

UTILITIES CODE
TITLE 2. PUBLIC UTILITY REGULATORY ACT
SUBTITLE C. TELECOMMUNICATIONS UTILITIES
CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE
COMPANY MARKETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. STATEMENT OF POLICY. It is the policy of this state to provide for full rate and service competition in the telecommunications market of this state so that customers may benefit from innovations in service quality and market-based pricing.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.002. DEFINITIONS. In this chapter:

(1) "Deregulated company" means an incumbent local exchange company for which all of the company's markets have been deregulated.

(2) "Market" means an exchange in which an incumbent local exchange company provides residential local exchange telephone service.

(3) "Regulated company" means an incumbent local exchange company for which none of the company's markets have been deregulated.

(4) "Stand-alone residential local exchange voice service" means:

(A) residential tone dialing service;

(B) services and functionalities supported under the lifeline program;

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

(D) at the election of the incumbent local exchange company, mandatory residential extended area service arrangements, mandatory residential extended metropolitan service

or other mandatory residential toll-free calling arrangements, mandatory expanded local calling service arrangements, or another service that a company is required under a tariff to provide to a customer who subscribes or may subscribe to basic network services;

(E) flat rate residential local exchange telephone service delivered by landline, but only if the service is ordered and received independent of:

(i) a service classified as a nonbasic service under Section 58.151 or residential call waiting service;

(ii) a package of services that includes a service classified as a nonbasic service under Section 58.151; or

(iii) another flat rate residential local exchange service delivered by landline; and

(F) residential caller identification services if the customer to whom the service is billed is at least 65 years of age.

(5) "Transitioning company" means an incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.003. COMMISSION AUTHORITY. (a) Notwithstanding any other provisions of this title, the commission has authority to implement and enforce this chapter.

(b) The commission may adopt rules and conduct proceedings necessary to administer and enforce this chapter, including rules to determine whether a market should remain regulated, should be deregulated, or should be reregulated.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.004. INFORMATION. (a) The commission may collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter.

(b) The commission shall maintain the confidentiality of information collected under this chapter that is claimed to be

confidential for competitive purposes. Information that is claimed to be confidential is exempt from disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.005. CUSTOMER PROTECTION. This chapter does not affect a customer's right to complain to the commission regarding a telecommunications provider.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

Sec. 65.051. MARKETS DEREGULATED. A market that is deregulated as of September 1, 2011, shall remain deregulated. Notwithstanding any other provision of this title, the commission may not reregulate a market or company that has been deregulated.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 14, eff. September 1, 2011.

Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD REMAIN REGULATED. (a) An incumbent local exchange company may petition the commission to deregulate a market of the company that the commission previously determined should remain regulated. Notwithstanding any other provision of this title, only the incumbent local exchange company may initiate a proceeding to deregulate one of the company's markets. Not later than the 90th day after the date the commission receives the petition, the commission shall:

(1) determine whether the regulated market should remain regulated; and

(2) issue a final order classifying the market in

accordance with this section.

(b) In making a determination under Subsection (a), the commission may not determine that a market should remain regulated if:

(1) the population in the area included in the market is at least 100,000; or

(2) the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company, there are at least two competitors operating in all or part of the market that:

(A) are unaffiliated with the incumbent local exchange company; and

(B) provide voice communications service without regard to the delivery technology, including through:

(i) Internet Protocol or a successor protocol;

(ii) satellite; or

(iii) a technology used by a wireless provider or a commercial mobile service provider, as that term is defined by Section [64.201](#).

(c) If the commission deregulates a market under this section and the deregulation results in a regulated or transitioning company no longer meeting the definition of a regulated or transitioning company, the commission shall issue an order reclassifying the company as a transitioning company or deregulated company, as those terms are defined by Section [65.002](#).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(3), eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(3), eff. September 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(3), eff. September 1, 2011.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. [5](#)), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. [980](#)), Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 21(3), eff. September 1, 2011.

Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS. (a) Notwithstanding Section 65.052, an incumbent local exchange company may elect to have all of the company's markets remain regulated on and after January 1, 2006.

(b) To make an election under Subsection (a), an incumbent local exchange company must file an affidavit with the commission making that election not later than December 1, 2005.

