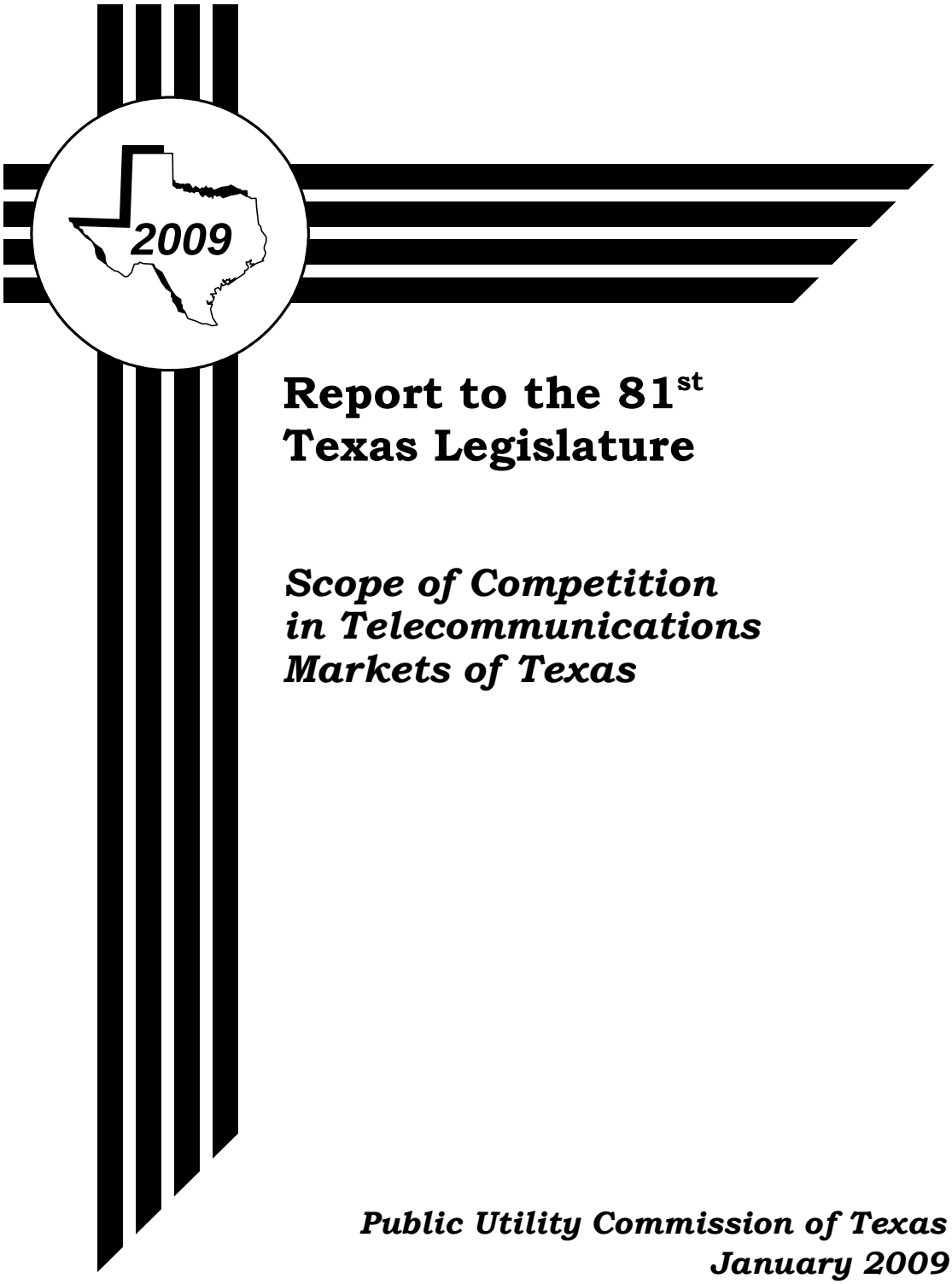

Report to the 81st Texas Legislature

Scope of Competition in Telecommunications Markets of Texas

Public Utility Commission of Texas
January 2009

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Public Utility Commission of Texas

January 15, 2009

Honorable Members of the Eighty-First Texas Legislature:

We are pleased to submit our 2009 Report on the Scope of Competition in Telecommunications Markets as required by Section 52.006 of the Public Utility Regulatory Act (PURA).

Competition in the telecommunications industry continues to develop and much of the change has been driven by technological advances and investment in mobile and broadband technologies. Mobile wireless companies play an increasingly significant role in the competitive market in Texas, and cable television and non-facilities based Internet-protocol providers have increased their market presence. Although incumbent local exchange companies continue to be the primary telecommunications service providers across Texas, some companies are using satellite technology to provide telecommunications services to rural customers and customers residing in previously unserved areas of the state. The availability of broadband service at affordable prices, principally from local exchange companies, cable companies, and mobile wireless companies, has resulted in significant growth in the number of broadband subscribers in Texas.

The state-issued certificates of franchise authority that were introduced though legislation enacted in 2005 have eased the barriers to entry of competitors and have encouraged investment in the video/cable market. As a result, competition in the video/cable market is beginning to emerge across Texas.

The enactment of legislation in 2005 also reduced the Commission's role in the oversight of the retail telecommunications voice market. Over the last four years, several markets served by the large incumbent local exchange telephone companies have been deregulated. As a result, there have been fewer regulatory matters at the Commission relating to these markets.

This report discusses the competitive offerings prevalent in the industry such as the bundling of multiple services. The report highlights major state and federal regulatory activities since the previous Scope of Competition Report. The report concludes with Commission recommendations for the Legislature to consider in the 81st legislative session.

We look forward to continuing to work with you on these and other policy objectives. If you need additional information about any issues addressed in this report, please do not hesitate to call on us.

Sincerely,

Barry T. Smitherman
Chairman

Donna L. Nelson
Commissioner

Kenneth W. Anderson, Jr.
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CHAPTER I. THE EVOLVING TELECOMMUNICATIONS INDUSTRY

A. Overview

The telecommunications industry continues to undergo rapid change both in Texas and nationally. Much of the change has been driven by technological advances and investment in mobile wireless and broadband technologies. Two of the indicators for these changes are the increase in mobile wireless subscribers and the decline in land-line subscribers, so that today in Texas, there are roughly twice as many mobile wireless subscribers as land-line subscribers served by incumbent local exchange carriers (ILECs). Another indicator is the increase in broadband subscribers in Texas, which between 2005 and 2007 increased by 133 percent.

Competition in local telecommunication markets has become increasingly intermodal-competition among companies using different types of telecommunication facilities rather than competition between traditional wireline-based telephone companies. The competition that was envisioned in the Federal Communications Act of 1996 relied heavily on competitive local exchange carriers (CLECs) using portions of the networks operated by the ILECs (and paying them for the use of these facilities). The new telecommunications arena primarily features competition between ILECs and competitors that deploy different types of facilities, such as cable companies and wireless companies. In addition, non-facilities-based companies, such as Vonage and Skype have gained customers. CLECs remain a part of the landscape, but with a diminishing market share.

Broadband service is principally being offered by local exchange carriers, cable companies and wireless companies. Broadband has provided Internet and television programming, but it is also providing telephone service. The development of Voice over Internet Protocol (VoIP) has enabled cable companies to begin offering telephone service over their own facilities, and cable is becoming an increasingly important competitor for telephone services. In addition, VoIP technology is being used by "non-facilities based" companies such as Vonage and Skype to provide telephone service over broadband facilities furnished to the end-user customer by another company, whether a cable company or a land-line telephone company using digital subscriber line technology.

The state-issued certificates of franchise authority have eased the entry of new participants (such as the ILECs) into the video market in Texas and the entry of existing cable companies into new markets.[1] The ILECs have moved rapidly to compete in this new environment by offering television services in partnership with direct broadcast satellite operators, while investing in fiber optic network upgrades to permit the offering of video programming on landline facilities. As of August 2008, 27 percent of the counties in Texas (69 counties) are or will be served by at least two video and cable providers. Smaller markets have also benefited from entry of telecommunications companies in the video market. ILECs are increasing their presence in the video markets

[1] State-issued certificates of franchise authority were authorized by legislation enacted in 2005 in the 79th Texas Legislature, 2nd Called Session, Senate Bill 5.

in Texas and are competing for customers with cable companies through "triple play" bundles of voice telecommunications service (local and long distance), broadband Internet, and television programming at a fixed monthly rate. Although the "all-distance" voice service bundles and triple play offerings dominate intermodal competition, ILECs with wireless networks are beginning to pursue a "quadruple play" marketing strategy which integrates wireless service into the triple play offering. To compete effectively with telephone companies, cable companies are also considering offering quadruple play bundles by either partnering with wireless companies or acquiring wireless assets.

Mobile phones have had a huge impact on consumer telephone use. According to the FCC, the overall wireless penetration in the United States has reached 80 percent and virtually everyone between the ages of 15 and 69 has a wireless phone.[2] Texas ranked second in the nation in June 2007 with 18.8 million wireless subscribers,[3] nearly 79 percent of its population. Wireless phones are increasingly serving as a substitute for traditional wireline telephone service. According to a 2007 survey, nearly one of every six American homes (15.8 percent) had only wireless phones.[4] The technological advances in the last decade have eroded the distinction between wireless and wireline technologies in the provision of voice, data, and even video services. According to the Federal Communications Commission (FCC), wireless technology is increasingly being used to provide a range of mobile broadband services at faster speeds which effectively compete with landline broadband service.[5] Other innovative mobile services and devices available in the past year include live mobile TV service, location-based services that rely on global positioning systems and the Apple iPhone, which combines the communications functions of a cell phone with music and video features and a web-browser.[6] Other mobile phone providers are also beginning to market phones that have these capabilities. There is also an increased availability of mobile handsets with Wi-Fi data service capability, which allow customers to access high-speed Internet connections at locations such as restaurants, coffee shops, hotels, airports, convention centers, and city parks that have wireless access points.[7]

In sum, the competitive landscape continues to be transformed through intermodal competitors, such as wireless and cable providers. Intermodal competitors actively

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[2] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, and Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 07-17 (Terminated), Twelfth Report, FCC 08-28 (Rel. February 4, 2008) at ¶ 244 (*CMRS Competitive Analysis – Twelfth Report*).

[3] *Local Telephone Competition: Status as of December 31, 2007*, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2008 (FCC Local Telephone Competition Report) at Table 14. Available online at: www.fcc.gov/wcb/stats.

[4] *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July-December 2007, National Health Center for Health Statistics*, Centers for Disease Control and Prevention, available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.htm (Wireless Substitution Report - December 2007 NHIS).

[5] *CMRS Competitive Analysis – Twelfth Report* at pages 5-8.

[6] *Id.*

[7] *Id.* at ¶ 253.

compete in the local telephone market against landline companies for customers. The competitive environment in the video market is also changing with the entry of telecommunications providers in the last two years.

B. Regulatory Activity

Regulatory activity on the state level over the last two years has focused on implementing the changes in PURA enacted by the Legislature in 2005. These activities have facilitated the continued transition of the Texas telecommunications landscape toward a market-based competitive environment and promoted competition in the video market.

The FCC has also focused on market-based policies rather than heavy regulation and has adopted policies that encourage competition in the video and telecommunications market.

1. Regulatory Activities in Texas

The major regulatory activities at the state level fall in the following categories: (1) revision of Texas Universal Service Fund (TUSF) support and (2) State-Issued Certificates of Franchise Authority (CFAs) for the provision of cable and video service.

a. Revision of Texas Universal Service Fund Support

The Texas Universal Service Fund plan contains programs that, in conjunction with the Federal Universal Service Fund (FUSF), assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas.

In 2005, the Legislature authorized the Commission to revise the Texas High Cost Universal Service Plan (THCUSP) after September 1, 2007. The THCUSP, the largest program within the TUSF, subsidizes rates in high cost, rural areas. In September 2007, the Commission created a proceeding to determine and potentially revise the monthly per-line support amounts available to qualified companies from THCUSP.[8] In April 2008, the Commission approved a unanimous settlement agreement (Agreement) that reduced THCUSP amounts available to eligible carriers over a four-year period by approximately $63.3 million beginning on January 1, 2009 and by approximately $144.35 million once all reductions are fully implemented.[9] This equates to approximately a 36.5 percent reduction in current THCUSP disbursements and a 25 percent reduction in

[8] *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. SUBST. R. 26.403*, Docket No. 34723.

[9] The four ILECs that receive THCUSP support are Verizon, Embarq, Windstream, and AT&T Texas (THCUSP ILECs). Under the Agreement, the support for ETPs will be reduced, not just the ILECs' support, and therefore the total THCUSP support reductions will be greater than the amounts estimated. The assumptions underlying the parties' estimates are set forth in the Agreement.

disbursements for the entire TUSF.[10] These reductions will result in a lower TUSF surcharge on customers' bills. The TUSF assessment on customer phone bills was changed to 3.4 percent from 4.4 percent of the intrastate portion of the customer's bill, effective January 1, 2009 to reflect the reduced TUSF support.

To offset the reduced THCUSP, affected incumbent telephone companies may seek to gradually increase unbundled basic telephone rates, so that basic rates are within a range of $15.50 to $17 per month. Finally, the Agreement reduces the number of eligible lines that are entitled to receive THCUSP support and provides for the Commission to conduct rulemaking proceedings related to TUSF, including one to increase the state Lifeline discount amount.[11]

b. State-Issued Cable and Video Franchise

Following the enactment of Senate Bill 5 in 2005, a number of ILECs and cable companies have obtained state-issued cable franchises.[12] On May 16, 2006, the Commission adopted a new substantive rule detailing the criteria and requirements for these franchises.[13] The ability to obtain a state-issued certificate makes it easier for incumbent telephone companies to enter the video market in Texas, and 50 companies have obtained state-issued certificates of franchise authority, including Verizon, AT&T, Grande Communications, Time-Warner, and Cox Communications.[14] In 17 counties, at least four different companies have received state-issued certificates.

After entering the video market, the telephone companies have been able to offer a "triple play" of bundled services (voice, data, and video) more readily and thus be in competition with the cable companies' triple play. Cable companies have also obtained state-issued certificates to provide cable service in existing markets after the expiration of their current city-issued franchises and in new markets.

The Commission's authority to resolve customer service complaints about cable and video providers operating under state-issued CFAs is unclear. PURA § 66.008 specifies that the Commission has no jurisdiction to process complaints in local markets where two or more non-satellite providers offer video service. Where cable companies have operated under municipal franchises, the municipality has had the authority to take

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[10] The TUSF supports the THCUSP and fourteen other universal service programs. Appendix E lists all the TUSF programs.

[11] The Commission recently completed two of the three rulemaking proceedings required by the Agreement. In September 2008, the Commission adopted an amendment to P.U.C. SUBST. R. 26.403 which imposed additional reporting requirements on recipients of THCUSP support (Project No. 35632). In November 2008, the Commission adopted an amendment to P.U.C. SUBST. R. 26.412 which increased the Lifeline discount by an amount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the incumbent telephone companies affected by the Agreement (Project No. 35629). There is an ongoing rulemaking proceeding to address service quality standards for alternate technology used by a certificate holder to meet its provider of last resort (POLR) obligations.

[12] PURA Chapter 66.

[13] Project No. 32171, adopting P.U.C. SUBST. R. 28.6 relating to State-issued Certificate of Franchise Authority (CFA) Certification Criteria.

[14] *See* Appendix D for a list of companies that have been granted CFAs.

and resolve customer complaints. However, in markets where the incumbent cable company has replaced an expiring municipal franchise with a new CFA, the municipality is no longer the franchise authority and it is unclear who has jurisdiction to process customer complaints. The Commission has determined that it does not have the same authority to consider and resolve customer complaints as a municipality did when the incumbent cable company was operating under a city-issued franchise. Therefore, the Commission has directed CFA holders not to include its name, address, and telephone number on monthly bills to subscribers.

2. Federal Regulation

a. Federal Universal Service Reform

In recognition of the increasing use of broadband Internet access as a mode of communication, the FCC is considering a comprehensive reform of the FUSF as a means to spur the deployment of broadband Internet access service to all areas of the nation, including high-cost, rural, and insular areas where many customers do not currently have access to such services. The FCC has sought comment on whether all recipients of federal high-cost support should be required to offer broadband Internet access service within five years to all customers within their supported areas as a condition of receiving FUSF support.[15] The support for ILECs would be set at the total amount of high-cost support disbursed to the ILEC in December 2008 on an annualized basis.[16] An alternative proposal would allow rural ILECs subject to rate of return regulation to continue drawing high cost universal support - as they do today - until 2010 and then the universal service support for these ILECs would be frozen at the 2010 support level.[17]

The proposal also seeks to promote broadband use among Lifeline/Link Up customers by creating a pilot program to provide discounted access to broadband services.[18] In addition, the FCC's proposal seeks to limit the growth of FUSF support disbursements and stabilize the contribution base for the FUSF by replacing the current revenue-based contribution with fixed $1 monthly contribution for each number associated with residential services.[19] The contributions for business services would be based on the number of connections to the public switched telephone network.[20]

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[15] *High-Cost Universal Service Support, WC Docket No. 05-337*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-962, Released November 5, 2008, Appendix A.

[16] *Id.* at ¶ 12.

[17] *Id.*, Appendix C at ¶ 12.

[18] *Id.,* Appendix A at ¶ 64 and Appendix C at ¶ 60.

[19] *Id.*, Appendix A at ¶ 105.

