or

(3) Subchapter G, Chapter 2001, Government Code.

(c) Notwithstanding Subsections (a) and (b), the cap on the rates for basic network services for a company electing under this chapter may not expire before September 1, 2005.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 40, eff. Sept. 1, 1999.

Sec. 58.055. RATE ADJUSTMENT BY COMPANY. (a) An electing company may increase a rate for a basic network service during the election period prescribed by Section 58.054 only:

(1) with commission approval that the proposed change is included in Section 58.056, 58.057, or 58.058; and

(2) as provided by Sections 58.056, 58.057, 58.058, and 58.059.

(b) Notwithstanding Subchapter F, Chapter 60, an electing company may, on its own initiative, decrease a rate for a basic network service during the electing period.

(c) The company may decrease the rate for a basic local telecommunications service to an amount above the service's appropriate cost. If the company has been required to perform or

has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 40, eff. Sept. 1, 1999.

Sec. 58.056. RATE ADJUSTMENT FOR CHANGES IN FCC SEPARATIONS. The commission, on motion of the electing company or on its own motion, shall proportionally adjust rates for services to reflect changes in Federal Communications Commission separations that affect intrastate net income by at least 10 percent.

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

Sec. 58.057. RATE ADJUSTMENT FOR CERTAIN COMPANIES. (a) An electing company, after the 42nd month after the date the company elects incentive regulation under this chapter, may file an application for a commission review of the company's need for changes in the rates of its services if the company:

(1) has fewer than five million access lines in this state; and

(2) is complying with:

(A) the company's infrastructure commitment;

(B) each requirement relating to quality of service; and

(C) each commission rule adopted under Chapter 60.

(b) The company's 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.

(c) The commission may use an index and a productivity offset in determining the requested changes.

(d) The commission may not:

(1) order an increase in the rate for residential local exchange telephone service that would cause the rate to increase by more than the United States Consumer Price Index in any

12-month period; or

(2) set the monthly rate for residential local exchange telephone service in an amount that exceeds the nationwide average rates for similar local exchange telephone services.

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

Sec. 58.058. RATE GROUP RECLASSIFICATION. Notwithstanding Subchapter B, the commission, on request of the electing company, shall allow a rate group reclassification that results from access line growth.

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

Sec. 58.059. COMMISSION RATE ADJUSTMENT PROCEDURE. (a) In accordance with this section, an electing company may request and the commission may authorize a rate adjustment under Section [58.056](#), [58.057](#), or [58.058](#).

(b) The electing company must provide to the commission notice of its intent to adjust rates. The notice must be accompanied by sufficient documentary evidence to demonstrate that the rate adjustment is authorized under Section [58.056](#), [58.057](#), or [58.058](#). The commission by rule or order shall prescribe the documentation required under this subsection.

(c) The electing company must also provide notice to its customers after providing notice to the commission. The notice to the customers must:

(1) within a reasonable period after notice to the commission, be published once in a newspaper of general circulation in the affected service area;

(2) be included in or printed on each affected consumer's bill in the first billing that occurs after notice is filed with the commission;

(3) have a title that includes the name of the company and the words "NOTICE OF POSSIBLE RATE CHANGE"; and

(4) include:

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

(B) an estimate of the amount of the annual

change for the typical residential, business, or access consumer if the commission approves the rate change;

(C) a statement that a consumer who wants to comment on the rate change or who wants additional information regarding the rate change may call or write the commission and that the information will be provided without cost to the consumer and at the expense of the electing company; and

(D) the commission's telephone number and address.

(d) The estimate of the amount of the annual change required by Subsection (c)(4)(B) must be printed in a type style and size that is distinct from and larger than the type style and size of the body of the notice.

(e) The commission shall review the proposed rates to determine if the rate adjustment is authorized under Section [58.056](#), [58.057](#), or [58.058](#).

(f) The rate adjustment takes effect on the 90th day after the date the electing company completes the notice required by this section unless the commission suspends the effective date under Subsection (g).

(g) At any time before a rate adjustment is scheduled to take effect, the commission, on its own motion or on complaint by an affected party, may suspend the effective date of the rate adjustment and conduct a hearing to review the proposed adjustment. After the hearing, the commission may issue an order approving the adjustment, or if it finds that the adjustment is not authorized under Section [58.056](#), [58.057](#), or [58.058](#), issue an order modifying or rejecting the adjustment. An order modifying or rejecting a rate adjustment must specify:

(1) each reason why the proposed adjustment was not authorized by Section [58.056](#), [58.057](#), or [58.058](#); and

(2) how the proposed adjustment may be changed so that it is authorized.