(c) If an incumbent local exchange company makes an election under this section, the commission shall issue an order classifying the company as a regulated company that is subject to the provisions of this title that applied to the company on September 1, 2005. This subsection does not affect the authority of a regulated company to elect under Chapter 58 or 59 after January 1, 2005, and to be regulated under the chapter under which the company elected. Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

SUBCHAPTER C. DEREGULATED COMPANY

Sec. 65.101. ISSUANCE OF CERTIFICATE OF OPERATING AUTHORITY. (a) A deregulated company may petition the commission to relinquish the company's certificate of convenience and necessity and receive a certificate of operating authority.

(b) The commission shall issue the deregulated company a certificate of operating authority and rescind the deregulated company's certificate of convenience and necessity if the commission finds that all of the company's markets have been deregulated under Subchapter B.

(c) A deregulated company that holds a certificate of operating authority is a nondominant carrier.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 4, eff.

September 1, 2013.

Sec. 65.102. REQUIREMENTS. (a) A deregulated company that holds a certificate of operating authority issued under this subchapter is not required to:

(1) fulfill the obligations of a provider of last resort;

(2) comply with retail quality of service standards or reporting requirements;

(3) file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan; or

(4) comply with a pricing requirement other than a requirement prescribed by this subchapter.

(b) Notwithstanding any other provision of this title, the commission has only the authority provided by this section over a deregulated company that holds a certificate of operating authority issued under this subchapter. Subject to Subsection (c), the following provisions apply to a deregulated company and may be enforced by the commission using the remedies provided by Subchapter B, Chapter 15, and Subsection (d):

(1) Subchapter A, Chapter 15;

(2) Subchapters A, C, and D, Chapter 17, as applicable to carriers holding a certificate of operating authority;

(3) Sections 52.007, 52.060, and 52.156;

(4) Sections 54.001, 54.002, 54.003, 54.004, 54.005, 54.006, 54.008(a), 54.101, 54.102, 54.103, 54.105, 54.151, 54.156, 54.158, 54.159, 54.255, 54.256, 54.257, 54.259, 54.260, and 54.261;

(5) Sections 55.010, 55.123, 55.133, 55.134, 55.136, and 55.137;

(6) Chapter 56, except Subchapters F and G;

(7) Chapter 60;

(8) Chapter 62;

(9) Subchapter E, Chapter 64;

(10) Sections 65.001, 65.002, 65.003, and 65.004, this subchapter, and Subchapter E of this chapter; and

(11) Chapter 66.

(c) Nothing in this subchapter affects the continuing applicability of the following provisions of this title:

- (1) Sections 51.003 and 51.010(c);
- (2) Section 52.002(d);
- (3) Sections 54.204, 54.205, and 54.206; and
- (4) Section 65.051.

(d) The commission may hear complaints of retail and wholesale customers against deregulated companies that are in the scope of the commission's authority provided by this section.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 16, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 29 (S.B. 1003), Sec. 1, eff. September 1, 2017.

SUBCHAPTER D. TRANSITIONING COMPANY

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY. (a) Except as provided by Subsection (b), a transitioning company is governed by this subchapter and the provisions of this title that applied to the company immediately before the date the company was classified as a transitioning company. If there is a conflict between this subchapter and the other applicable provisions of this title, this subchapter controls.

(b) A transitioning company is not required to fulfill the obligations of a provider of last resort in a deregulated market.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 17, eff. September 1, 2011.

Sec. 65.152. GENERAL REQUIREMENTS. (a) A transitioning company may:

(1) exercise pricing flexibility in a market subject only to the price and rate standards prescribed by Sections 65.153 and 65.154; and

(2) introduce a new service in a market subject only to the price and rate standards prescribed by Sections 65.153 and 65.154.

(b) A transitioning company may not be required to:

(1) comply with retail quality of service standards or reporting requirements in a market that is deregulated; or

(2) file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 18, eff. September 1, 2011.

Sec. 65.153. RATE REQUIREMENTS. (a) In a market that remains regulated, a transitioning company shall price the company's retail services in accordance with the provisions that applied to that company immediately before the date the company was classified as a transitioning company.

(b) In a market that is deregulated, a transitioning company shall price the company's retail services as follows:

(1) for all services, other than basic local telecommunications service, at any price higher than the service's long run incremental cost; and

(2) for basic local telecommunications service, at any price higher than the lesser of the service's long run incremental cost or the tariffed price on the date that market was deregulated, provided that the company may not increase the company's rates for stand-alone residential local exchange voice service before the date that the commission has the opportunity to revise the monthly per line support under the Texas High Cost Universal Service Plan

pursuant to Section 56.031, regardless of whether the company is an electing company under Chapter 58.