[20] *Id.* at ¶ 130.

b. Intercarrier Compensation Reform

The FCC is considering a new approach to intercarrier compensation that attempts to reduce inefficiencies in the existing intercarrier compensation regime, eliminate the potential for arbitrage and fraud caused by disparate compensation rates, and spur the transition to an all-Internet Protocol (IP) broadband network. The FCC has issued a Further Notice of Proposed Rulemaking (FNPRM),[21] in which it has proposed the establishment of new staged uniform termination rates over a ten-year transition plan designed to reduce rates while minimizing market disruptions and cushioning the impact of the reform on both customers and carriers.[22] At the end of the transition period, all telecommunications traffic would be subject to reciprocal compensation provisions of the Federal Telecommunications Act of 1996, Section 251(b)(5), and state commissions, applying the new "additional costs" standard in the FNPRM, will set final reciprocal compensation rates at or below $0.0007 per minute of use.[23]

The FCC would permit incumbent ILECs to recover at least part of the lost intercarrier compensation revenues caused by the reduction in intercarrier compensation rates through increases in end-user charges and new universal service support.[24] The FCC has proposed raising the cap on the interstate subscriber line charge (SLC) and ILECs are permitted to increase their SLCs up to the new caps.[25] Further, any new universal service support for an ILEC is conditioned on the ILEC showing that its federal SLC, state SLC (if any), and state retail local service rates are at the maximum levels permitted under existing state law.[26]

The FCC proposals relating to FUSF and intercarrier compensation would represent significant changes in the telecommunications environment, and the proposals have garnered both support and opposition. It seems unlikely now that they will be adopted before the new president takes office, and with a new administration and the likelihood of new FCC members, it is unclear whether these changes will be adopted.

c. National Standards for Cable and Video Franchises

The FCC concluded that local franchising processes in many jurisdictions had become an unreasonable barrier to entry that impeded the achievement of the federal goals of enhanced cable competition and accelerated broadband deployment. Consequently, the FCC set new standards applicable to the negotiations of local franchising agreements with new entrants. These standards address a reasonable time frame for negotiations, build-out requirements, franchise fees, and educational and public-interest network obligations. However, these standards only apply to franchising controlled by county or municipal-level franchising authorities. The FCC did not

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[21] *Id.* at Appendix A.

[22] *Id.* at ¶ 158.

[23] *Id.* at ¶¶ 158 and 202.

[24] *Id.* at ¶ 294.

[25] *Id.* at ¶ 298.

[26] *Id.* at ¶¶ 299 and 320.

preempt the video franchising system adopted by Texas.[27] The FCC subsequently extended some of these standards to incumbent cable operators seeking to renegotiate or modify existing franchise agreements.[28]

d. VoIP Rulings

VoIP technology uses a broadband Internet connection to transmit voice calls over the Internet, bypassing the public switched telephone network at least in part. The regulatory status of VoIP is uncertain at this time. Federal law makes a distinction between "information services," which are not regulated, and "telecommunications services," which are subject to common carrier regulation. The FCC has not yet determined whether VoIP is a regulated telephone service or an unregulated information service. The decisions made by the FCC since 2004, in particular regarding Enhanced 9-1-1 (E9-1-1) and USF contributions, tend to show that VoIP is being compared to traditional telephone service.[29] The FCC has an ongoing proceeding to determine how VoIP should be treated in the overall telecommunications regulatory framework.

e. Net Neutrality

A debate over "net neutrality" has emerged at the FCC and in Congress in the last two years. The debate concerns whether an Internet service provider can favor its own Internet content (if any) over that of a competitor's, or charge content providers for receiving favorable treatment. To ensure that broadband networks are widely deployed, the FCC adopted principles that generally require the Internet to be operated in a neutral manner.[30] As part of the conditions for the FCC's approval of the merger of AT&T and Bell South in December 2006, AT&T/Bell South voluntarily committed to maintain a neutral network and neutral routing in its wireline broadband Internet access service. This commitment expires on December 2008 or the effective date of any future legislation on net neutrality enacted by Congress, whichever is earlier. While the issue continues to be debated in Congress, legislation has not yet been enacted on net neutrality.[31]

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[27] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking* at ¶ 1, footnote 2, FCC 06-180, MB Docket No. 05-311 (Rel. March 5, 2007).

[28] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Second Report and Order*, FCC 07-190, MB Docket No. 05-311 (Rel. November 6, 2007).

[29] *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking* at ¶¶ 25 and 36, FCC No. 06-94, WC Docket No. 06-122 (Rel. June 27, 2006). *IP-Enabled Services, First Report and Order and Notice of Proposed Rulemaking* at ¶ 23, FCC No. 05-116, WT Docket No. 04-36 (Rel. June 3, 2005).

[30] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Policy Statement*, at ¶ 4, FCC 05-151, CC Docket No. 02-33 (Rel. September 23, 2005).

[31] For further detail on this topic, please see the Commission report in Project No. 32527, *Study To Determine Whether Title 2, Utilities Code Adequately Preserves Customer Choice in the Internet-Enabled Applications Associated with Broadband Service.*

C. Technology

New technologies in telecommunications often provide business opportunities for both existing and new competitors. Alternately, new technologies are often substitutes for existing technologies. The following is a synopsis of new technologies in the telecommunications marketplace.

- **VoIP** – Voice over Internet Protocol, or VoIP, uses the Internet protocol for voice transmission. This permits efficient use of the network, as voice and data can share the same connection simultaneously. It can provide for enhanced features not available with standard telephone service. Cable companies and telephone companies are providing service using their broadband data services, and third-party service providers such as Vonage use their customers' existing broadband connections to provide service, completing calls through another broadband provider or an ILEC using copper wires. Some companies such as Skype permit customers to call any other Skype customer on a computer-to-computer basis. Because some VoIP providers offer their customers multiple phone numbers and phone numbers in any area code, the service has raised issues concerning the exhaustion of telephone numbers and the jurisdictional identification of traffic (interstate or intrastate) for compensation purposes. Concerns have also been raised about the interoperability of VoIP with other systems, such as alarm systems, and the ability of VoIP operators to provide E9-1-1 emergency calling functions. The appropriate treatment of VoIP in the overall telecommunications framework, including issues such as whether providers using VoIP technology should be required to pay into the TUSF, has not been determined.
- **Satellite Access** – Increased demand for voice and data satellite services has lowered costs for service providers and prices for consumers, making satellite access more attractive, particularly in rural markets where the cost of providing wireline service can be very high.
- **Broadband over Power Line (BPL)** – This technology delivers broadband telecommunications signals over existing power lines. Previously, electric companies were considering BPL both for commercial voice and data services and for internal uses, such as remote meter reading, but at this time interest appears to be shifting to the use of BPL for utility applications only. Concerns continue to be raised about the potential for BPL to interfere with other uses of the radio spectrum because, unlike the coaxial cable used by cable companies, electric wires are not shielded.
- **WiMAX** (Worldwide Interoperability for Microwave Access) – WiMAX is a wireless protocol that provides DSL-like speeds in limited areas. In addition to forming the basis for some wireless companies' next-generation broadband wireless service, it has the potential to extend broadband access in rural areas that currently are not served by DSL or cable modem.
- **Ethernet** – Ethernet, previously used only for local connections within a building, is being extended by telephone companies over their fiber and

copper network to form Metropolitan Area Networks, where multiple buildings or corporate campuses can be connected in the same way that users in a single building have been connected.

- **Fiber-to-the-Home** (FTTH) – Some telephone companies, notably Verizon with its fiber optic service product FiOS, have begun to extend fiber optic cable all the way to subscribers' homes. This provides practically unlimited capacity, enabling high-definition video service, voice service, and very high-speed data transmission. The technology is costly to install and was initially undertaken only in new neighborhoods and have since expanded into existing neighborhoods and also in out-of-franchise areas.
- **Very High-speed Digital Subscriber Line** (VDSL) – Another new technology involves extending fiber further into the network, but uses a portion of the existing copper lines to provide high-speed data (VDSL) and video to customers. This approach provides much higher capacity than the DSL service it had previously offered at a lower cost than FTTH.

CHAPTER II. STATUS OF COMPETITION

A. Introduction

Communication used to be dominated by landline telephones and faxes; however, communication today involves traditional landlines, coaxial cable, fiber optics, and wireless technologies. While the Public Utility Commission began this decade focused on competition between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) using traditional wireline infrastructure, technological innovation has broadened the scope of competition within the telecommunications industry. For example, the distinctions between industries like telecommunications and cable have started to erode. Cable companies, with their triple play packages offering local phone, video and Internet, now compete directly with telecommunications companies. Telecommunication companies, in turn, offer their own triple play packages, providing the video service previously available only through cable companies.

Using data collected from various sources, this chapter details the current state of competition in the voice and broadband markets in Texas. This chapter addresses the state of competition between ILECs and traditional CLECs as well as the emerging competition from alternative providers such as cable companies and wireless providers. In addition, for the first time, this chapter uses data collected from certificated cable and video providers to analyze the impact of the state-issued certificate of franchise authority provisions in PURA Chapter 66 enacted by the Legislature in 2005 in spurring investment and competition in the cable and video market. The research methodology used in gathering the data for the analysis in this chapter is described in Appendix A.

B. Competitive Landscape in Texas

Today, the competitive landscape includes the following types of service providers: ILECs, CLECs, cable telephone companies, non-facility VoIP companies, and wireless companies. These companies provide the following services: voice telecommunications services, data services, and video services.

1. Voice Telecommunications Market

Though the number of mobile wireless subscribers in Texas (19,646,758 as of December 2007)[32] significantly exceeds the number of access lines provided by Texas ILECs and CLECs (10,376,692 as June 2008), and wireless substitution has grown significantly in recent years, for most customers, mobile wireless services are not direct substitutes for the voice telecommunications services that are the primary topic of this report. For the purpose of this report, a distinction is made between mobile wireless subscribers who use their wireless service as a substitute for traditional wireline service and those who use wireless in addition to wireline service. Only the portion of those mobile wireless "lines" used by customers as primary telephone lines in place of

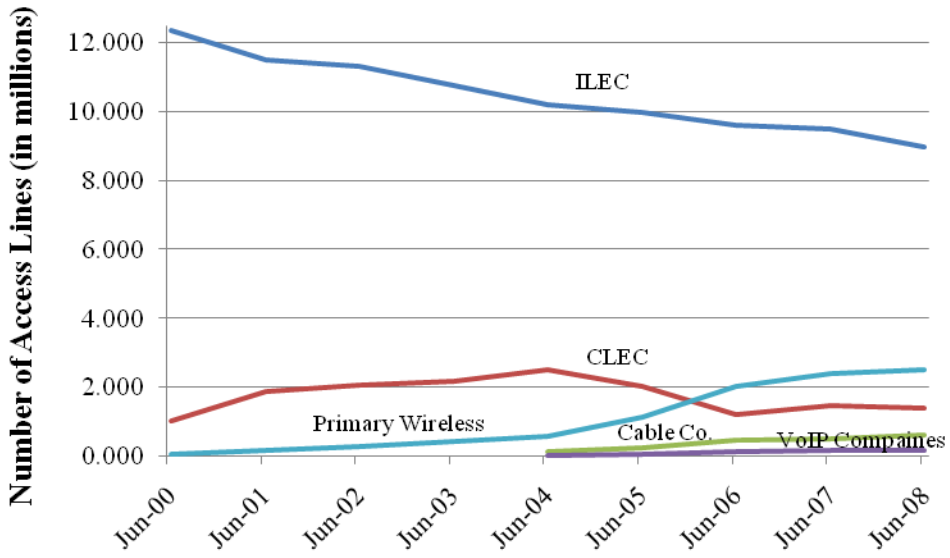
[32] FCC Local Telephone Competition Report at Table 14.

traditional wireline service are considered in the analysis of market share of telecommunications providers.

a. Market Share

Market share among telecommunications providers, as Figure 1 shows, has continued the trends begun earlier in the decade. The number of traditional wireline access lines served by ILECs and CLECs lines continues to decrease while market share of primary use wireless lines and cable companies continue to increase at significant rates. The mobile wireless companies experienced an increase of 115 percent in wireless lines in Texas since 2001 and today there are approximately 2.5 million primary-use mobile wireless lines (as compared to 9 million ILEC access lines). Cable companies have experienced a 300 percent increase in their voice market share since 2004, but serve only about 620,000 customers.

Figure 1 – Voice Telecommunications Access Lines in Texas

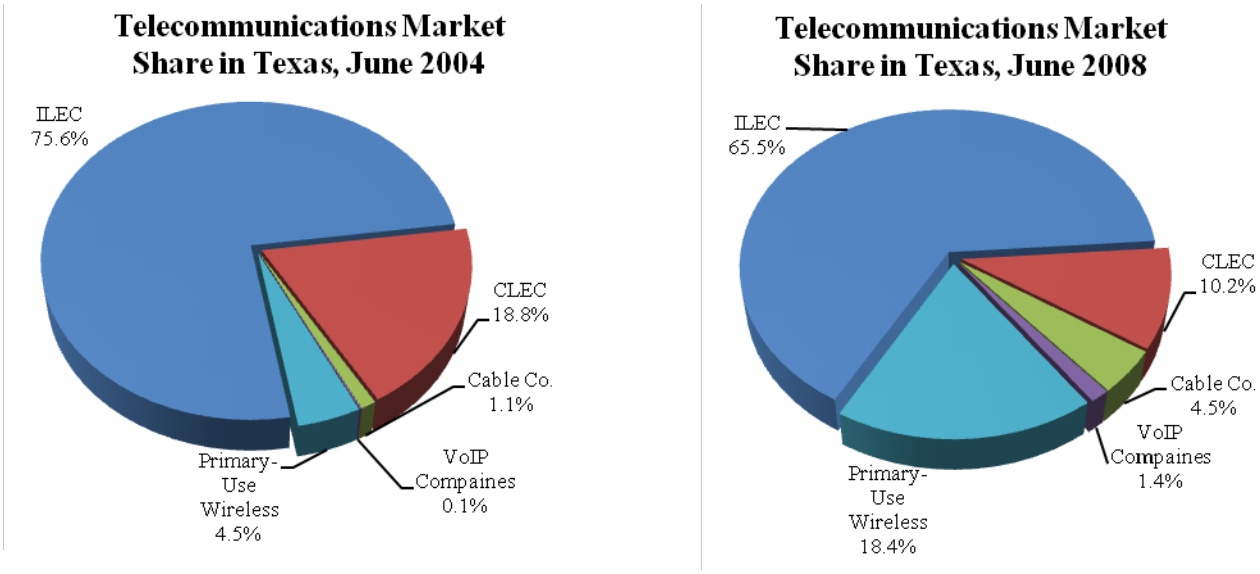


	Jun-00	Jun-01	Jun-02	Jun-03	Jun-04	Jun-05	Jun-06	Jun-07	Jun-08
ILEC	12.350	11.496	11.302	10.760	10.213	9.975	9.618	9.482	8.973
CLEC	1.043	1.891	2.078	2.186	2.534	2.033	1.240	1.480	1.404
Cable Co.					0.147	0.260	0.493	0.509	0.621
VoIP Compaines					0.016	0.045	0.134	0.170	0.185
Primary-Use Wireless	0.067	0.166	0.289	0.431	0.605	1.152	2.021	2.405	2.515

SOURCES: Public Utility Commission of Texas 2007 and 2008 Scope of Competition Data Responses, High-Speed Services for Internet Access, FCC (March 2008), Local Telephone Competition Reports, FCC (September 2008), Texas Cable Association, Wireless Substitution Report – December, 2007 NHIS, CMRS Competitive Analysis – Twelfth Report, http://www.vonage.com/corporate/index.php?lid=footer_corporate

As shown in Figure 2, while the majority of voice lines remain with ILECs and CLECs, mobile wireless companies have surpassed the CLECs for primary use lines (this does not include wireless phones that are used in addition to primary traditional phone lines). Both cable and VoIP providers have seen significant growth in the last four years although they continue to have relatively small market shares in comparison to CLEC and wireless companies.

Figure 2 – Voice Telecommunications Market Share in Texas as of June 2004 and June 2008

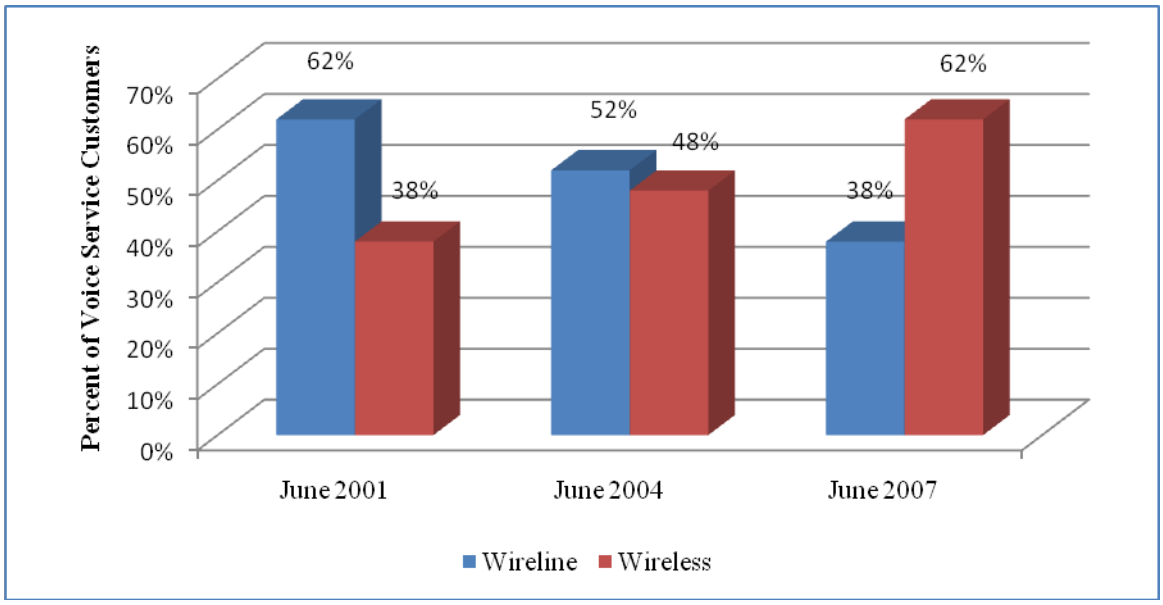


SOURCES: Public Utility Commission of Texas 2007 and 2008 Scope of Competition Data Responses, High-Speed Services for Internet Access, FCC (March 2008), Local Telephone Competition Reports, FCC (September 2008), Texas Cable Association, Wireless Substitution Report – December, 2007 NHIS, CMRS Competitive Analysis – Twelfth Report, http://www.vonage.com/corporate/index.php?lid=footer_corporate.

b. Wireline and Wireless Subscribership

Over this decade, there has been a significant growth in the mobile wireless subscribership while wireline subscribership has experienced an equally significant decline. Taking into consideration all wireless subscribers (not just those who use wireless as their primary voice service), the wireless market share has grown from 38 percent of all voice service customers in 2001 to 62 percent of all voice service customers in 2007 (see Figure 3). There were 24 percent more wireless subscribers than wireline subscribers in 2007. The number of wireline subscribers in Figure 3 includes customers receiving voice service from ILECs, CLECs, and cable companies in Texas.