(h) Except as provided by this section, a request for a rate restructure must comply with the notice and hearing requirements prescribed by Sections 53.101-53.106.

(i) An electing company that has not more than five percent

of the total access lines in this state may adopt as the cost for a service the cost for the same or substantially similar service offered by a larger incumbent local exchange company. The electing company may adopt the larger company's cost only if the cost was determined based on a long run incremental cost study. An electing company that adopts a cost under this subsection is not required to present its own long run incremental cost study to support the adopted cost.

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

Sec. 58.060. RATE ADJUSTMENT AFTER CAP EXPIRATION. After the expiration of the period during which the rates for basic network services are capped as prescribed by Section 58.054, an electing company may increase a rate for a basic network service only:

(1) with commission approval subject to this title;  
and

(2) to the extent consistent with achieving universal affordable service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 41, eff. Sept. 1, 1999.

Sec. 58.061. EFFECT ON CERTAIN CHARGES. This subchapter does not affect a charge permitted under:

- (1) Section 55.024;
- (2) Subchapter C, Chapter 55; or
- (3) Subchapter B, Chapter 56.

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

Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding Section 58.052(b) or Subchapter F, Chapter 60, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate. The company may exercise pricing flexibility in accordance with this section 10 days after providing an informational notice to the commission, to the office, and to any

person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:

(1) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or

(2) the sum of the tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.

(c) Except as provided by Section 58.003, an electing company may flexibly price a package that includes a basic network service in any manner provided by Section 51.002(7).

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 42, eff. Sept. 1, 1999.

#### SUBCHAPTER E. NONBASIC SERVICES

Sec. 58.151. SERVICES INCLUDED. The following services are classified as nonbasic services:

(1) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone charges, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(2) business tone dialing service, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(3) service connection for all business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(4) direct inward dialing for basic business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(5) "1-plus" intraLATA message toll services;

(6) 0+ and 0- operator services;

(7) call waiting, call forwarding, and custom calling, except that:

(A) residential call waiting service shall be classified as a basic network service until July 1, 2006; and

(B) for an electing company subject to Section 58.301, prices for residential call forwarding and other custom calling services shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(8) call return, caller identification, and call control options, except that, for an electing company subject to Section 58.301, prices for residential call return, caller identification, and call control options shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(9) central office based PBX-type services;

(10) billing and collection services, including installment billing and late payment charges for customers of the electing company;

(11) integrated services digital network (ISDN) services, except that prices for Basic Rate Interface (BRI) ISDN services, which comprise up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(12) new services;

(13) directory assistance services, except that an electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at no charge until July 1, 2006;

(14) services described in the WATS tariff as the tariff existed on January 1, 1995;

(15) 800 and foreign exchange services;

(16) private line service;

(17) special access service;

(18) services from public pay telephones;

- (19) paging services and mobile services (IMTS);
- (20) 911 services provided to a local authority that are available from another provider;
- (21) speed dialing;
- (22) three-way calling; and
- (23) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in Section 58.051, except that nothing in this section shall preclude a customer from subscribing to a local flat rate residential or business line for a computer modem or a facsimile machine.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 43, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 19, eff. September 7, 2005.

Sec. 58.152. PRICES. (a) An electing company may set the price for any nonbasic service at any level above the lesser of the:

(1) service's long run incremental cost in accordance with the imputation rules prescribed by or under Subchapter D, Chapter 60; or

(2) price for the service in effect on September 1, 1999.

(b) Subject to Section 51.004, an electing company may use pricing flexibility for a nonbasic service. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packages that include basic network services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 43, eff. Sept. 1, 1999.

Sec. 58.153. NEW SERVICES. (a) Subject to the pricing conditions prescribed by Section 58.152(a), an electing company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's



certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company serving more than five million access lines in this state shall provide notice to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company of any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers. Changes requiring notice under this subsection include the introduction of any new nonbasic services, any new features or functions of basic or nonbasic services, promotional offerings of basic or nonbasic services, or the discontinuation of then-current features or services. The electing company shall provide the notice:

(1) if the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(2) if the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange company of a new service is in compliance with Section 58.152(a). The commission shall allow the company to continue to provide the service while the complaint is pending.

(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with Section 58.152(a). If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as

necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

(e) The notice requirement prescribed by Subsection (b) expires September 1, 2003.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 43, eff. Sept. 1, 1999.