(c) Except as provided by Subsection (c-1), in each deregulated market, a transitioning company shall make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company.

(c-1) A transitioning company may offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.

(d) In any market, regardless of whether regulated or deregulated, the transitioning company may not:

(1) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(2) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or

(3) engage in predatory pricing or attempt to engage in predatory pricing.

(e) A rate that meets the pricing requirements in Subsection (b) shall be deemed compliant with Subsection (d)(2).

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 19, eff. September 1, 2011.

Sec. 65.154. RATE AND PRICE REQUIREMENTS NOT APPLICABLE.

(a) A transitioning company is not required to comply with the following requirements prescribed by this title on submission of a written notice to the commission:

(1) a direct or indirect requirement to price a residential service at, above, or according to the long-run

incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services; or

(2) a requirement to file with the commission a long-run incremental cost study for residential or business services.

(b) Notwithstanding Subsection (a), a transitioning company may not:

(1) establish a retail rate, price, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(2) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or

(3) engage in predatory pricing or attempt to engage in predatory pricing.

(c) A rate or price for a basic local telecommunications service is not anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff for that service in effect on the date the transitioning company submits notice to the commission under Subsection (a).

(d) This section, including Subsection (a)(1), does not affect:

(1) other law or legal standards governing predatory pricing or anticompetitive conduct; or

(2) an infrastructure commitment under Chapter 58 or 59.

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 20, eff. January 2, 2012.

Sec. 65.155. COMPLAINT BY AFFECTED PERSON. (a) An affected person may file a complaint at the commission challenging whether a transitioning company is complying with Section 65.154(b).

(b) Notwithstanding Section 65.154(a)(2), the commission may require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 20, eff. January 2, 2012.

SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY DEREGULATED COMPANY. (a) On the date the last market of an incumbent local exchange company is deregulated, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) After reducing the rates under Subsection (a), a deregulated company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES.

(a) Notwithstanding any other provision of this title, a transitioning company that has more than three million access lines in service in this state on January 1, 2006, shall:

(1) on July 1, 2006, reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to 33 percent of the difference in the rates in effect on June 30, 2006, and the company's respective

federal originating and terminating per minute of use switched access rates;

(2) on July 1, 2007, reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to 33 percent of the difference in the rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates; and

(3) on July 1, 2008, reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) After reducing the rates under Subsection (a), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN TRANSITIONING COMPANIES WITH NOT MORE THAN THREE MILLION ACCESS LINES. (a) Notwithstanding any other provision of this title, a company that is classified as a transitioning company effective January 1, 2006, and that has not more than three million access lines in service in this state on that date shall reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) On July 1, 2006, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that are not regulated on July 1, 2006, by the total number of the company's markets on December 30, 2005.

(c) On July 1, 2007, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(d) On July 1, 2008, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(e) On July 1, 2009, and each succeeding year thereafter on July 1, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount derived by multiplying the difference in the company's rates in effect on June 30, 2006, and the company's

respective federal originating and terminating per minute of use switched access rates in effect on that date by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005, except that a transitioning company shall be required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges if more than 75 percent of the transitioning company's markets are not regulated on July 1 of 2009 or any succeeding year.

(f) After reducing the rates under Subsection (e), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY DESIGNATED TRANSITIONING COMPANY. (a) Notwithstanding any other provision of this title, a company that is classified as a transitioning company after January 1, 2006, shall reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) On the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that are not regulated on the date the company is classified as a transitioning company by the total number of the company's markets on December 30, 2005.

(c) On the first anniversary of the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(d) On the second anniversary of the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(e) On the third anniversary of the date the company is classified as a transitioning company and each anniversary thereafter, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount derived by multiplying the difference in the company's rates in effect on the day before the date the company was

classified as a transitioning company, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005, except that a transitioning company shall be required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges if more than 75 percent of the transitioning company's markets are not regulated on July 1 of 2009 or any succeeding year.

(f) After reducing the rates under Subsection (e), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY. (a) After a deregulated or transitioning company reduces the company's rates under this subchapter, the company may not increase those rates above the applicable rates prescribed by this subchapter.

(b) If a transitioning company's federal per minute of use switched access rates are reduced, the company shall reduce the company's per minute of use switched access rates to not more than the applicable rates prescribed by this subchapter.

(c) Notwithstanding Subsections (a) and (b), a deregulated or transitioning company may decrease the company's per minute of use switched access rates to amounts that are less than the applicable rates prescribed by this subchapter.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26,

eff. September 7, 2005.