Figure 3 – Wireline and Wireless Voice Telecommunications Subscribership in Texas

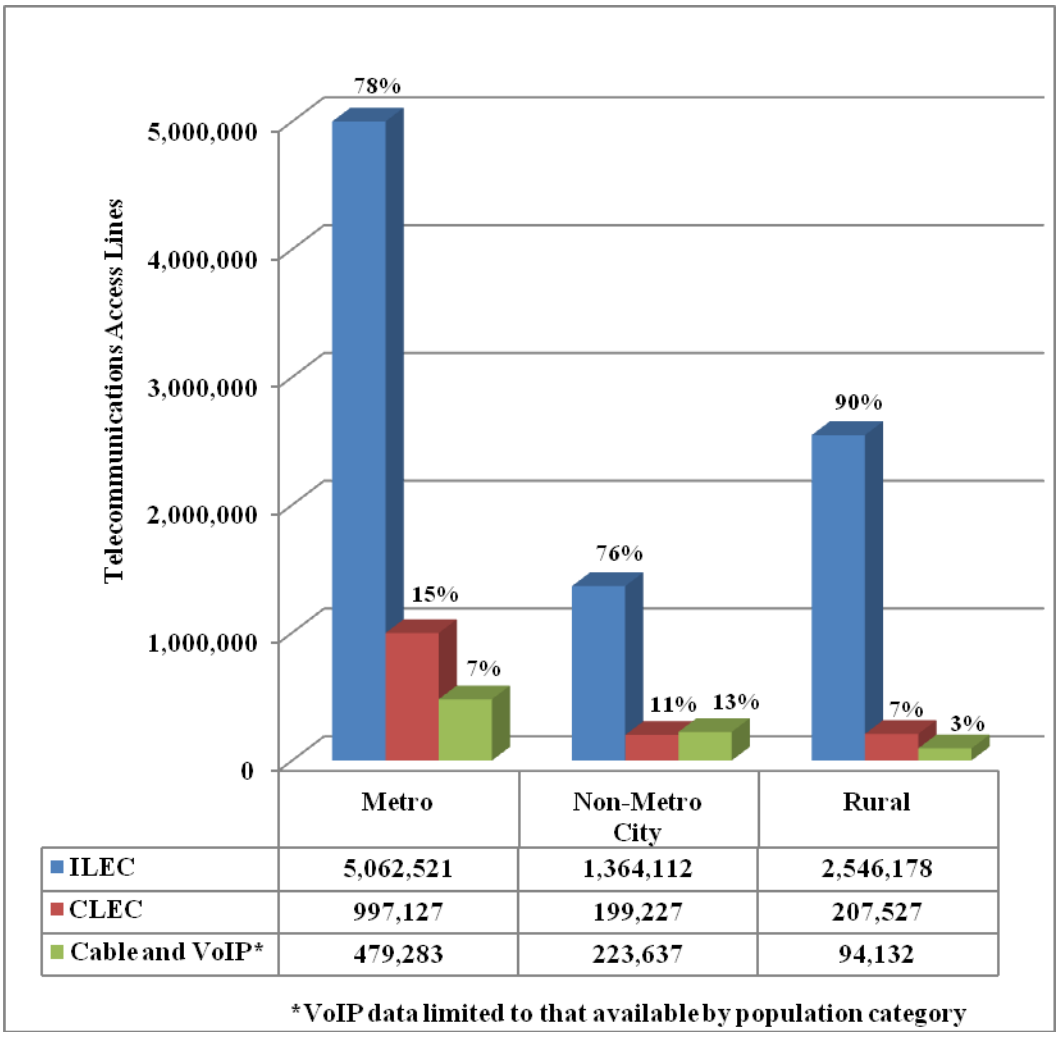


SOURCES: Public Utility Commission of Texas 2007 Scope of Competition Data Responses and 2007 Scope of Telecommunications Report, FCC Local Telephone Competition Report, Table 14, (March 2008)

c. Geographic Variations

For purposes of this report, telecommunications providers were asked to give an account of their lines based on three population categories: metro, non-metro cities, and rural. Metro areas include those cities with a population of 200,000 or more and their surrounding communities. Non-metro cites are those with populations between 30,000 and 200,000. Rural areas constitute the remaining cities and towns with populations under 30,000. Figure 4 examines the distribution of lines based on whether the subscribers are in metro, non-metro cities, or rural areas of the state.

Figure 4 – Voice Telecommunications Access Lines by Population Category in Texas as of June 2008



SOURCES: Public Utility Commission of Texas 2008 Scope of Competition Data Responses and Texas Cable Association

Because there are limitations in determining the appropriate population category for all VoIP lines, the totals for cable and VoIP lines in Figure 4 do not include all of the VoIP lines included in Figures 1 and 2. Nevertheless, ILECs appear to dominate in all three population categories and rural areas have yet to experience significant market penetration from cable and VoIP providers.

2. Broadband Market

In today's digital world, broadband represents an increasingly important measure of competition and services available in the telecommunications market. Broadband services provide a platform for communications firms to offer information content, such as entertainment and video and business services involving data transfer. Services such as video, voice, or Internet are no longer limited by the type of delivery. All of these

services are composed of bytes of information that can be transported over wire, cable, or through the air. Therefore as broadband services expand, they become increasingly important to the competitive environment of telecommunications service in Texas.

As an increasing number of Texans subscribe to online services, broadband becomes a larger player in the telecommunications market. The number of broadband subscribers in Texas has increased 133 percent from 2005 to 2007 demonstrating a high rate of adoption of broadband service as its price continues to drop to a level that more Texans can afford.

As shown in Table 1, the number of broadband subscribers in Texas has grown from 614,704 in June 2001, to more than 6.8 million as of June 2007. In June 2007, Texas ranked second in the nation with respect to number of high-speed lines.[33]

Table 1 – Broadband Subscribers in Texas as Compared to Other States

State	Jun. 2001	Jun. 2002	Jun. 2003	Jun. 2004	Jun. 2005	Jun. 2006	Jun. 2007	Percent Change 2005/2007
California	1,639,921	2,527,275	3,378,373	4,608,822	5,954,876	9,395,265	14,446,700	143%
Texas	**614,704**	**1,015,245**	**1,571,250**	**2,203,490**	**2,943,487**	**4,357,437**	**6,855,680**	**133%**
New York	811,386	1,364,556	1,891,457	2,349,956	3,067,983	4,854,803	6,797,126	122%
Florida	634,703	1,103,236	1,634,552	2,236,963	2,958,350	4,408,427	6,349,084	115%
Illinois	325,085	525,817	840,632	1,270,907	1,817,481	2,666,304	4,305,351	137%
New Jersey	394,198	654,235	924,835	1,194,557	1,605,301	2,654,674	4,150,053	158%
Pennsylvania	249,119	501,950	755,947	1,123,876	1,578,981	2,646,898	4,120,573	161%
National	9,241,996	15,787,647	22,995,444	31,950,574	42,517,810	65,270,912	100,921,647	137%

SOURCE: *High-Speed Services for Internet Access*, FCC (March 2008)

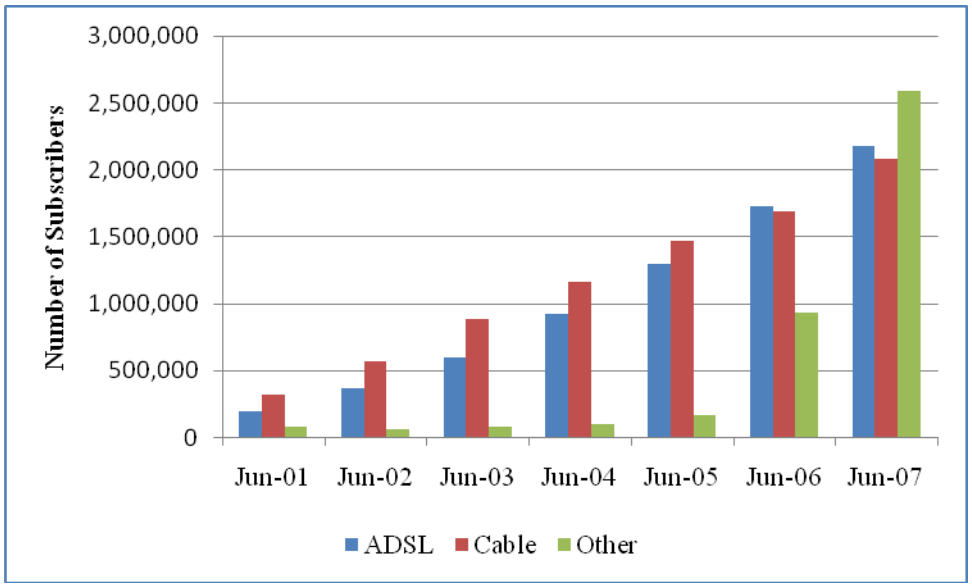
Although customers have several options available to them, cable modem service and digital subscriber line (DSL) service, individually, continue to hold the largest shares of the broadband market (see Figure 5). DSL allows customers to use their existing phone lines to transmit and receive data over the same copper facility. Similarly, cable modem service utilizes the same coaxial facility used to transmit video to also transmit broadband service. Other media for broadband service include wireline technologies other than asymmetric digital subscriber line (ADSL), symmetric DSL (SDSL), wireless, satellite, fiber-to-the-premise (FTTP), and broadband over power lines (BPL).

Figure 5 depicts the level of subscribership to various technologies used in providing broadband service from 2001 to 2007. Although cable modem technology led the industry in market share over the first part of the decade, ADSL overtook cable service in market share for the first time in 2006. This increase in market share could be attributed to deep price discounts for basic high speed service as well as multi-tiered pricing for different speeds of broadband. A notable development in the broadband market in Texas is the tremendous growth of broadband provided over media other than ADSL and cable over the last two years. As of June 2007, broadband service over other media (as listed above), collectively, exceeded the market share held individually by

[33] Federal Communications Commission, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2007*, Wireline Competition Bureau, March 2008. Available online at: www.fcc.gov/wcb/stats.

ADSL and cable. This development points to the increasing impact of wireless and fiber to the premises technologies in the broadband market.

Figure 5 – Broadband Subscribers in Texas



SOURCE: High-Speed Services for Internet Access, FCC (March 2008)

As shown in Table 2, customers in an increasing number of counties have multiple choices of providers when subscribing to broadband service. The number of broadband providers in Texas counties has increased over the last two years. In 2006 there were 59 counties that had either one or no broadband provider. The latest data show that only 35 Texas counties remain with only one or no provider while the number of counties with more than one provider has increased from 195 to 219. There were only four counties that were not served by any broadband provider – Goliad, Refugio, Stephens and Winkler. The number of counties with more than 15 broadband providers has increased from one (Denton County) to five.

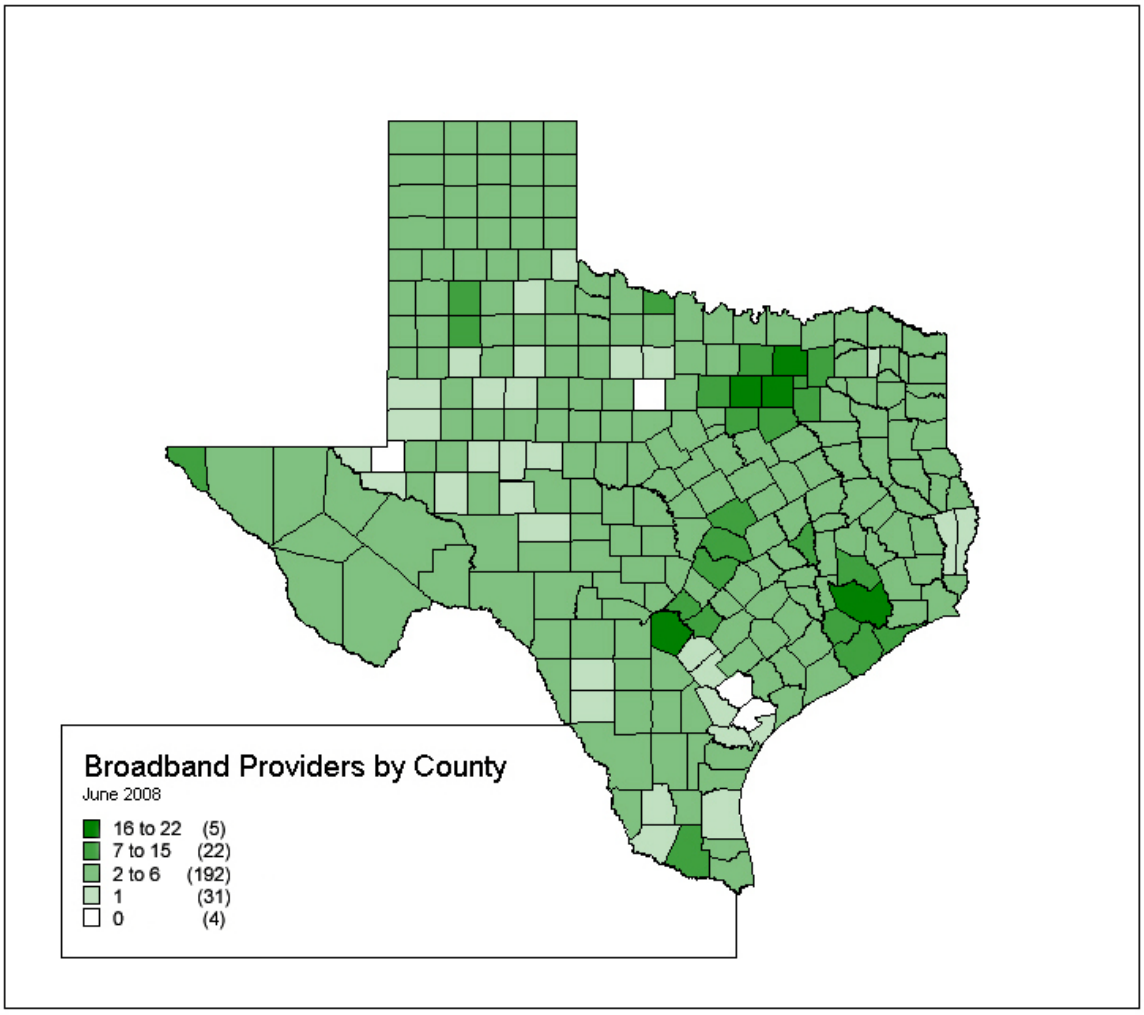
Table 2 – Number of Broadband Providers in Texas

Number of Providers	Number of Counties in 2006	Number of Counties in 2008
0	22	4
1	37	31
2-6	157	192
7-15	37	22
16-24	1	5

SOURCES: Public Utility Commission of Texas 2006 and 2008 Scope of Competition Data Responses and Texas Cable Association.

Figure 6 depicts the number of broadband providers operating in each Texas county. Many providers are available in and around metropolitan areas. Many rural areas around Texas appear to be served by at least two providers. However, these providers do not necessarily offer service throughout the areas they are serving. Wireless broadband technology promises to increase the number of broadband competitors in rural areas even further.