Sec. 58.155. INTERCONNECTION. Because interconnection to competitive providers and interconnection for commercial mobile service providers are subject to the requirements of Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), as amended, and Federal Communications Commission rules, including the commission's authority to arbitrate issues, interconnection is not addressed in this subchapter or Subchapter B.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 44, eff. Sept. 1, 1999.

Sec. 58.156. REGULATION OF SERVICES. Sections 55.001, 55.002, 55.003, and 55.004 do not apply to retail nonbasic services offered by an electing company or by a transitioning company, as defined by Section 65.002.

Added by Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 3, eff. September 1, 2013.

#### SUBCHAPTER F. GENERAL INFRASTRUCTURE COMMITMENT

Sec. 58.201. STATEMENT OF STATE GOAL. (a) It is the goal of this state to facilitate and promote the deployment of an advanced telecommunications infrastructure to spur economic development throughout this state. This state should be among the leaders in achieving this objective.

(b) The primary means of achieving this goal is through encouraging private investment in this state's telecommunications infrastructure by creating incentives for that investment and promoting the development of competition.

(c) The best way to bring the benefits of an advanced telecommunications network infrastructure to communities in this state is through innovation and competition among all the state's communications providers. Competition will provide residents of this state with a choice of telecommunications providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms try to satisfy customer needs. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.202. POLICY GOALS FOR IMPLEMENTATION. In implementing this subchapter, the commission shall consider this state's policy goals to:

(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, and availability of service;

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

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

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

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

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

(8) regulate a provider of services only to the extent the provider has 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 they use; and

(10) subject to Subchapter C, develop appropriate quality of service standards for local exchange companies so as to place this state among the leaders in deployment of an advanced telecommunications infrastructure.

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

Sec. 58.203. INFRASTRUCTURE GOALS OF ALL ELECTING COMPANIES. (a) Recognizing that it will take time for competition to develop in the local exchange market, the commission shall, in the absence of competition, ensure that each electing company achieves the infrastructure goals described by this section.

(b) Not later than December 31, 1996, an electing company shall make available to each customer in the company's territory access to end-to-end digital connectivity.

(c) Each new central office switch installed for an electing company after September 1, 1995, must be digital or technically equal to or superior to digital. In addition, a switch installed after September 1, 1997, must, at a minimum, be capable of providing integrated services digital network (ISDN) services in a manner consistent with generally accepted national standards.

(d) Not later than January 1, 2000, 50 percent of the local exchange access lines in each electing company's territory must be served by a digital central office switch.

(e) Not later than January 1, 2000, an electing company's public switched network backbone interoffice facilities must employ broadband facilities capable of 45 or more megabits a second. The company may employ facilities at a lower bandwidth if technology permits the delivery of video signal at the lower bandwidth at a quality level comparable to a television broadcast signal. The requirements of this subsection do not apply to local loop facilities.

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

Sec. 58.204. ADDITIONAL INFRASTRUCTURE COMMITMENT OF CERTAIN COMPANIES. (a) Not later than December 31, 1998, an electing company serving more than one million but fewer than five million access lines shall provide digital switching central

offices in all exchanges.

(b) Not later than January 1, 2000, an electing company serving more than five million access lines shall:

(1) install Common Channel Signaling 7 capability in each central office; and

(2) connect all of the company's serving central offices to their respective LATA tandem central offices with optical fiber or equivalent facilities.

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

Sec. 58.205. EXTENSION OR WAIVER OF INFRASTRUCTURE REQUIREMENTS. (a) For an electing company that serves more than one million but fewer than two million access lines, the commission may temporarily extend a deadline prescribed by Section 58.203 if the company demonstrates that the extension is in the public interest.

(b) For an electing company that serves fewer than one million access lines, the commission may waive a requirement prescribed by Section 58.203 if the company demonstrates that the investment is not viable economically.

(c) Before granting a waiver under Subsection (b), the commission must consider the public benefits that would result from compliance with the requirement.

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

Sec. 58.206. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing Section 58.203 or 58.204 in determining whether an electing company is entitled to:

(1) a rate increase under this chapter; or

(2) increased universal service funds under Subchapter B, Chapter 56.

