

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE C. TELECOMMUNICATIONS UTILITIES

CHAPTER 59. INFRASTRUCTURE PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. POLICY. It is the policy of this state that an incumbent local exchange company that does not elect to be regulated under Chapter 58 should have incentives to deploy infrastructure that will benefit the residents of this state while maintaining reasonable local rates and universal service. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.002. DEFINITIONS. In this chapter:

(1) "Electing company" means an incumbent local exchange company that elects for an infrastructure commitment and corresponding regulation under this chapter.

(2) "Election date" means the date on which the commission receives notice of election under Subchapter B. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. INFRASTRUCTURE INCENTIVES

Sec. 59.021. ELECTION. (a) An incumbent local exchange company may elect to make an infrastructure commitment and to be subject to corresponding regulation under this chapter if the company:

(1) serves less than five percent of the access lines in this state; and

(2) has not elected incentive regulation under Chapter 58.

(b) A company makes the election by notifying the commission in writing of the company's election.

(c) A company electing under this chapter may renew the election for successive two-year periods. An election that is renewed under this subsection remains in effect until the earlier

of the date that:

(1) the election expires because it was not renewed;

(2) the commission allows the company to withdraw its election under Section 59.022; or

(3) the legislature eliminates the incentive regulation authorized by this chapter and Chapter 58.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 46, eff. Sept. 1, 1999.

Sec. 59.022. WITHDRAWAL OF ELECTION. (a) The commission may allow an electing company to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause.

(b) 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.

Sec. 59.023. ELECTION UNDER CHAPTER 58. (a) This chapter does not prohibit a company electing under this chapter from electing incentive regulation under Chapter 58.

(b) If a company makes an election under Chapter 58, the infrastructure commitment made under this chapter offsets the infrastructure commitment required in connection with the Chapter 58 election.

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

Sec. 59.024. RATE CHANGES. (a) Except for the charges permitted under Subchapter C, Chapter 55, Subchapter B, Chapter 56, and Section 55.024, an electing company may not, before the end of the company's election period under this chapter, increase a rate previously established for that company under this title unless the commission approves the proposed change as authorized under Subsection (c) or (d).

(b) For purposes of Subsection (a), the company's previously established rates are the rates charged by the company on its election date 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) The commission, on motion of the electing company or on its own motion, shall adjust prices for services to reflect changes in Federal Communications Commission separations that affect intrastate net income by at least 10 percent.

(d) Notwithstanding Subsection (a), the commission, on request of the electing company, shall allow a rate group reclassification that results from access line growth.

(e) Section 58.059 applies to a rate change under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 47, eff. Sept. 1, 1999.

Sec. 59.025. SWITCHED ACCESS RATES. Notwithstanding any other provision of this title, the commission may not, on the commission's own motion, reduce an electing company's rates for switched access services before the expiration of the election period prescribed by Section 59.024, but may approve a reduction proposed by the electing company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 48, eff. Sept. 1, 1999.

Sec. 59.026. COMPLAINT OR HEARING. (a) On or before the end of the company's election period, an electing company is not, under any circumstances, subject to:

(1) a complaint or hearing regarding the reasonableness of the company's:

- (A) rates;
- (B) overall revenues;
- (C) return on invested capital; or
- (D) net income; or

(2) a complaint that a rate is excessive.

(b) Subsection (a) applies only to a company that is in compliance with the company's infrastructure commitment under this chapter.

(c) This section does not prohibit a complaint, hearing, or determination on an electing company's implementation of a competitive safeguard required by Chapter 60.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 49, eff. Sept. 1, 1999.

Sec. 59.027. 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 tariff 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. 59.028. 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.

Sec. 59.029. 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 electing company shall exclude:

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

(2) investments required by Section 59.052.

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

Sec. 59.030. NEW SERVICES. (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 shall price each new service at or above the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that has been accepted by the commission.

(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 electing company of a new service is in compliance with Subsection (b).

(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 the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the electing 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.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 50, eff. Sept. 1, 1999.

Sec. 59.031. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding Section 59.027(b) or Subchapter F, Chapter 60, an electing company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. The electing company may exercise pricing flexibility 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. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002(7) and includes packaging of regulated services with unregulated services or any service of an affiliate.

(b) An electing company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that an electing company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the 31st day after the company implements the rate.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 50, eff. Sept. 1, 1999.