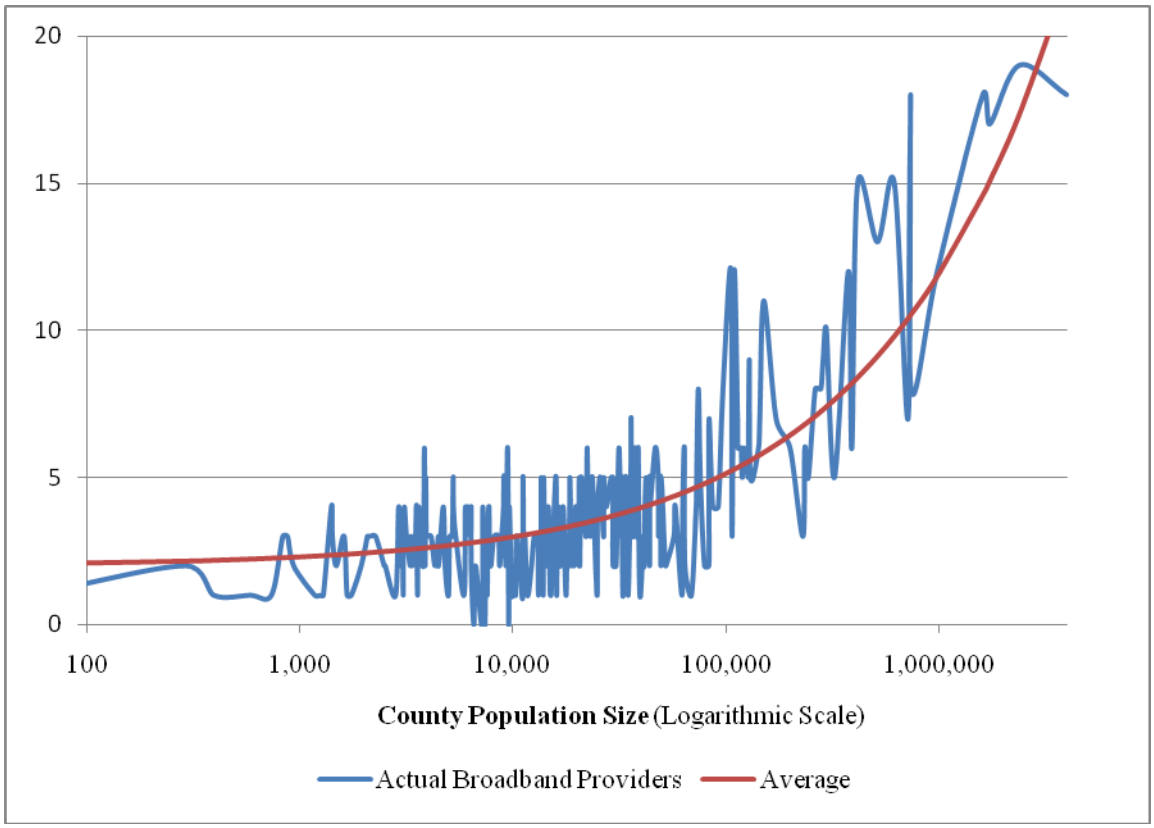
Figure 6 – Number of Broadband Providers by County as of June 2008



SOURCES: Public Utility Commission of Texas 2008 Scope of Competition Data Responses and Texas Cable Association.

Additionally, Figure 7 shows the number of broadband providers in a county by population size. The graph shows there is a link between the size of a population and the number of broadband providers.

Figure 7 – Number of Broadband Providers by County Population in Texas as of June 2008



SOURCES: Public Utility Commission of Texas 2008 Scope of Competition Data Responses, Texas Cable Association, U.S. Census Bureau, 2007 Population Estimate Data Set, Texas County (August 21, 2008).

3. Cable/Video Market

PURA Chapter 66, enacted in 2005, provides for a state-issued certificate of franchise authority (CFA) to new entrants as well as incumbent cable providers wishing to compete in new markets or obtain certificates in existing serving areas after the expiration of their current franchises. The intent of this legislation was to encourage investment and competition among cable and video service providers by removing the requirement to seek separate franchise agreements with individual municipalities. This provision has been especially significant for traditional telecommunications companies that have been providing video services to compete with cable companies offering phone service. Collectively, cable and video service providers spent over $1.5 billion in Texas in 2007 improving and expanding their cable and broadband infrastructure that carries cable and video service. By the end of 2007, the number of occupied homes having the potential of being served by a cable or video service operator promptly was approximately 18 million and the total number of subscribers to cable/video service was approximately 4 million.

As shown in Table 3, competition in the cable/video market is beginning to emerge in many counties in Texas. In 69 counties there are at least two video providers offering service and in 17 counties, there are at least four providers certificated to provide cable/video service. However, these providers do not necessarily offer service throughout the counties they are serving.

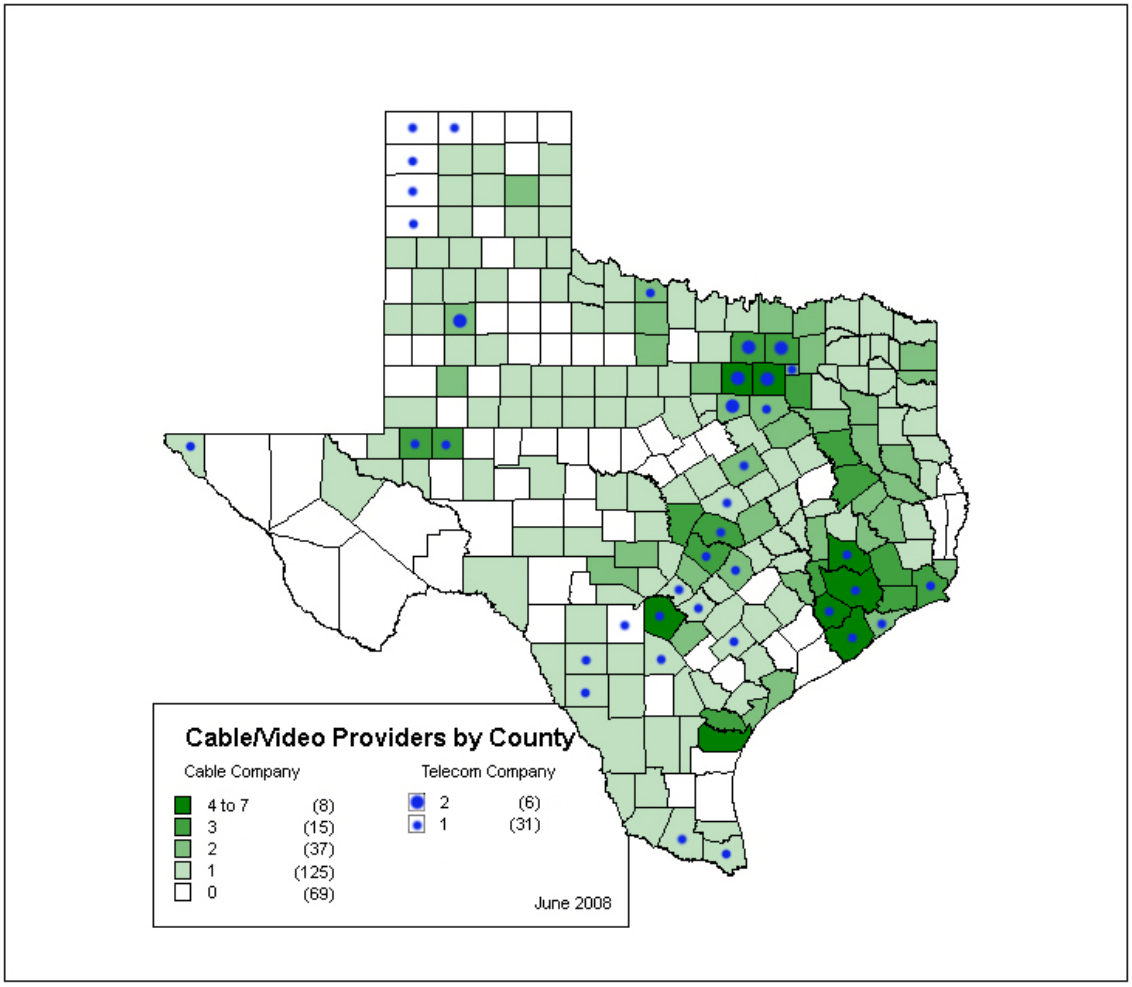
Table 3 – Number of Cable and Video Providers in Texas

Number of Providers	Number of Counties in 2008
0	63
1	122
2-3	52
4-6	15
7-8	2

SOURCES: CFA Applicants and Texas Cable Association

Investment by telecommunications companies has not only benefited the largest, most populated areas of Texas. As shown by Figure 8, telecommunications companies are not only investing in large markets that have many cable providers, but also smaller markets where there is only one or no cable provider.

Figure 8 – Number of Cable and Video Providers by County as of August 2008



SOURCES: CFA Applicants and Texas Cable Association

In sum, the voice market in Texas continues to experience a decline in the number of primary service lines served by ILECs while the market share held by wireless and cable companies have grown since 2004. The broadband market showed tremendous growth in Texas over the last two years with the most notable increase in market share seen in lines served by broadband technology other than ADSL and cable. Competition in the cable and video market is beginning to emerge in many Texas counties as a result of numerous providers receiving franchises to operate under PURA Chapter 66.

CHAPTER III. EFFECTS OF COMPETITION ON RATES, SERVICE AVAILABILITY, AND UNIVERSAL SERVICE

The introduction of competition into both the regulated and deregulated markets of the State continues to have little effect on the affordability and availability of basic local telephone service (BLTS).[34] Even prior to the onset of competition, BLTS was and is still available ubiquitously in Texas, and local telephone rates in Texas have been below the national average for several years. Historically, this ubiquitous service has been accomplished by the combination of legally capped rates, Provider of Last Resort obligations, Federal Universal Service Fund (FUSF) and Texas Universal Service Fund (TUSF) support programs. However, there will likely be a gradual increase in the basic local exchange rates in some exchanges (markets) over the next four years as the four largest incumbent local exchange carriers (ILECs) seek to offset the loss of Texas High Cost Universal Service Plan support that they have received in the past. It is likely that any resulting adverse impact on the affordability of basic local telephone service in these exchanges will be mitigated by the availability of competitive alternatives. In real terms, BLTS rates have fallen, because they have been capped for roughly a decade, when the costs of the other goods and services measured by the Consumer Price Index have risen.

Rates for individual "vertical services" such as Caller ID Service and Call Waiting Service have continued to increase under the pricing flexibility provisions of PURA Chapters 58, 59, and 65. It appears that telecommunications providers are guiding subscribers to both packages of service and bundles of different services (including Internet and video) that, in some instances, provide clearly identifiable discounts to both residential and business customers who are willing to spend more in total to obtain multiple telecommunications services.

A. Effects of Competition on Rates

For many Texas customers, rates for residential local telephone service (when combined with one or more vertical services) have continued to increase since the enactment of Chapter 65, under which "transitioning"[35] ILECs are permitted to modify the rates for BLTS in combination with vertical services in those markets that are deregulated.

For smaller telecommunications providers regulated under Chapters 58 and 59, rates for vertical and other services continue to rise. However, all transitioning and partially regulated companies continue promoting and introducing new packages, bundles, and term agreements that offer discounts to residential and business customers. In a recent filing, a small telephone company introduced a package of services that

[34] Basic local telephone service, for purposes of this report, is flat rate telephone service without any features included beyond access to the public local exchange telephone network.

[35] A transitioning company is one that has had one or more of its markets, but not all markets, deregulated. On December 28, 2005, in Project No. 31831, the Commission classified AT&T, Verizon and Embarq-Centel as "transitioning" companies.

included telephone service, expanded local calling, a choice of eight calling features, unlimited long distance in the 48 contiguous states, high speed Internet access and video service for a monthly fee of $112.95.[36]

1. Local Telephone Service Rates

Basic local telephone service rates have been kept below the national average especially for residential customers in Texas through a combination of legally capped rates, Provider of Last Resort obligations, and universal service fund programs. Table 4 provides an illustration of basic local telephone rates applicable to residential service, single-line business service, and multiple-station business trunk service in deregulated and regulated markets in Texas served by ILECs regulated under various regulatory regimes.

As shown in Table 4, local telephone rates for business customers are higher than those charged to residential customers and rates in urban areas exceed the rates in rural areas. For example, the Dallas Metropolitan Exchange, a deregulated market served by AT&T Texas, offers two different rates for residential local telecommunications service, a flexible "local service plus rate" of $17.05 per month and a fixed "single service rate" of $12.05 per month. These rates will likely increase over the next few years as AT&T Texas seeks to offset the reduction of support from the TUSF. Generally, the rates of local service in the deregulated exchanges of Dallas in North Texas and Donna in South Texas are higher than the pricing of local service in the rural exchanges of Fort Davis in West Texas and Gonzales in the San Antonio Area for residential consumers, and are even higher than rates in other rural areas of Huxley in East Texas, Tawakoni and Blossom in North East Texas and Port Aransas in the Corpus Christi area.

The rates for single-line business service in the rural exchanges appear to depend on whether the ILEC serving the exchange has the ability to exercise pricing flexibility. As shown in Table 4, the single-line business rates in the rural areas of Huxley and Port Aransas are less than the rates for the same service in the rural areas of Gonzales and Tawakoni. The difference in rates may be attributed to the fact that Gonzales and Tawakoni are served by Verizon, an ILEC that has the flexibility to set prices for a non-basic service such as single-line business in these exchanges under PURA Chapter 58. On the other hand, Huxley and Port Aransas are served by Eastex Telephone Cooperative, a Chapter 52 ILEC and CenturyTel of Port Aransas, a Chapter 59 ILEC, respectively, and these companies are constrained in their ability to engage in pricing flexibility for single-line business customers.

[36] Santa Rosa Telephone Cooperative, Inc. Tariff Control No. 36070 – Pricing and Packaging Flexibility (effective September 8, 2008). Service is presently available in certain exchanges where the company has fiber-to-the-home.

Table 4 – Sample of Basic Telephone Service Rates in Texas

Serving Company	Major City/ Local Access Transport Area (LATA)	Exchange served	Basic Single Line Service Rates		
			Residential	Business	Business Trunk
AT&T Texas – Chapter 65	Dallas/ Dallas LATA	Dallas Metropolitan Exchange-flexible	$17.05	$35.00	$48.00
AT&T Texas – Chapter 65	Dallas/Dallas LATA	Dallas Metropolitan Exchange-fixed	$12.05	n/a	n/a
AT&T Texas - Chapter 65	Donna/Brownsville LATA	Donna Exchange - flexible	$15.50	$30.00	$40.00
AT&T Texas - Chapter 65	Donna/Brownsville LATA	Donna Exchange - fixed	$10.10	n/a	n/a
AT&T Texas – Chapter 65	Ft. Davis/Midland LATA	Fort Davis Exchange	$8.15	$30.00	$40.00
Verizon – Chapter 58/65	Gonzales/San Antonio LATA	Gonzales Exchange	$8.40	$26.90	$40.10
Blossom Telephone Company – Chapter 52	Blossom/ Dallas LATA	Blossom Exchange	$7.00	$9.00	n/a
Eastex Telephone Coop – Chapter 52	Huxley – Houston LATA	Huxley Exchange	$7.87	$11.72	$18.57
Verizon – Chapter 58/65	Tawakoni - Dallas LATA	Tawakoni Exchange	$7.10	$23.95	$34.95
CenturyTel of Port Aransas - Chapter 59	Port Aransas – Corpus Christi LATA	Port Aransas Exchange	$6.45	$11.95	$18.55

SOURCE: Texas PUC tariffs.

Over the next four years basic telephone service rates in exchanges served by the four largest incumbent telephone companies in the state are expected to increase to offset the reduction in support received by these companies from the TUSF. To offset the reduced support, affected incumbent telephone companies may seek to gradually increase unbundled basic rates so that basic rates are within a range of $15.50 to $17 per month. However, all customers in Texas will see a reduction in the TUSF surcharge on their telephone bills. The TUSF assessment on customer phone bills was changed to 3.4 percent from 4.4 percent, of the intrastate portion of the bill effective January 1, 2009 to reflect the reduced TUSF support. Most of the competition in telephone services is in connection with service packages that provide customers enhanced services like caller ID or unlimited long distance or with bundled services, such as Internet or video. While

competitive forces are clearly at work in influencing the pricing of service packages and bundles, these forces do not appear to be influencing BLTS rates.

Chapter 65 also allows "transitioning" ILECs to increase the rates for BLTS, when combined with at least one other vertical service, in those exchanges that have been deregulated. The election of PURA Chapter 58 and 59 regulations by a majority of the medium-sized ILECs continues to restrict increases in residential basic local service rates. Chapters 58 and 59 regulations cap basic local service rates and allow increases in the rates only as allowed by PURA §§ 58.055 and 59.024. Basic local service rates will typically include, on a flat-rate basis, access to a calling scope ranging anywhere from a few hundred access lines (customers) to more than 1.5 million access lines within the boundary of an exchange.[37] Additionally, the telephone lines in contiguous exchanges may be included within the calling scope of an exchange through the addition of mandatory extended area service or the implementation of expanded local calling service. The mandatory expansion of the calling scope will most often include the assessment of an additional monthly fee. The mandatory extended area service monthly fees are capped under Chapter 58 and 59 regulations, thereby restricting any increases in an electing ILEC's rates.

2. Vertical Services Rates

Vertical services rates are not capped under Chapters 58, 59, and 65 of PURA. As such, the rates of many of the most popular vertical features have generally continued to increase. The most popular vertical services include Caller ID Name and Number, Automatic Call Blocking, Call Forwarding, Speed Calling, Call Return, and Three-Way Calling.

Informational notice filings from the two largest electing ILECs in the state, AT&T Texas and Verizon, indicate that although no changes have been made to the monthly rates for Caller ID Name and Number service over the past two years, the prices have increased by 53 percent and 42 percent respectively since 1999.[38] As shown in Tables 5 and 6, more modest rate changes and in some cases, no changes have occurred over the past two years for other individually priced discretionary calling services.

The following tables compare rate changes for common and popular vertical service for Verizon and AT&T Texas since those companies' election of incentive regulation.

[37] Approximately three hundred exchanges in the State of Texas have fewer than 500 access lines within their boundaries, while the Houston exchange has more than 1.5 million lines within its boundary.

[38] *See* Tables 5 and 6 - Residential Price Changes for Verizon and AT&T Texas, respectively.

Table 5 – Sample of Changes in Verizon's Pricing for Vertical Services

Service	Texas Residential Retail Price		
	Before September 1999	As of September 2006	As of September 2008
Three-Way Calling – Per Event	$0.75	$0.95	No Change
Automatic Busy Redial – Per Event			
Automatic Call Return – Per Event			
Three-Way Calling - Monthly	$2.70	$4.25	$4.50
Automatic Call Return - Monthly	$3.00	$4.25	$5.50
Remote Call Forwarding - Monthly	$14.50	$17.00	No Change
Caller ID Name and Number	$6.50	$9.25	No Change
Caller ID Name and Number with Automatic Call Block	$6.75	$9.25	No Change
Operator Verification – Per Event	$1.35	$2.50	No Change
Operator Interrupt – Per Event	$2.20	$5.00	No Change
Local Directory Assistance – Per Event	$0.25	$1.25	No Change
National Directory Assistance – Per Event	Not Available	$1.25	$1.50
Additional Directory Listing – Per Listing	$.55	$3.00	No Change
Return Check Charge – Per Event	$10.00	$25.00	No Change
Rate for Non-published Number	$1.65/month	$4.95/month	No Change

SOURCE: Texas PUC filings.