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

#### SUBCHAPTER G. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES

Sec. 58.251. INTENT AND GOAL OF SUBCHAPTER. (a) It is the

intent of this subchapter to establish a telecommunications infrastructure that interconnects the public entities described in this subchapter. The interconnection of these entities requires ubiquitous, broadband, digital services for voice, video, and data in the local serving area. The ubiquitous nature of these connections must allow individual networks of these entities to interconnect and interoperate across the broadband digital service infrastructure. The delivery of these advanced telecommunications services requires collaborations and partnerships of public, private, and commercial telecommunications service network providers.

(b) The goal of this subchapter is to interconnect and aggregate the connections to every entity described in this subchapter, in the local serving area. It is further intended that the infrastructure implemented under this subchapter connect each entity that requests a service offered under this subchapter.

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

Sec. 58.252. DEFINITIONS. In this subchapter:

(1) "Educational institution" has the meaning assigned by Section [57.021](#).

(1-a) "Health center" means a federally qualified health center service delivery site.

(2) "Library" means:

(A) a public library or regional library system as those terms are defined by Section [441.122](#), Government Code;

(B) a library operated by an institution of higher education or a school district; or

(C) a library operated by a nonprofit corporation as defined by Section [441.221\(3\)](#), Government Code.

(3) "Private network services" means:

(A) broadband digital service that is capable of providing transmission speeds of 45 megabits a second or greater for customer applications; and

(B) other customized or packaged network services.

(4) "Telemedicine center" means a facility that is

equipped to transmit, by video, data, or voice service, medical information for the diagnosis or treatment of illness or disease and that is:

(A) owned or operated by a public or not-for-profit hospital, including an academic health center; or

(B) owned by one or more state-licensed health care practitioners and operated on a nonprofit basis.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 831 (H.B. 735), Sec. 11, eff. September 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 1, eff. September 1, 2011.

Sec. 58.253. PRIVATE NETWORK SERVICES FOR CERTAIN ENTITIES.

(a) On customer request, an electing company shall provide private network services to:

(1) an educational institution;

(2) a library as defined in Section 57.021;

(3) a nonprofit telemedicine center;

(4) a public or not-for-profit hospital;

(5) a legally constituted consortium or group of entities listed in this subsection; or

(6) a health center.

(b) Except as provided by Section 58.266, the electing company shall provide the private network services for the private and sole use of the receiving entity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 959, Sec. 9, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1220, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1255, Sec. 16, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1350, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 831 (H.B. 735), Sec. 12, eff. September 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 2, eff. September 1, 2011.

Sec. 58.254. PRIORITIES. An electing company shall give priority to serving:

- (1) rural areas;
- (2) areas designated as critically underserved either medically or educationally; and
- (3) educational institutions with high percentages of economically disadvantaged students.

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

Sec. 58.255. CONTRACTS FOR PRIVATE NETWORK SERVICES. (a) An electing company shall provide a private network service under a customer specific contract.

(b) An electing company shall offer private network service contracts under this subchapter at 110 percent of the long run incremental cost of providing the private network service, including installation.

(c) Commission approval of a contract is not required.

(d) Subtitle D, Title 10, Government Code, does not apply to a contract entered into under this subchapter.

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. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 3, eff. September 1, 2011.

Sec. 58.256. PREFERRED RATE TREATMENT WARRANTED. An entity described by Section 58.253(a) warrants preferred rate treatment. However, a rate charged for a service must cover the service's long run incremental cost.

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

Sec. 58.257. ELECTION OF RATE TREATMENT. An educational institution or a library may elect the rate treatment provided by



this subchapter or the discount provided by Subchapter B, Chapter 57.

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

Sec. 58.258. PRIVATE NETWORK SERVICES RATES AND TARIFFS.

(a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016. However, an electing company may increase a rate in accordance with the provisions of a customer specific contract.

(b) An electing company may not charge an entity described by Section 58.253(a) a special construction or installation charge. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 20, eff. September 7, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 4, eff. September 1, 2011.

Sec. 58.259. TARIFF RATE FOR CERTAIN INTRALATA SERVICE.

(a) An electing company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits a second service for the entities described by Section 58.253(a).

(b) The tariff rate may not be:

(1) distance sensitive; or

(2) higher than 110 percent of the service's statewide average long run incremental cost, including installation.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 5, eff. September 1, 2011.

Sec. 58.260. POINT-TO-POINT 45 MEGABITS A SECOND INTRALATA SERVICE. (a) On request of an entity described by Section 58.253(a), an electing company shall provide to the entity point-to-point 45 megabits a second intraLATA services.

(b) The service must be provided under a customer specific

contract except that any interoffice portion of the service must be recovered on a statewide average basis that is not distance sensitive.