Sec. 59.032. CUSTOMER PROMOTIONAL OFFERINGS. (a) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The electing company shall file with the commission a

promotional offering that consists of:

(1) waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) An electing company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) An electing company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 50, eff. Sept. 1, 1999.

SUBCHAPTER C. INFRASTRUCTURE COMMITMENT AND GOALS

Sec. 59.051. INFRASTRUCTURE COMMITMENT. (a) An electing company shall commit to make in this state, during the six years after the election date, the telecommunications infrastructure investment prescribed by this chapter.

(b) The company shall make the commitment to the governor and the commission in writing.

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

Sec. 59.052. INFRASTRUCTURE GOALS. (a) The commission shall ensure that each electing company achieves the infrastructure goals described by this section.

(b) Each new central office switch installed for an electing company in this state after September 1, 1995, must be digital.

(c) An electing company shall make available to each customer in the company's territory access to end-to-end digital connectivity. In this subsection, "make available" has the meaning assigned by 16 T.A.C. Section 23.69.

(d) In each electing company's territory, 50 percent of the local exchange access lines must be served by a digital central

office switch.

(e) An electing company's public switched network backbone interoffice facilities must employ broadband facilities that serve at least 50 percent of the local exchange access lines and are 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.

(f) An electing company shall install Common Channel Signaling 7 capability in each access tandem office.

(g) The infrastructure goals specified by Subsections (c)-(f) must be achieved not later than January 1, 2000.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.053. WAIVER OF INFRASTRUCTURE REQUIREMENTS. (a) For an electing company that serves fewer than one million lines, the commission may waive a requirement prescribed by Section 59.052 if the company demonstrates that the investment is not viable economically.

(b) Before granting a waiver under Subsection (a), 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. 59.054. PROGRESS REPORT. (a) On each anniversary of the company's election date, an electing company shall file with the commission a report on the company's progress on its infrastructure commitment.

(b) The report must include a statement of:

- (1) the institutions requesting service under Subchapter D;
- (2) the institutions served under Subchapter D;
- (3) the investments and expenses for the previous period and the total investments and expenses for all periods; and
- (4) other information the commission considers necessary.

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

Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing Section 59.052 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 D. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES

Sec. 59.071. DEFINITIONS. In this subchapter:

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

(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 telecommunications services provided to an entity described by Section 59.072(a), including broadband services, customized services, and packaged network services.

(4) "Telemedicine center" means a facility that is equipped to transmit, by video or data 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; or

(B) owned by a state-licensed health care practitioner 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. 13, eff.

September 1, 2008.

Sec. 59.072. 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;
- (3) a telemedicine center; or
- (4) a legally constituted consortium or group of

entities listed in this subsection.

(b) Except as provided by Section 59.081, the electing company shall provide the private network services for the private and sole use of the receiving entity. However, the company may provide the services with a facility that is used to provide another service to another customer.

(c) The customers listed in Subsection (a) are a special class of customers for purposes of the private network for distance learning, telemedicine, and information-sharing purposes.

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

Sec. 59.073. INVESTMENT PRIORITIES. An electing company shall give investment priority to serving:

- (1) rural areas;
- (2) areas designated as critically underserved 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. 59.074. 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 costs.

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

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. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 13, eff. September 1, 2011.

Sec. 59.075. PREFERRED RATE TREATMENT WARRANTED. The classes of customers described by Section 59.072(a) warrant 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. 59.076. 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. 59.077. 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.

(b) An electing company may not assess an entity described by Section 59.072(a) a tariffed special construction or installation charge unless the company and the entity agree on the assessment.

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. 22, eff. September 7, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 9, eff. September 1, 2011.

Sec. 59.078. PRIVATE LINE OR SPECIAL ACCESS RATES. (a) On request by an educational institution or a library, an electing company shall provide 1.544 megabits a second private line or

special access service at 110 percent of the service's long run incremental cost, including installation costs.

(b) The rate provided by Subsection (a) is in lieu of the discount provided by Subchapter B, Chapter 57.

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

Sec. 59.079. COMPLAINTS LIMITED. Notwithstanding any other provision of this title, an electing company is subject to a complaint under Subchapter C or this subchapter only by an entity described by Section 59.072(a).

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

Sec. 59.080. 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. 59.081. SHARING OR RESALE OF NETWORK SERVICES. (a) A private network service may be used and shared among the entities described by Section 59.072(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 other customers 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. 59.082. 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. 59.083. 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. 23, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 10, eff. September 1, 2011.