Table 6 – Sample of Changes in AT&T Texas's Pricing for Vertical Services

Service	Texas Residential Retail Price		
	Before September 1999	As of September 2006	As of September 2008
Three-Way Calling - Monthly	$2.10	$5.99	No Change
Call Forwarding - Monthly			
Speed Calling 8 - Monthly			
Anonymous Call Rejection - Monthly	$1.00	$3.99	$5.00
Auto Redial - Monthly	$2.00	$5.99	$6.00
Call Waiting - Monthly	$2.80	$3.99	$6.00
Call Waiting ID - Monthly	$3.00	$6.00	$5.40
Caller ID Name - Monthly	$4.95	$7.00	No Change
Caller ID Number - Monthly	$4.95	$7.00	No Change
Caller ID Name and Number - Monthly	$6.50	$9.95	No Change
Call Blocker - Monthly	$2.00	$5.99	No Change
Priority Call - Monthly	$2.00	$3.99	$5.00
Personalized Ring - Monthly	$3.50	$2.95	$5.00
Call Return	$0.50 each use	$1.99 each use	No Change
Three-Way Calling	$0.75 each use	$1.99 each use	No Change
Call Trace	$8.00 each use	$6.00 each use	$9.00
Directory Assistance	$0.30 each use	$1.25 each after 3 calls	$1.50 each after 3 calls
Rate for Non-published Numbers - Monthly	$1.10	$5.50	No change
Directory Assistance Call Completion	$0.30 additional each use	$0.25 additional each use	$0.00

SOURCE: Texas PUC filings

3. Packages, Bundles, Term Commitments, and Promotions

As in the past few years, the trend has been for ILECs, CLECs, cable providers, and VoIP providers to market service packages to residential and business customers that include basic local telephone service, vertical calling features, and long-distance services. The most prolific of bundles offered by telephone and cable companies is the "triple play" offering – a package comprising video service, high-speed Internet access, and voice telephone service. The triple play offerings are typically priced under $100 with a one to two-year term commitment. Some phone companies with wireless networks also offer "quadruple play" packages that integrate wireless service into a bundle of video service, high speed Internet access, and voice telephone service. As shown in Table 7, AT&T Texas, for instance, offers Quad Pack, which consists of voice service, high speed DSL Internet access, AT&T U-verse video service, and the AT&T mobility package.

Bundled and packaged services continue to provide residential and business customers with one-stop shopping for all of their communications and video entertainment needs. The inclusion of the term agreement provides the customer larger discounts for a longer-term commitment, thereby giving the telecommunications and cable providers a more predictable revenue stream. The trend appears to be toward a greater array of terms options offered to customers (i.e. one, two, three, four, and five-year term offerings as opposed to only one, three, and five-year choices).

Cable companies and VoIP providers continue to offer special promotions to lure customers away from the incumbent, while the ILECs respond by offering special promotions to former residential and business customers in order to "winback" their business. These special promotions generally provide temporary economic incentives to induce customers to switch their local telephone service, video service, and/or high speed Internet service back to the their previous provider.

The following tables illustrate some of the residential and business packages offered over the past two years. It is important to note that in some instances the packages and bundles are completely replaced by new packages and bundles with different names that often offer the same or very similar features:

Table 7 – Residential Packages and Rates as of August 2006 and September 2008

Landline Telephone Providers			
Company	**Package Name**	**Description Provided by Company**	**Price/Mo**
AT&T Texas	All Distance Select with High Speed Internet Express in 2006	Unlimited Local, Unlimited Long Distance, Caller ID and choice of two vertical features (*i.e.*: Call Waiting, Call Forwarding, Call Blocking, etc.), Inline (telephone wire and jack maintenance plan) and High Speed Internet Express	$52.98 per month for 12 months, $75.98 after 12 months
	All Distance Select with High Speed Internet Express in 2008	Unlimited Local, Unlimited Long Distance, Caller ID and choice of two vertical features (*i.e.*: Call Waiting, Call Forwarding, Call Blocking, etc.), Inline (telephone wire and jack maintenance plan) and High Speed Internet Express.	$65 per month
Verizon Texas	Freedom Essentials in 2006	Unlimited Local & Toll Service, Unlimited U.S. & Puerto Rico Long Distance, Caller ID, Home Voice Mail, Call Waiting.	$39.95
	Freedom Plan In 2006	Freedom Essentials plus long distance service to both Canada and Puerto Rico.	$57.99
	Triple Freedom for 2008	High Speed Internet, TV, and Phone: Unlimited calling, up to 3 Mbps Internet transmission, and 200 TV channels – requires an 18 month commitment.	$99.99
Embarq (formerly Sprint)	Personal II Solutions with unlimited long distance in 2006	Unlimited Interstate Long Distance (LD), Unlimited Local, Caller ID, Call Waiting, Three-Way Calling, Call Forwarding, Return Call, and Repeat Dial, and a choice of one premium services (Voicemail, Line Guard, CPE Warranty, or Sprint Privacy ID®).	$38.95 ($10 for LD and $28.95 for local package)
	Personal II Solutions with unlimited long distance in 2008	Unlimited Interstate Long Distance, Unlimited Local, Caller ID, Call Waiting, Three-Way Calling, Call Forwarding, Return Call, and Repeat Dial, and a choice of one premium services (Voicemail, Line Guard, CPE Warranty, or Sprint Privacy ID®)	$44.95 ($16 for LD and $28.95 for local package)
AT&T	U-verse 2008	Voice Communications – unlimited U.S, Puerto Rico, and Canada, Basic High Speed Internet Access and Basic 100 channel Internet TV. Options: faster Internet, more channels, and entertainment packages.	$90.00
Galaxy Internet Services	Residential VoIP Phone Service	Unlimited U.S. calling, Caller ID, Three-Way Calling, Call Waiting, Speed Calling, Voice Mail.	$19.95 monthly

Landline Telephone Providers			
Company	**Package Name**	**Description Provided by Company**	**Price/Mo**
AT&T	Quad Pack 2006	Personal Choice Telephone Service, Nationwide 100 Long Distance, High Speed Internet Access (DSL), Cingular 450 Cell phone with rollover and Dish Network Top 60 Television.	$124.92
	Quad Pack 2008	Now with AT&T U-verse and AT&T Mobility Package.	Range of $214 to $244
Cox Digital Cable	Unlimited Connection 2006	Unlimited Local, Toll and U.S. calls with 18 features (*Requires Cox Cable and Internet service at additional fee. Available only in Cox Cable franchise areas.)	$49.95
	Bundle and Save	Unlimited Local, Toll, and U.S. calls with 18 features when bundled with two other services (*Requires Cox Cable and Internet service at additional fee. Available only in Cox Cable franchise areas.)	$39.95
SuddenLink 2008		Basic Cable, Value Internet 1Mbps, and Phone with unlimited nationwide LD.	$99.99 for 12 months
Time Warner Cable	Unlimited Calling 2006	Unlimited Local & Toll Service, Unlimited Long Distance in U.S., Caller ID, Call Waiting, Call Forwarding. (Requires subscription to Time Warner Cable Video and High-Speed Internet Service. Available only in Time Warner Cable franchise areas).	
		Including Canada and Puerto Rico	$49.95
		In a Package With Cable TV	$44.95
		In a Package With Cable TV and High Speed Internet	$39.95
	Three services 2008	Digital Local Phone, Internet Basic (3Mbps), and HD Digital Cable. In addition, 7 cent per minute nationwide LD.	$89.95
		OR	
		Unlimited Nationwide Phone, 7 Mbps Internet, and Digital Cable (300 channels).	$129.95
Vonage	Premium Plan 2006	Unlimited calls anywhere in the U.S. and Canada, Voicemail, Call Waiting, Three-Way Calling, Caller ID with name, Call Forwarding, and Free In Network Calling (*Requires broadband Internet connection at an additional fee.)	$24.99
	2008	Now with unlimited calls to Puerto Rico, Italy, France, Spain, the UK, and Ireland.	$24.99

Table 8 – Small-Business Rate Packages as of August 2006 and October 2008

Landline Telephone Providers			
Company	**Package Name**	**Description Provided by Company**	**Price/Mo.**
AT&T Texas	"Business Unlimited" 2006	Unlimited Local Service, Unlimited National Long Distance, Caller ID, Call Forwarding, Three-Way Calling, and Call Return.	$49.99
	"Business Unlimited" 2008	Package unchanged from 2006.	$50.00
AT&T Texas	All In One Advantage	Unlimited Local Service, Unlimited Nationwide and Toll Service, BusinessDirect® (a "web portal" to access and review AT&T business services).	$54.95
Voice Over Internet Protocol (VOIP) or Digital Phone Service[39]			
Company	**Package Name**	**Description Provided by Company**	**Price/Mo.**
GalaxyVoice	Galaxy 2006	Unlimited Local and Long Distance, Voice Mail, Call Forwarding, Call Transfer, Repeat Dialing, and Caller ID Block.	$44.95
	Galaxy 2008	Unlimited U.S.	$39.95
Vonage	Small Business Unlimited 2006	Unlimited calls anywhere in the U.S. and Canada, Voicemail, Call Waiting, Three-Way Calling, Caller ID with Name, Call Forwarding, & Free In Network Calling (Requires broadband Internet connection at an additional fee.) Now includes unlimited calls to Puerto Rico, Italy, France, Spain, UK, and Ireland.	$49.99
	Small Business Basic 2006	1500 minutes of calling in U.S., Canada and Puerto Rico, 3.9cents per/min. thereafter, plus a free fax line.	$39.99
	Small Business 2008	Package unchanged in 2008.	$39.99

[39] Prices and descriptions identified for VoIP may be found at company websites and/or with a call to a service representative at the telephone number listed at a company website. Examples of web addresses are as follows: *http://www.galaxyvoice.com/?GTSE=goto&GTKW=voip* and *http://www.vonage.com/products_premium_sb.php.*

4. Other Service and Feature Rates

The fees for directory-assistance service continue to climb with more ILECs eliminating the residential three call allowance per month and prices ranging from $0.25 to $1.50 per directory assistance call. Late-fee assessments have generally stayed unchanged from the levels charged in 2004. Rates for services such as directory listings, non-published-number, and non-listed-number have generally remained unchanged or have experienced slight increases over the past two years.

B. Service Availability and Programs Supporting Service Availability

The availability of basic local telephone services has not changed as a result of competition. However, the availability of peripheral services, features, and functionality provided in conjunction with basic telephone service has become more prevalent.

As noted in the *2007 Report on Scope of Competition in Telecommunications Markets of Texas*[40] *(2007 Scope of Competition Report*), the availability and affordability of basic local telephone service does not appear to have been greatly affected by the introduction of competition to the public switched network. Rural areas, with higher infrastructure costs and smaller populations, have not attracted robust local exchange competition, but they have, in many instances, been afforded the options of cable, wireless, or satellite telecommunications service as alternatives to consider when making a choice for telecommunications service. The provision of VoIP service appears to be increasing for business customers that use a variety of data and high-speed transmission services.

1. Subscribership

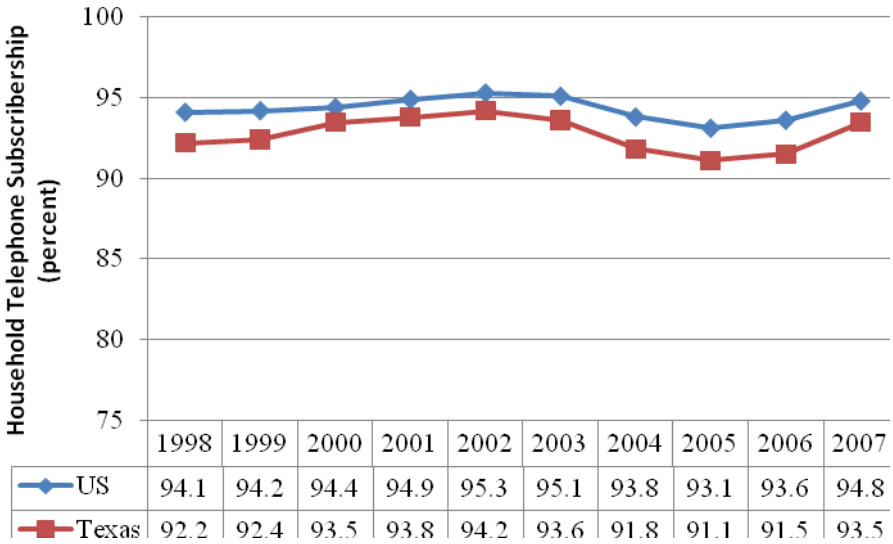
The percent of households that have telephone service (telephone penetration) is one of the fundamental measures of the extent of the universal service. The FCC reports this data based on surveys conducted by the Census Bureau. In recent years, the question asked by the census is: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other types of telephone."

Although the level of subscribership in Texas has typically lagged slightly behind the national average over the past ten years, there has been an increase in the number of telephone subscribers in Texas since 2005, as shown in Figure 9. This increase could be attributed to the popularity of wireless telephone service. Texas, like the rest of the country, has experienced an explosion in the number of wireless customers – in June 2007, nearly 79 percent of the population in Texas had wireless phones. In December 2005, there were approximately 15.6 million mobile wireless telephone subscribers in Texas. By December 2007, that number increased to approximately 19.6 million

[40] *Report to the 80th Texas Legislature – Scope of Competition in Telecommunications Markets of Texas,* PUC of Texas (Jan. 2007).

subscribers for an increase of almost 26 percent over a two-year period.[41] Such exceptional growth coupled with the voice, data, and possible video service applications of the wireless product may continue to change the telecommunications landscape significantly over the next ten years and increase the percent of subscribership levels overall.

Figure 9 – Percentage of Telephone Subscribership



	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
US	94.1	94.2	94.4	94.9	95.3	95.1	93.8	93.1	93.6	94.8
Texas	92.2	92.4	93.5	93.8	94.2	93.6	91.8	91.1	91.5	93.5

SOURCE: Telephone Subscribership in the United States, Table 3, FCC (August 2008)

2. Basic Telephone Service in Uncertificated Areas

An uncertificated area is an area of the state where no ILEC is required to provide service. PURA Chapter 56, Subchapter F authorizes the Commission to designate a telecommunications provider to provide basic telephone service in uncertificated areas if the provider is otherwise eligible to receive high cost support from the TUSF. In July 2003, Western Wireless Corporation, a provider of cellular telecommunications service, became the first telecommunications provider authorized to provide basic telecommunication service to residential and business customers within an uncertificated area.[42] Retail rates for the basic telecommunications service in these uncertificated areas range between $15 to $20 per month.

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[41] FCC Local Telephone Competition Report at Table 14.

[42] *Application of Western Wireless Corporation to seek Reimbursement for the provisioning of Universal Service in Uncertificated Areas of Roberts and Hutchinson Counties, Texas pursuant to P.U.C. SUBST. R. 26.423,* Docket No. 27056, Notice of Approval (July 16, 2003). The Commission had previously approved Western Wireless as an eligible telecommunications provider in *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418,* Docket No. 22289 *and Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Provider Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.417*, Docket No. 22295, Order (Oct. 30, 2000).

In September 2005, the Commission granted Eligible Telecommunications Provider (ETP) certification to DialToneServices, L.P. for the purpose of providing satellite telephone service to uncertificated areas in the state. The Commission established monthly per-line support amounts for 17 different uncertificated areas located in 19 Texas counties in the Amarillo Local Access and Transport Area (LATA), the Midland LATA, the San Angelo LATA, and the San Antonio LATA.[43] Since that time, DialTone Services has provided approximately 40 satellite-telephone service connections to basic local service in these uncertificated areas of the state.

3. Aid to Construction for Uncertificated Areas

PURA in conjunction with P.U.C. SUBST. R. 26.423 establishes procedures for the Commission to designate an ETP to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity (CCN), and for the reimbursement of costs from the TUSF upon a petition of potential subscribers and an agreement by those potential subscribers to pay a portion of the aid to construction.[44] Once an ETP volunteers or is designated to serve the area, construction costs and monthly assistance rates are developed, reviewed, and are either denied or approved with or without modification. If accepted by all parties, construction of facilities is completed and local service is provided.

To date three such petitions have been filed by potential subscribers living in uncertificated areas of the state. The most recent case involved the granting of aid to construction costs to provide satellite telephone service to a residential area located in the Sabine National Forest. After numerous attempts to obtain service over landline copper facilities, it was decided to use a satellite transmission medium to provide basic residential telephone service to the area. DialTone Services volunteered to provide this service to 4 to 6 customers in that uncertificated area and will receive aid for construction and monthly support from TUSF.[45]

C. Effects of Competition on Universal Service

Competition has not had an adverse effect on universal service. The Texas High Cost Universal Service Plan and the Small and Rural ILEC Universal Service Plan provide substantial financial support to eligible carriers to ensure that all customers throughout the State of Texas have access to basic local telecommunications service at just, reasonable, and affordable rates. Appendix F sets forth the TUSF disbursements for

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[43] *Application of DialToneServices L.P. for Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider in Certain Uncertificated Areas*, Docket No. 31401, Notice of Approval (September 2, 2005).

[44] Other requirements include entering into an agreement for subscription to basic local service for a period of time, proof of ownership of the residential or business property in question, etc.