(c) The rate for the service may not be higher than 110 percent of the service's long run incremental cost, including installation.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 6, eff. September 1, 2011.

Sec. 58.261. BROADBAND DIGITAL SPECIAL ACCESS SERVICE. (a) An electing company shall provide to an entity described by Section 58.253(a) broadband digital special access service to interexchange carriers.

(b) The rate for the service may not be higher than 110 percent of the service's long run incremental cost, including installation.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 7, eff. September 1, 2011.

Sec. 58.262. EXPANDED INTERCONNECTION. (a) On request of an entity described by Section 58.253(a), an electing company shall provide to the entity expanded interconnection (virtual colocation).

(b) The company shall provide expanded interconnection:

(1) in accordance with commission rules adopted under Subchapter H, Chapter 60; and

(2) at 105 percent of long run incremental cost, including installation.

(c) An entity described by Section 58.253(a) is not required to qualify for expanded interconnection if expanded interconnection is ordered by the commission.

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

Sec. 58.263. INTERNET ACCESS. (a) This section applies only to an educational institution or library in an exchange of an electing company serving more than five million access lines in which toll-free access to the Internet is not available.

(b) On request of the educational institution or library, the electing company shall make available a toll-free connection or toll-free dialing arrangement that the institution or library may use to obtain access to the Internet in an exchange in which toll-free access to the Internet is available.

(c) The electing company shall provide the connection or dialing arrangement at no charge to the educational institution or library until Internet access becomes available in the exchange of the requesting educational institution or library.

(d) The electing company is not required to arrange for Internet access or to pay Internet charges for the requesting educational institution or library.

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

Sec. 58.264. COMPLAINTS LIMITED. (a) Notwithstanding any other provision of this title, an electing company is subject to a complaint under this subchapter only by an entity described by Section 58.253(a).

(b) An entity may only complain that the company provided a private network service under this subchapter preferentially to a similarly situated customer.

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

Sec. 58.265. INTERCONNECTION OF NETWORK SERVICES. The private network services provided under this subchapter may be interconnected with other similar networks for distance learning, telemedicine, and information-sharing purposes.

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

Sec. 58.266. SHARING OR RESALE OF NETWORK SERVICES. (a) A private network service may be used by and shared among the entities described by Section 58.253(a) but may not be otherwise shared or resold to other customers.

(b) A service provided under this subchapter may not be required to be resold to another customer at a rate provided by this subchapter.

(c) This section does not prohibit an otherwise permitted resale of another service that an electing company may offer through the use of the same facilities used to provide a private network service offered under this subchapter.

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

Sec. 58.267. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing this subchapter in determining whether an electing company is entitled to:

(1) a rate increase under this chapter; or

(2) increased universal service funds under Subchapter B, Chapter 56.

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

Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016, regardless of:

(1) the date the company elected under this chapter;

or

(2) any action taken in relation to that company under Chapter 65.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 21, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 8, eff. September 1, 2011.

#### SUBCHAPTER H. SWITCHED ACCESS SERVICES

Sec. 58.301. SWITCHED ACCESS RATE REDUCTION. An electing company with greater than five million access lines in this state shall reduce its switched access rates on a combined originating

and terminating basis as follows:

(1) the electing company shall reduce switched access rates on a combined originating and terminating basis in effect on September 1, 1999, by one cent a minute; and

(2) the electing company shall reduce switched access rates on a combined originating and terminating basis by an additional two cents a minute on the earlier of:

(A) July 1, 2000; or

(B) the date the electing company, or its affiliate formed in compliance with 47 U.S.C. Section 272, as amended, actually begins providing interLATA services in this state in accordance with the authorization required by 47 U.S.C. Section 271, as amended.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 45, eff. Sept. 1, 1999.

Sec. 58.302. SWITCHED ACCESS RATE CAP. (a) An electing company may not increase the per minute rates for switched access services on a combined originating and terminating basis above the lesser of:

(1) the rates for switched access services charged by that electing company on September 1, 1999, as may be further reduced on implementation of the universal service fund under Chapter 56; or

(2) the applicable rate described by Section 58.301 as may be further reduced on implementation of the universal service fund under Chapter 56.

(b) Notwithstanding Subchapter F, Chapter 60, but subject to Section 60.001, an electing company may, on its own initiative, decrease a rate charged for switched access service to any amount above the long run incremental cost of the service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 45, eff. Sept. 1, 1999.