[45] *Application of Karolena Harris For Telecommunications Service in Uncertificated Area Pursuant to P.U.C. SUBST. R. 26.421 and Offer of DialToneServices L.P. to Provide Service*, Docket No. 35115, Order (April 11, 2008).

these high-cost support programs. The Lifeline Service and Link Up programs have had a direct and significant effect on universal service.

1. Lifeline Service

Lifeline service provides qualifying low-income customers a discount for local telephone service. Qualifying Lifeline customers receive a discount of up to $13.50 from their Lifeline provider, which is reimbursed from a combination of the TUSF and the FUSF. In addition, eligible customers served by Lifeline providers operating in the service areas of AT&T Texas, Verizon Southwest, Embarq, and Windstream Communications Southwest, or their successors, will receive a discount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the four companies mentioned above as a result of the Unanimous Settlement Agreement adopted by the Commission on April 25, 2008.[46] This additional discount will be reimbursed from the TUSF. To receive support from the FUSF, a telecommunications carrier has to be designated by the Commission as an Eligible Telecommunications Carrier (ETC). A telecommunications carrier has to be designated as both an ETC and an ETP to receive support from the FUSF and TUSF. Prior to Senate Bill 5, 79th Legislature, Second Called Session, only ETPs and ETCs were required to provide Lifeline service. As amended by Senate Bill 5, PURA § 55.015 now requires all certified telecommunication providers (CTPs) of local exchange telephone to provide Lifeline service. All certificated providers, other than resellers, can apply to become an ETC or ETP and can thereby qualify for support from the FUSF and/or the TUSF.[47] Total Service Resale (TSR) providers were not previously required to provide Lifeline service but must now do so under PURA § 55.015 and these providers can qualify to receive TUSF support for Lifeline service.[48]

Lifeline enrollment has steadily increased since 1999 when legislation directed the Commission to establish an automatic enrollment for the Texas Department of Human Services' (now Texas Health and Human Services Commission (HHSC)) qualified clients. Since then, further collaboration of the carriers, HHSC, and the PUC has resulted in implementation of the Low Income Discount Administrator (LIDA), which now provides a centralized enrollment system for low-income customers seeking telephone and electric discounts (the Low Income Telephone and Electric Utilities Program or LITE UP). Table 9 shows the enrollment figures since 2004.

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[46] P.U.C. SUBST. R. 26.412, *Lifeline Service Program*; *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. SUBST. R. 26.403,* Docket No. 34723, Order, April 25, 2008.

[47] P.U.C. SUBST. R. 26.417, *Designation of Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)* and P.U.C. SUBST. R. 26.418, *Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.*

[48] P.U.C. SUBST. R. 26.419, *Telecommunication Resale Provides Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.*

Table 9 – Lifeline Enrollments, 2004-2007

2004 Lifeline	2005 Lifeline	Percent Increase/ Decrease 2004-2005	2006 Lifeline	Percent Increase/ Decrease 2005-2006	2007 Lifeline	Percent Increase/ Decrease 2006-2007
622,860	656,131	5.3%	624,073	-4.9%	673,825	8.0%

SOURCE: Solix – LIDA.

2. Link Up Service

In conjunction with Lifeline, participating carriers offer an installation discount, Link Up service, to qualified low income customers that provides a discount of up to $30 for installation of residential telephone service and is supported by FUSF. As shown in Table 10, this discount of the non-recurring installation charge, coupled with automatic enrollment, appears to have had a positive effect on basic local telephone subscribership levels in Texas.

Table 10 – Link Up Enrollments, 2004-2007

2004 Link-Up	2005 Link-Up	Percent Increase/ Decrease 2004-2005	2006 Link-Up	Percent Increase/ Decrease 2005-2006	2007 Link-Up	Percent Increase/ Decrease 2006-2007
113,715	130,319	14.6%	122,455	-6.03%	165,853	35.4%

SOURCE: Universal Service Administrative Company.

CHAPTER IV. COMMISSION ACTIVITIES: 2006-2008

This chapter provides an overview of some of the Commission's activities since the *2007 Scope of Competition Report*. The Chapter begins with an overview and a discussion of the Commission's activities relating to promotion of competition in the telecommunications markets and the cable/video market, summarizes the recent proceeding conducted to revise Texas Universal Service Fund (TUSF) support and recent Federal Communication Commission (FCC) actions regarding the Federal Universal Service Fund (FUSF), describes the carrier designations of eligibility to receive support from TUSF and FUSF, provides a synopsis of the regulation of certain telecommunication rates, provides an overview of the activities related to emergency management and homeland security, and concludes with a summary of the next generation VoIP and wireless Phase II 9-1-1 service activities, establishment of service quality standards for alternate technologies and status of broadband over power lines.

A. Competition

To promote competition in the telecommunications markets in Texas, the Commission has participated in a number of activities. The activities implement the regulatory mandate regarding fair access to the incumbents' networks as required by the Federal Telecommunications Act of 1996 (FTA)[49] and the deregulation of markets as required by PURA Chapter 65. Specifically, these include approval of interconnection agreements developed through negotiations or arbitrations, monitoring of a dominant certificated telecommunications utility's performance with respect to each allowing access to its network by competitors, and deregulation of incumbent local exchange carrier (ILEC) markets. To promote competition in the cable and video market, the Commission has issued cable and video franchises under the authority of PURA Chapter 66.

1. Interconnection Agreements

Competitive Local Exchange Companies (CLECs) have several options under FTA Section 252 for securing an interconnection agreement (ICA). An ICA is a contract between a CLEC and an ILEC that provides rates, terms, and conditions for interconnection for their respective networks and access to unbundled network elements. ILECs and CLECs are required to negotiate ICAs under the FTA. In addition, the FCC determined that ILECs may demand negotiation of an ICA with Commercial Mobile Radio Service (CMRS) providers.[50] If negotiations are unsuccessful, either party can petition the Commission to arbitrate open issues.

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[49] Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

[50] *In the Matter of Developing a Unified Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, FCC 05-42, (Rel. February 24, 2005).

a. Negotiated Interconnection Agreements

In many instances, parties successfully reach agreement through voluntary negotiations. During the two years ending August 2008, carriers in Texas conducted a substantial number of voluntary negotiations for interconnection, services, and access to the network of the ILEC on an unbundled basis. During this period, the Commission approved a total of 301 interconnection agreements and 122 amendments to existing agreements.

b. Compulsory Arbitration

Under its procedural rules, the Commission distinguishes between arbitration proceedings that address disputes regarding terms and conditions in existing interconnection agreements and those that develop terms and conditions for new interconnection agreements. Far fewer interconnection agreements are developed through arbitrations or dispute resolutions than through voluntary negotiations but the right of a CLEC to arbitrate disputes is probably an important incentive for ILECs to negotiate the terms under which CLECs use portions of an ILEC's network and to interconnect on reasonable rates, terms, and conditions.

2. AT&T Performance Measures

The Commission established wholesale performance measurements and a remedy plan for SBC Texas (now AT&T Texas) as part of an order that allowed SBC Texas to enter the interLATA long-distance market. The purpose of the performance-remedy plan was to encourage SBC Texas to provide non-discriminatory wholesale services to its competitors who relied, to varying degrees, on SBC Texas's legacy network to provide service. Initially, the SBC Texas plan consisted of 131 measures, but over time the number of measures has been reduced to 35. The aggregate CLEC performance data reports are filed at the Commission by AT&T Texas on a monthly basis, and the penalty-payment summaries are posted on a password-protected website to assist in monitoring AT&T Texas's performance. Access to this website is available to CLECs and designated Commission staff.

Measures are generally classified as either customer-affecting (Tier-1) or competition-affecting (Tier-2). The original performance plan specified that if AT&T Texas did not meet certain customer-affecting performance measurements on a monthly basis, then Tier-1 liquidated damage payments were required to be made to compensate CLECs. If AT&T Texas did not meet certain competition-affecting performance-measurement standards for three consecutive months, then Tier-2 assessments were made to the State. The Commission approved modifications to the original performance plan pursuant to an agreement between AT&T Texas and the CLECs that eliminated the Tier-2 liquidated damage payments after September 2005.[51] Only Tier-1 liquidated damage payments must continue to be made to CLECs. The performance remedy plan continues to be self-executing as it relates to Tier-1 payments to the CLEC.

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[51] *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821.

Since 2004, the Tier-1 penalty payments to CLECs have steadily declined except for increases in payments resulting from modifications to the calculation methodology. The drop in the penalty payments to CLECs can be attributed to improved performance by AT&T Texas, lower CLEC activity and elimination of AT&T Texas's obligation to provide access to certain portions of its network on an unbundled basis. Wholesale performances measures and the associated remedy plans continue to play a critical role in ensuring that AT&T Texas meets its obligations in a timely and non-discriminatory manner, with respect to provisioning and maintenance of number portability, collocation, interconnection trunks, unbundled loops, and the processing of CLEC orders so that CLECs are able to compete effectively in the residential and business markets in Texas.

3. Deregulation of ILEC Markets

The Commission regulates the ILECs who serve in Texas under one of five different regulatory regimes. The 62 ILECs operating in Texas are listed in Appendix C.[52] Of those 62 companies, ten are regulated under Chapter 58 "incentive regulation" and four are regulated under Chapter 59 "incentive regulation." Five cooperatives are partially deregulated under Chapter 53. Three Chapter 58 ILECs are also classified as "transitioning companies" as defined in Chapter 65. The remaining 43 ILECs are regulated under Chapter 52 and are subject to the rate of return regulation authority of the Commission.

PURA Chapter 65 provided for deregulation of certain ILEC markets. A total of 70 markets have been deregulated since 2005: 36 markets with a population greater than 100,000; 18 markets with a population between 30,000 and 100,000; and 16 markets with a population less than 30,000.[53] These markets are served by three ILECs: AT&T Texas, Verizon, and Embarq (formerly known as Sprint-Centel). These companies are classified as "transitioning companies" whereby at least one, but not all the company's markets have been deregulated.[54] These deregulated markets contain approximately 70 percent of the local telecommunications lines in Texas. Appendix B lists all exchanges that have been deregulated. The Commission has not received any new petitions for deregulation of markets since October 2006.

4. State-issued Cable/Video Franchises

Following the enactment of Senate Bill 5 in 2005, a number of ILECs and cable companies have obtained state-issued cable franchises.[55] On May 16, 2006, the Commission adopted a new substantive rule detailing the criteria and requirements for

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[52] The Commission determined that 59 companies in the State of Texas shall be classified as and remain "regulated" companies in Project No. 31869 and Docket No. 31831.

[53] The Hutto Exchange served by Embarq-Centel was removed from PURA Chapter 65 deregulation and re-regulated under PURA Chapter 58 in April 2008 as part of the settlement reached in the Texas High Cost Universal Service Plan (THCUSP) proceeding in Docket No. 34723.

[54] In Project No. 31831, an Order was issued on December 28, 2005 by the Commission classifying AT&T, Verizon and Embarq-Centel as "transitioning" companies.

[55] PURA Chapter 66.

these franchises.[56] This rule established the certification criteria for a state-issued certificate of Franchise Authority (CFA) to provide cable and video services in the state and sets forth certain reporting requirements. As of November 2008, 50 new CFAs were issued. Appendix D lists the companies issued CFAs.

B. Universal Service

The Texas Universal Service Fund (TUSF) includes programs that, in conjunction with the Federal Universal Service Fund (FUSF), assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high-cost rural areas in Texas and financial assistance for telephone services for low-income customers and for programs such as relay services.

1. Texas Universal Service Fund

The TUSF consists of eleven programs that support the provision of telecommunications service in high-cost areas and reimburses state agencies for the cost of administering the fund and its programs. The two largest programs in the TUSF, Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural ILEC Universal Service Plan (SRIUSP), help subsidize rates in high-cost, rural areas. Appendix E provides a list of the various TUSF programs. The TUSF is funded by a statewide uniform charge, or "assessment," payable by each telecommunications provider that has access to the customer base. The Commission oversees the ongoing administration of the TUSF and delegated the ministerial functions to Solix (formerly, National Exchange Carriers Association) through a contractual agreement. In addition, the Commission has the authority to initiate annual performance audits and financial audits of the TUSF at its discretion.

Support is disbursed to telecommunications providers serving high-cost areas and to low-income customers, and to assist the nine other TUSF programs, such as Relay Texas and the Audio Newspaper Program (ANP). Appendix F sets forth the TUSF disbursements for the TUSF programs since 2002. The disbursements have remained relatively flat over the last six years although there has been a downward trend in the disbursements in recent years. The fund's disbursement total in fiscal year 2008 was approximately $544 million. As of fiscal year 2008, disbursements from the Large Company Area High-Cost Program, (THCUSP), accounted for approximately 72 percent of the fund's total disbursements. Disbursements from the Small Company Area High-Cost Program to providers serving the small ILEC study areas accounted for 17 percent of the fund's total. The remaining nine programs and administration costs account for the remaining 11 percent of the fund's disbursements, which amounts to approximately $60 million. The cost to administer the TUSF in fiscal year 2008 was approximately $4.3 million, or about 0.79 percent of the total fund. For both of the high-cost funds, both ILECs and CLECs are eligible for support payments, if they meet the program criteria.

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[56] Project No. 32171, adopting P.U.C. SUBST. R. 28.6 relating to State-issued Certificate of Franchise Authority (CFA) Certification Criteria.

The Commission had established the initial monthly per-line support amounts in January 2000. In 2005, Senate Bill 5 directed the Commission to evaluate whether the TUSF accomplishes its purposes and deliver a report to the Legislature on the results of the evaluation.[57] In 2005, the Legislature also enacted PURA § 56.031, which provides that the Commission may revise the THCUSP support amounts at any time after September 1, 2007. In September 2007, the Commission opened a proceeding to determine and potentially revise the monthly per-line support amounts available to qualified Eligible Telecommunications Providers (ETPs) from the THCUSP, the largest of the programs within the TUSF.[58]

Ultimately, the parties to the proceeding entered into a unanimous settlement agreement (Agreement) providing that THCUSP support amounts available to ETPs would be reduced over a four-year period. For example, the parties estimated that the THCUSP support provided to the four ILECs would be reduced by approximately $63.3 million annually beginning on January 1, 2009, and by approximately $144.35 million after all reductions are fully implemented.[59] This amount equates to approximately a 36.5 percent reduction in current THCUSP disbursements and approximately a 25 percent reduction in disbursements for the entire TUSF.[60] Such reductions will result in a lower TUSF surcharge on customers' bills.

In establishing these reduced support amounts, the Agreement also addressed the adequacy of basic rates to support universal service, as required by PURA § 56.031. The Agreement provides that basic rates within a range of $15.50 to $17 per month are adequate to support universal service, and the Agreement coordinates the reduction of THCUSP support against assumed gradual increases to basic rates to levels within this range.[61] To offset this reduced THCUSP support, affected ILECs may seek to modify basic rates consistent with the prescribed range, in subsequent proceedings. The Agreement, however, does not require ILECs to change their rates. Finally, the Agreement reduced the number of eligible lines that are entitled to receive THCUSP support and provides for several rulemaking proceedings including one to increase the state Lifeline discount amount.

In an order issued on April 25, 2008 the Commission adopted the Agreement in its entirety and in July 2008, the Commission reduced the TUSF assessment rate to 3.4 percent from 4.4 percent, effective January 1, 2009. This reduction will lower the TUSF charge on customers' bills.

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[57] PURA § 56.029.

[58] *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. SUBST. R. 26.403,* Docket No. 34723.

[59] The four ILECs that receive THCUSP support are Verizon, Embarq, Windstream, and AT&T Texas (THCUSP ILECs). Under the Agreement, the support for ETPs will be reduced, not just the ILECs' support, and therefore the total THCUSP support reductions will be greater than the amounts estimated.

[60] The TUSF supports the THCUSP and fourteen other universal service programs. P.U.C. SUBST. R. 26.401.

[61] These reductions are only a portion of the total THCUSP support reductions called for in the Agreement.

2. Federal Universal Service Fund

In recent years, the explosive growth in high-cost universal service support disbursements from the FUSF coupled with the eroding FUSF contribution base has led the FCC to undertake interim steps to impose caps on high-cost support provided to competitive carriers and expand the universal service contribution base. To rein in the tremendous growth in high-cost universal service support disbursements from the FUSF, in May 2008, the FCC capped the total annual competitive eligible telecommunications carrier (ETC) support for each state at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis.[62] However, a competitive ETC will not be subject to the interim cap if it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier. In June 2006, as part of the FCC's efforts to ensure the long-term stability and sufficiency of the FUSF support system in an increasingly competitive market, the FCC increased the contribution of wireless companies into the FUSF and extended FUSF contribution obligations to providers of interconnected VoIP services.[63] While these FCC measures are temporary, they will remain in place until the FCC adopts comprehensive universal service reform.

In recognition of the increasing use of broadband Internet access as a mode of communication, the FCC is considering a comprehensive reform of the FUSF to spur the deployment of broadband Internet access service to all areas of the nation, including high-cost, rural, and insular areas where many customers do not currently have access to such services. The FCC has sought comment on whether all recipients of federal high-cost support should be required to offer broadband Internet access service within five years to all customers within their supported areas as a condition of receiving FUSF support.[64] Under the FCC proposal, if an ILEC fails to commit to provide to offer broadband Internet service within five years in its supported areas, the ILEC will gradually lose its FUSF high-cost support, and this support will be awarded through a reverse auction to an ETC that will agree to serve as carrier of last resort and offer broadband Internet service to all customers within the ILECs' supported areas within ten years.[65] The support for ILECs would be set at the total amount of high-cost support disbursed to the ILEC in December 2008 on an annualized basis.[66] An alternative proposal would allow rural rate-of-return ILECs to continue drawing high cost universal

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[62] *High-Cost Universal Service Support, Order* at ¶ 7, FCC 08-122, WC Docket No.05-337 (Rel. May 1, 2008).

[63] *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking* at ¶¶ 25 and 36, FCC 06-94, WC Docket No. 06-122 (Rel. June 27, 2006).

[64] *High-Cost Universal Service Support, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-962, WC Docket No. 05-337, *(*Rel. November 5, 2008), (USF and ICC Order), Appendix A.

[65] *Id.* at ¶ 12.

[66] *Id.*

support — as they do today — until 2010 and then the universal service support for these ILECs will be frozen at the 2010 support level.[67]

The proposal also seeks to promote broadband use among Lifeline/Link Up customers by creating a pilot program to provide discounted access to broadband services.[68] In addition, the FCC's proposal seeks to limit the growth of FUSF support disbursements and stabilize the contribution base for the FUSF by replacing the current revenue-based contribution with a fixed $1 monthly contribution for each number associated with residential services.[69] The contributions for business services would be based on the number of connections to the public switched telephone network.[70]

The FCC proposals relating to FUSF would represent significant changes in the telecommunications environment. However, given the upcoming changes in the federal administration and likely changes to FCC membership, adoption of these proposals is unclear.

3. ETC/ETP/RETP Designation

The Commission is responsible for issuing three designations of eligibility to participate in TUSF and FUSF programs. Senate Bill 5 mandated that all certificated providers of local exchange telephone service provide Lifeline service. Previously, only ETCs and ETPs were required to provide Lifeline Service. This new statutory requirement raised questions as to how total service resellers (TSRs) would be reimbursed for the Lifeline discount to customers. Because TSRs are not eligible to apply for ETC or ETP designation, the Commission established the Resale Eligible Telecommunication Provider (RETP) designation.

a. Eligible Telecommunication Carrier

An ETC designation is required in order for a telecommunications carrier to receive support from the FUSF. FUSF support is provided to such designated telecommunications carriers to provide basic telephone service at reasonable rates. The FCC requires state commissions to process ETC applications and assign such designation to qualified carriers.

b. Eligible Telecommunication Provider

An ETP designation is required in order for a telecommunications provider to receive support from the TUSF. Similar to FUSF support, TUSF support is provided to designated providers to assist in providing basic telephone service at reasonable rates in Texas. For a provider to be eligible to apply for ETP designation, it must first be designated as an ETC.

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[67] *Id.*, Appendix C at ¶ 12.

[68] *Id.*, Appendix A at ¶ 64 and Appendix C at ¶ 60.

[69] *Id.*, Appendix A at ¶ 105.

[70] *Id.*, Appendix A at ¶ 130.

c. Resale Eligible Telecommunication Provider

A RETP designation is available to certificated providers of local exchange telephone service that provide this service solely through the resale of an ILEC's service. Because a TSR is not eligible to become an ETC or an ETP, this designation was established for the specific purpose of allowing a certificated TSR the ability to receive funds for Lifeline Service from the TUSF. A TSR is not eligible to receive support from the FUSF. The Commission issued its first RETP designation to dpi Teleconnect in June 2007.

Table 11 – ETC/ETP/RETP Designations, August 2006-August 2008

	ETC	***ETP***	***RETP***
Applications for Designation(s) Approved	17	8	5
Application for Designation(s) Pending for Designation or Relinquishment	4	2	0
Relinquishments or Applications Withdrawn	2	2	0
Applications Denied	1	1	0

C. Rate Regulation

The Commission continues to regulate the rates of ILECs and competitive carriers to the extent authorized by PURA and federal rules and regulations. Some significant developments have occurred since the last report.

1. Telecommunications Infrastructure Fund

The Telecommunications Infrastructure Fund (TIF) was established to create a statewide funding mechanism to give schools, hospitals, and libraries a means by which to invest in the equipment necessary for the advancement of information sharing and educational opportunity for all of Texas. The programs established through the TIF provided the equipment and infrastructure necessary for distance learning, telemedicine medical and health services, and other programs to more fully develop the State's medical and educational system.

House Bill 735, enacted in the 80th Legislative Session, repealed the TIF effective September 1, 2008. As a result, the intrastate telecommunications bills of both business and residential customers of landline and wireless providers declined by 1.25 percent after September 2008.

2. Intrastate Access Charges

Access charges represent the fees paid by telecommunications carrier to each other to originate or terminate long-distance calls not carried on their own networks. These fees are typically usage sensitive, that is, they vary according to the number of minutes associated with a long-distance call.

Certain "transitioning" ILECs, which elected to be regulated under Chapter 65, are required to reduce their access charges. This election has resulted in a significant reduction in access charges from July 1, 2006 through July 1, 2008. The ILECs whose access charges have been reduced are AT&T Texas, Verizon, and Embarq-Centel. The most significant reductions were made by AT&T Texas, as shown in Table 12. AT&T Texas reduced and restructured its switched access rates on July 1st of 2006, 2007, and 2008. Over a period of three years the total wholesale cost to long-distance carriers of originating and terminating a long-distance call within AT&T Texas service territory has been reduced from approximately 6 cents per minute-of-use to approximately 1.3 cents per minute-of-use, or a combined reduction of about 80 percent over a three-year period.

Table 12 – Changes in AT&T Texas's Switched Access Rates

Rate Element	AT&T Texas		
	Before July 1, 2006	**After July 1, 2007**	**After July 1, 2008**
Per minute–of-use rates			
Originating Switched Access			
Carrier Common Line	$0.016230	$0.005410	$0.00
Local Switching	$0.006900	$0.004388	$0.004725
Local Transport	$0.001904	$0.002202	$0.001918
Total Originating Switched Access	$0.025034	$0.012000	$0.006643
Terminating Switched Access			
Carrier Common Line	$0.026657	$0.004480	$0.00
Local Switching	$0.006900	$0.004388	$0.004725
Local Transport	$0.001904	$0.002202	$0.001918
Total Terminating Switched Access	$0.035461	$0.011070	$0.006643
Total Switched Access	**$0.060495**	**$0.023070**	**$0.013286**

SOURCE: Texas PUC filings.

While the switched access rates of the large ILECs have been reduced over the past few years, the high level of switched access charges levied by small-sized and medium-sized incumbent local exchange carriers remain an area of concern. Although these per minute-of-use charges were reduced at the time that the TUSF was established, the charges still remain high. As shown in Table 13, the charges ranging from a total of approximately $0.04 per minute-of-use to as high as $0.13 per minute-of-use represent the wholesale cost to originate and terminate a long distance call within certain rural and some urban territories in Texas. Among the rate elements, the carrier common line charge is the largest rate component in the total switched access charges for the small and medium-sized companies. When combined on an originating and terminating basis, Table 13 indicates that these charges alone range from approximately $0.02 per minute-of-use to as high as approximately $0.10 per minute-of-use. Generally, the carrier

common line charge is not a cost-based charge but can be construed as a "make whole" type charge.

Table 13 – Switched Access Rates of Small and Medium-Sized ILECs

Company Name	Carrier Common Line		Local Switching		Transport (estimated)	Total
	Originating	Terminating	Originating	Terminating		
Blossom Telephone Company	$0.027800	$0.039356	$0.01010	$0.01010	$0.006704	$0.094060
Cap Rock Telephone Cooperative	$0.027800	$0.070521	$0.009600	$0.009600	$0.010562	$0.128083
Electra Telephone Company	$0.010000	$0.011800	$0.009800	$0.009800	$0.007756	$0.049156
Guadalupe Valley Telephone Cooperative	$0.027800	$0.031541	$0.009800	$0.009800	$0.017637	$0.096578
Lake Livingston Telephone Company	$0.027800	$0.065226	$0.009800	$0.009800	$0.007304	$0.119930
Sugar Land Telephone Company	$0.010000	$0.011800	$0.011300	$0.011300	$0.017637	$0.062037
Tatum Telephone Company	$0.020764	$0.022560	$0.009800	$0.009800	$0.009392	$0.072316
United Telephone Company	$0.027800	$0.014360	$0.012300	$0.012300	$0.0124743	$0.079234
XIT Rural Telephone Cooperative	$0.027800	$0.069366	$0.009600	$0.009600	$0.0162580	$0.132624

SOURCE: Texas PUC filings.

The level of intrastate switched access rates for small-sized and medium-sized companies has remained unchanged since 2000. Intrastate switched access rates for these companies are generally not at parity with their interstate switched access rates. Unless changes are made to these switched access rates of the medium and small ILECs, the disparity between the intrastate and interstate switched access rates and migration of carriers from circuit based networks to IP-based networks is likely to provide incentives for arbitrage by carriers that wish to avoid paying the high intrastate switched access rates for originating and terminating long-distance calls in rural areas of Texas.

To ensure that CLECs' switched access charges are not excessive, PURA § 52.155 permits a CLEC to either 1) mirror an ILEC's prevailing switched access rates; 2) adopt the statewide average composite originating and terminating intrastate switched access rates; or 3) request Commission approval for higher switched access rates. The

vast majority of CLECs have elected to adopt the statewide average composite rates established periodically by the Commission while the remaining CLECs have chosen to mirror ILEC rates. The most recent modification to statewide average composite switched access charges was made in November 2008. Table 14 identifies statewide average composite switched access charges that represent the statewide maximum rates that a CLEC can charge to originate or terminate long-distance calls provided by another carrier. As Table 14 indicates, the statewide average of switched access charges has been cut by 50 percent over a two-year period.

Table 14 – CLEC Statewide Weighted Average Usage-Sensitive Switched Access Rates

Rate Element	Non-Dominant Carrier Access Charges		
	August 17, 2006	**December 3, 2007**	**November 6, 2008**
Per minute of use rates			
Originating Switched Access			
Carrier Common Line	$0.0113847	$0.0059111	$0.0021593
Local Switching	$0.0079847	$0.0072207	$0.0073271
Transport	$0.0011842	$0.0009278	$0.0010467
Total Originating Switched Access	$0.0205536	$0.0140596	$0.0105331
Terminating Switched Access			
Carrier Common Line	$0.0131223	$0.0056507	$0.0025859
Local Switching	$0.0079847	$0.0072207	$0.0073271
Transport	$0.0011842	$0.0009278	$0.0010467
Total Terminating Switched Access	$0.0222912	$0.0137992	$0.0109597
Total Switched Access	**$0.0428448**	**$0.0278588**	**$0.0214928**

SOURCE: Texas PUC filings.

3. Intercarrier Compensation

Intercarrier compensation rates are typically charges that a telecommunications carrier assesses to transport and terminate another carrier's telecommunications traffic. In case of long distance calls, the intercarrier compensation rates are intended to cover the cost of originating and terminating the call. Historically, regulators relied on a complex array of intercarrier compensation mechanisms to promote universal service. For instance, with the emergence of competition for long-distance services in the 1970s, the implicit subsidies for local service were maintained when intercarrier compensation charges, known as "access charges," were created so that local telephone companies were compensated by long-distance providers to originate and terminate long-distance calls.

After the FTA opened the local market to competition in 1996, the FCC began to replace the implicit subsidies with explicit support through the FUSF. In Texas, in 1999, the Commission expanded the TUSF and began the transition from an implicit to an explicit support mechanism with reductions in the intrastate switched access charges and increased support for carriers that needed it through the TUSF. With emergence of competition in the local market, another mechanism was introduced through which

carriers compensate each other for the exchange of traffic besides the access charge regime. FTA § 251(b)(5) imposed on all local exchange carriers (LECs) the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. The reciprocal compensation rates were set based on a forward-looking long-run average incremental cost methodology that included a reasonable allocation of common costs, including overheads.

Intercarrier compensations rates are typically negotiated as part of the interconnection agreement between local exchange carriers. If negotiations are unsuccessful, parties may petition the Commission for arbitration. In an arbitrated agreement approved by the Commission in 2005 between AT&T Texas and the CLEC Coalition, the intercarrier compensation arrangement encompassed different types of telecommunications traffic, which included local traffic, ISP-bound traffic, extended area service traffic, long-distance traffic, and cellular traffic.[71]

Interconnection arrangements between carriers are currently governed by a complex system of intercarrier compensation regulations that treat different types of carriers and different types of calls differently, even though there may be no significant differences in the costs among carriers or in the costs of network functions used to transport and terminate different types of calls. This disparity in rates creates opportunities for arbitrage. For instance, the disparity in intrastate and interstate switched access rates creates incentives for arbitrage among long-distance carriers that wish to avoid paying higher intrastate switched access rates. Currently AT&T Texas has brought its intrastate rates into parity with its interstate switched access rates.

In 2001, the FCC had to take steps to address regulatory arbitrage involving traffic to dial-up ISPs where many CLECs took advantage of high compensation rates for local traffic by targeting ISP customers who were large recipients of local traffic. By providing service to high-volume ISPs, these CLECs generated significant traffic imbalances in the CLEC's favor. As a result of the FCC's action on the arbitrage problem concerning ISP-bound traffic, the arbitrated agreement between AT&T Texas and the CLEC Coalition contains an option that does not distinguish between ISP-bound traffic and local traffic and requires the parties to compensate each other for the transport and termination of ISP-bound traffic and all other local traffic at $0.0007 per minute of use.

The potential for arbitrage caused by intercarrier compensation arrangements that includes different rates for different carriers and different types of call where there is no significant difference in underlying costs can be illustrated by comparing the $0.0007 per minute of use rate in the AT&T-CLEC Coalition agreement for the termination of ISP-bound traffic and local traffic with the current intrastate/interstate switched access termination rate of $0.006643 charged by AT&T Texas for the termination of long-distance calls. When applied to billions of minutes of use, the impact can be significant. For other ILECs in Texas, the disparity is likely to be even greater.

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[71] *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821, Order Approving Interconnection Agreements, (August 29, 2005).

The disparate rates that apply to different types of traffic in the existing intercarrier compensation mechanisms also create the opportunity and incentive for carriers to disguise the nature, or conceal the source, of the traffic being sent in order to avoid or reduce payments to other carriers.

The FCC is considering a new approach to intercarrier compensation that attempts to reduce inefficiencies in the existing intercarrier compensation regime, eliminate the potential for arbitrage and fraud caused by disparate compensation rates, and spur the transition to an all-Internet Protocol (IP) broadband network. The FCC has issued a Further Notice of Proposed Rulemaking (FNPRM),[72] in which it has proposed the establishment of new staged uniform termination rates over a ten-year transition plan designed to reduce rates while minimizing market disruptions and cushioning the impact of the reform on both customers and carriers. [73] At the end of the transition period, all telecommunications traffic would be subject to reciprocal compensation provisions of section 251(b)(5) and state commissions, applying the new "additional costs" standard in the FNPRM, will set final reciprocal compensation rates at or below $0.0007 per minute of use.[74] The FCC would permit ILECs to recover at least part of the lost intercarrier compensation revenues caused by the reduction in intercarrier compensation rates through increases in end-user charges and new universal service support.[75] The FCC has proposed raising the cap on the interstate subscriber line charge (SLC) and ILECs are permitted to increase their SLCs up to the new caps.[76] Further, any new universal service support for an ILEC is conditioned on the ILEC showing that its federal SLC, state SLC (if any), and state retail local service rates are at the maximum levels permitted under existing state law.[77]

As noted earlier, because of likely changes to the FCC membership under the new administration, it is unclear whether the intercarrier compensation proposals under consideration at the FCC will be adopted. However, a comprehensive reform of intercarrier compensation seems imperative to address the increasing regulatory arbitrage, increased competition in the local telephone markets and the migration by telecommunications carriers of their traffic to broadband and IP-based networks. As carriers convert from circuit-switched networks to IP-based networks, access revenues are likely to decline because access charges are not assessed on broadband connections. The reduction in access revenues would put pressure on ILECs who rely on subsidies embedded in access revenues to recover the costs of providing service in rural areas. The challenge facing the FCC is to reform the complex intercarrier compensation regimes in a manner that would ensure quality telephone service at affordable rates in high-cost rural areas.

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[72] USF and ICC Order, Appendix A.

[73] *Id.* at ¶ 158.

[74] *Id.* at ¶¶ 158 and 202.

[75] *Id.* at ¶ 294.

[76] *Id.*, Appendix A at ¶ 298.

[77] *Id.*, Appendix A at ¶¶ 299 and 320.

D. Emergency Management

1. Hurricane Infrastructure Report

Following the Hurricane Rita restoration efforts in September and October 2005, the Commission established a project[78] in December 2005 to investigate the damage caused by Hurricane Rita and subsequent restoration of service. Following the issuance of a report, two projects were initiated to amend Commission rules.

a. Project No. 34594 (Completed Rulemaking) - Reliability of Operations of Telecommunications Providers.

On January 4, 2008, the Commission adopted a new rule relating to Reliability of Operations of Telecommunications Providers, which applies to facilities-based, local exchange companies.[79] Telecommunications providers are required to file a copy of their emergency operations plan or summary by May 1, 2008. There were 62 plans or summaries filed for Commission review.

The items to be included in each filing with the Commission are as follows:

1. An affidavit by an operations officer;

2. A communications plan that describes the procedures for contacting the media, customers, and service users as soon as reasonably possible either before or at the onset of an emergency;

3. Priorities for restoration of service or references to the federal national security priority rules (47 C.F.R. pt. 64, App. A);

4. A plan for disaster recovery and continuity of operations;

5. A pandemic plan; and

6. A hurricane plan, if applicable.

Other requirements that apply to the telecommunications providers include conducting an annual drill if their emergency operations plan is not implemented in response to a natural or manmade disaster. Telecommunication providers are also required to supply the Commission with emergency contact information, which is to be updated as necessary. During an emergency event such as a hurricane, these individuals would be contacted by the Commission to obtain outage and restoration information. This information is then forwarded to the Governor's Division of Emergency Management and is used to generate twice-daily situation reports that are reviewed by the Governor's Office, state agencies, and local jurisdictions.

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[78] *PUC Investigation of Methods to Improve Electric and Telecommunications Infrastructure that will Minimize Long-Term Outages and Restoration Cost Associated with Gulf Coast Hurricanes*, Project No. 32182.

[79] P.U.C. SUBST. R. 26.51.

b. Project No. 34742 (Ongoing Rulemaking) - Location in Flood Plains and Emergency Power for Certificated Telecommunications Utilities' Facilities in Hurricane Prone Areas.

The Commission initiated a rulemaking to create new rules relating to Central Office and Remote Facilities Reliability. More specifically, the rulemaking addressed the location of central offices and remote facilities in flood plains and emergency power for telecommunications utilities' facilities in hurricane-prone areas. The goal of the rulemaking was to establish minimum standards for the design and construction of a new central office or remote facility above the 100-year flood plain and for the installation of emergency back-up power at central offices to ensure more efficient restoration of service following a major event such as a hurricane. The Commission decided not to adopt a proposed rule at this time, but instead conduct a cost-benefit analysis prior to reconsidering this rule.

2. Commission Response to Emergency Events

The Commission continues to give increased attention to disaster recovery. The Commission's Emergency Management Response Team (EMRT) has been assigned the task of responding to emergency situations that may cause harm to the infrastructure of telecommunications utilities and the customers they serve. Emergency events can affect a small number of customers, as in a tornado or wildfire, or millions of customers as in the case of Hurricane Ike.

The EMRT's primary function is to provide accurate utility outage and restoration information to the State Operation Center (SOC) during an emergency situation. This information is included in a report that is delivered to the Governor to assist in determining the State's resource allocation during the course of an emergency situation. The EMRT also helps coordinate restoration of service to ensure that high-priority customers are restored first and helps telecommunications providers overcome obstacles to restoring service. During the last two years, Texas experienced numerous hurricanes that have challenged the preparedness and ability of telecommunication providers to recover from the storms and restore service.

a. Hurricane Humberto

Hurricane Humberto was a more severe storm than predicted. It was expected to be a tropical storm with winds at 35 miles per hour making landfall on Wednesday, September 12, 2007. When the storm struck near High Island, it was a Category 1 hurricane with 85 mile per hour winds. Most of the damage occurred in Galveston, Orange, Chambers, and Jefferson counties. Immediately following the storm, approximately 702 AT&T Texas customers reported that they were without phone service. Initially, AT&T Texas had 15 central offices, 39 remote terminals, and several AT&T Texas offices running on generators or back-up batteries. Damage assessment conducted also revealed that 40 cables were damaged. Service in impacted areas was restored on September 17, 2007.

b. Hurricane Dolly

Tropical storm Dolly was expected to make landfall along the Texas coast between Brownsville and Corpus Christi as a Category 1 or 2 hurricane on the evening of Wednesday, July 23, 2008 or early next day. Hurricane Dolly made landfall as a Category 2 hurricane with 100 mph winds around noon on July 23. AT&T Texas estimated that 600 customers were without telephone service after the storm struck. AT&T Texas's pre-landfall preparations included staging generators in Harlingen and testing sump pumps in central offices. Following the passage of the storm, AT&T Texas moved a cellular central office on wheels to South Padre Island to restore cell service. AT&T Texas restored service to its affected customers on August 6, 2008.

c. Tropical Storm Edouard

Tropical Storm Edouard made landfall at 6:00 am on Tuesday, August 5, 2008, near High Island, with winds at 65 miles per hour. Telecommunications providers were minimally impacted by the passage of the storm.

d. Hurricane Gustav

Hurricane Gustav made landfall on Monday, September 1, 2008 in southeast Louisiana. After landfall, the focus in Texas was sheltering and mass care. Shelters were opened at 40 different sites to house East Texas and Louisiana evacuees, including special needs and medical evacuees. Approximately 45,000 Louisiana residents were housed in Texas shelters and hospitals. Evacuees began returning home on Wednesday, September 3. Some medical evacuees are still housed in Texas hospitals and are waiting for the original hospitals to send word that they are able to accept the patients.

Texas' efforts have received national attention as President Bush visited the SOC on September 1, 2008 to visit with the Governor's Division of Emergency Management. On Friday, August 29, 2008, Governor Perry conducted a briefing from the SOC, outlining the State's preparations for the impending hurricane. Telecommunication providers did not report outages in Texas and resources were quickly sent to assist their Louisiana counterparts.

e. Hurricane Ike

Hurricane Ike made landfall on Saturday, September 13, 2008 on Galveston Island as a Category 2 hurricane with 110 miles per hour winds. At peak, approximately 340,000 customers were without telecommunications service. This number represents approximately 11 percent of the total customers served in the impacted areas (3,126,541).

AT&T Texas reported that 277 cables were out of service after passage of the storm. Four central offices were also out of service. AT&T's Galveston Sherwood central office was destroyed. AT&T also reported that 551 remote terminals were out of service because of a lack of commercial power. On October 23, 2008, AT&T Texas restored service to customers who could receive telephone service. Verizon Southwest reported that 1,575 cables were damaged and required repairs. While none of the Verizon central offices were out of service, 30 relied on generators for back-up power.

By Monday, September 22, power was restored to all but five of those central offices. Service to all affected customers was restored on September 29, 2008. Windstream reported that 34 cables were affected, seven switching stations were out of service because of the lack of commercial power, and 237 remote terminal locations were out of service because of the lack of commercial power. Windstream restored service to its affected customers on September 29, 2008. Eastex Telephone Cooperative experienced minor feeder and cable damage and two central offices were out of service for a 24-hour period because of a failed generator. All power has been restored to these locations. Time Warner Cable reported that 70 percent of its system was impacted by the lack of power in areas affected by the hurricane, and damage was sustained to the system in the Beaumont/Port Arthur area. Time Warner Cable restored service to its affected customers on October 1, 2008.

E. Homeland Security Activities

Commission Staff has actively participated in National Association of Regulatory Commissioners (NARUC) meetings discussing the protection of critical infrastructure. Beginning in 2007, NARUC began facilitating peer-to-peer technical assistance. Training sessions were developed for several NARUC meetings in which states were encouraged to answer a series of questions relating to their critical infrastructure protection initiatives. Commission Staff contributed to these activities and attended NARUC's regularly scheduled meetings. The ongoing exchange of information helps to inform Commission Staff about efforts of the federal government and other state governments in the arena of cyber and physical security.

F. 9-1-1 service – Next Generation VoIP and Wireless Phase II

Since the *2007 Scope of Competition Report*, the Commission has not dealt with any major issues related to Enhanced 9-1-1 (E9-1-1) service, but the introduction of voice over Internet Protocol (VoIP) as a communications platform is impacting the provision of 9-1-1 service and the communications industry's apparent transition toward packet data transport will broaden the impact in the future. These changes have resulted in an increase in the types of network services and service providers that require interoperability and interconnection with existing 9-1-1 network providers and database management service providers. The interconnecting entities include the following:

1) traditional wireline telecommunications carriers;

2) wholesale service providers that serve various retail service providers and VoIP providers;

3) wireless carriers;

4) telematics providers;[80]

5) Video and IP Relay service providers;

[80] Services provided to users of cellular, WiFi and WiMAX systems and future technologies that allow for the transmission of images or other critical data about emergencies to local authorities.

6) satellite providers; and

7) Multi-Line telephone systems providers (include Private Branch Exchanges (PBXs) and IP-PBXs).

Connectivity of wholesale services providers into the 9-1-1 system have raised numerous issues, particularly because some wholesale providers provide services only to retail providers that have end-user customers. As a result, these wholesale providers are not required to become Certificated Telecommunications Utilities (CTUs). Currently, the Commission rules pertaining to interconnection and standards for service providers of 9-1-1 apply only to CTUs.

To address technological changes to the network, the Commission on State Emergency Communications (CSEC) has developed a strategic plan to upgrade the 9-1-1 infrastructure from a circuit switched system to an IP-enabled system. This new network system is defined as Next Generation 9-1-1 (NG911).[81] This new network will be designed to allow the 9-1-1 system to keep up with changing technology, reduce the potential for 9-1-1 network failure, and allow for more advanced services to be developed.

Currently, three types of E9-1-1 service are implemented in Texas to allow end users to interconnect with or call the Public Safety Answering Points (PSAPs). They include, 1) traditional wireline E9-1-1 service, 2) wireless E9-1-1 (Phase I) with Automatic Number Identification (ANI) capability, and 3) Interconnected VoIP E9-1-1 service. VoIP E9-1-1 service was implemented on a statewide basis in 2005.

Wireless E9-1-1 service (Phase II) with an Automatic Location Identification (ALI) capability is available only in some metropolitan areas; however, full implementation throughout Texas is expected by September 2009. As of October 2008, approximately 98 percent of the PSAPs have the capability of providing Wireless E9-1-1 Phase II service. The Commission has begun the task of reviewing the current 9-1-1 rules by scheduling public hearings. Ultimately, the Commission may propose new rules to facilitate the migration to an IP-based network, ensure interoperability among various providers, and maintain network integrity and reliability of the Texas emergency 9-1-1 system.

G. Quality of Service Standards for Alternate Technologies

PURA § 54.251(c) provides that a certificate holder may meet its provider of last resort (POLR) obligations by using any available technology, so long as the service provider meets service quality standards, established by the Commission, that are comparable to those established for traditional wireline or landline technologies. The Commission initiated a rulemaking project in October 2005 to develop a set of quality of

[81] Commission on State Emergency Communication's Strategic Plan for Statewide 9-1-1 Service for FY 2009 to FY 2013; a copy of plan is available at http://911.state.tx.us/files/pdfs/Statewide%209-1-1%20Strat%20Plan%202009-2013.doc

service standards for alternate technologies.[82] The Commission solicited written comments and held a public hearing on the matter in March 2006. In August 2008, the rulemaking project was reactivated to meet one of the terms of the agreement reached by the parties and approved by the Commission in the TUSF reform proceeding.[83]

H. Broadband Over Power Lines (BPL)

Senate Bill 5 also authorized an affiliate of an electric utility or a person unaffiliated with an electric utility to own, construct, maintain, and operate a BPL system.[84]

BPL is a method by which a broadband telecommunications signal is transmitted over the existing electric distribution system to deliver broadband to individual end users. This technology has been in development for several years. However, because BPL is based on radio-frequency transmission and the power lines over which the signal travels are not shielded, BPL tends to interfere with other "over the air" radio frequency transmissions such as amateur radio. Refinements in BPL systems over the past few years have minimized this radio interference, though radio interference tests are still required wherever these systems are deployed.

In the last few years, a number of BPL pilot projects were underway and a few utilities were moving toward production BPL systems that were intended to offer retail services as well as provide utility communications. However, lately there appears to have been a cooling of interest in BPL as a medium of retail service offerings in favor of more limited deployments for use in Smart Grid applications. In Texas, both CenterPoint and Oncor had originally included BPL as a component of their proposed Advanced Metering Infrastructure (AMI) but have since moved away from retail BPL. Oncor purchased the installed base of BPL facilities provided by Current Communications for Oncor's AMI pilot project and may use these in a future Smart Grid implementation.

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[82] *Rulemaking Project for Establishing Telecommunications Service Quality Standards for Alternate Technologies Used by a Provider of Last Resort*, Project No. 31958 (pending).

[83] *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA §56.031 and P.U.C. SUBST. R. 26.403*, Docket No. 34723. Order, April 25, 2008.

[84] PURA § 43.051.

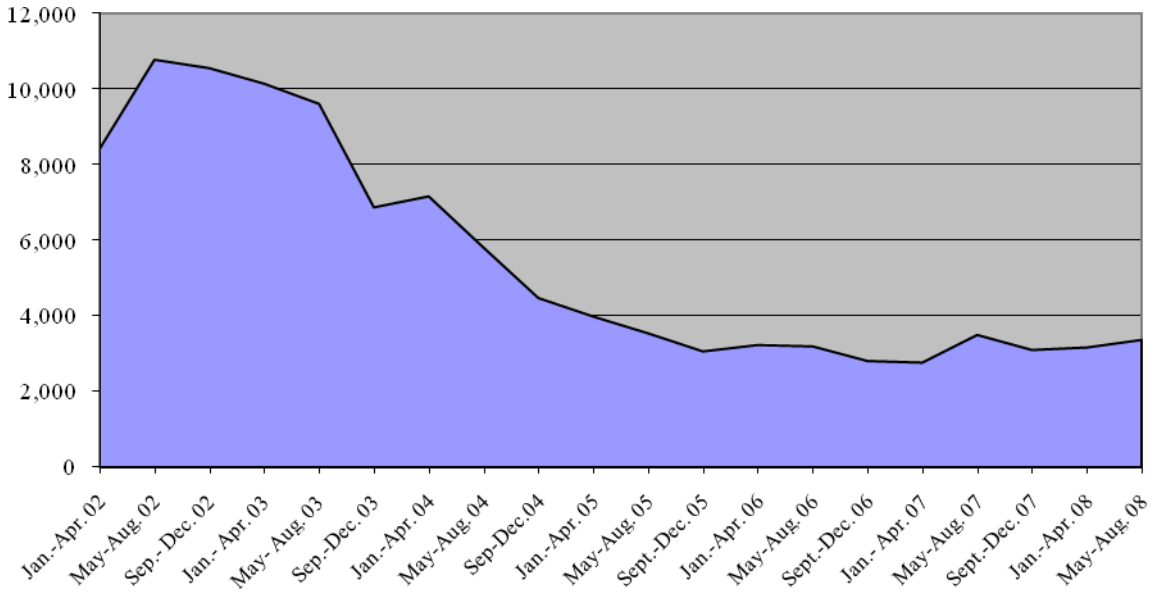
CHAPTER V. CUSTOMER PROTECTION/COMPLAINT ISSUES

The Commission is required to adopt rules establishing customer-protection standards and protecting customers from fraudulent, unfair, misleading, deceptive, or anti-competitive practices.[85] Under these rules, people may complain to the Commission about their telephone service and the Commission is required to keep records of the complaint. This chapter discusses the number and types of complaints received.

A. Complaints Received

As shown in Figure 10, the number of telephone complaints has been relatively constant over the last two years. A notable increase occurred during the May to August 2007 period, when a total of 3,499 complaints were filed.

Figure 10 – Total Telephone Complaints Received January 2002 – August 2008



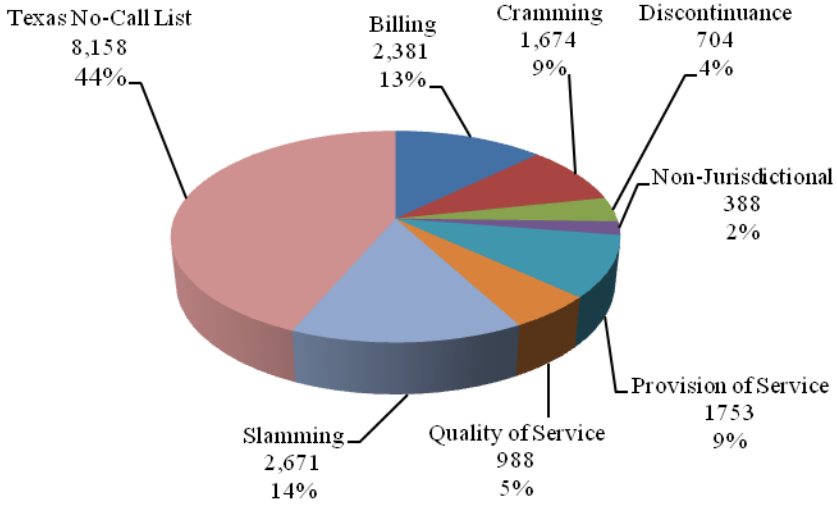
B. Type of Complaints

Complaints related to the Texas No-Call List, continue to represent the largest category of telecommunications complaints with 44 percent in FYs 2007 and 2008. The majority of other telecommunications complaints received included slamming at 14

[85] PURA § 64.001.

percent, billing at 13 percent, and cramming at 9 percent, as well as provision of service at 9 percent. Slamming is the switching of a customer's telecommunications service without proper authorization and verification. The Commission, like the FCC, maintains a zero-tolerance policy regarding the prevention and elimination of slamming. Cramming is an unauthorized charge on a customer's telecommunications utility bill without proper consent and verification of authorization from the customer.

Figure 11 – Telecommunications Complaints Received September 2006 – August 2008



CHAPTER VI. OVERSIGHT AND ENFORCEMENT ACTIONS

A. Introduction

The Commission protects consumers and promotes fair competition by enforcing statutes, rules, and orders applicable to Certificated Telecommunications Providers (CTPs) and other entities under its jurisdiction. The Commission's enforcement efforts focus on violations of PURA and the Commission's Substantive Rules, provisions of the Texas Business and Commerce Code relating to the Texas No-Call list, and provisions of the Local Government Code relating to municipal right-of-way issues.

1. Prior Commission Enforcement

Prior to October of 2007, the Commission's enforcement efforts were handled through the efforts of an agency enforcement coordinator, the Legal Division, and agency personnel in most of the Commission's divisions. While this system worked effectively to that point, the Commission reorganized in 2007, and one of the results was to establish a new division dedicated solely to issues related to enforcement, the Oversight and Enforcement Division (O&E).

2. New Commission Enforcement

The Commission's new O&E Division was established on October 1, 2007. The goal of the O&E Division is to promote compliance with PURA (and other applicable laws) and PUC Substantive Rules by electric and telecommunication service providers to protect customers and markets, and to ensure reliability. O&E works with the Commission's Legal Division, as well as other divisions, in its investigations and enforcement activities. In telecommunications, the main areas of oversight and enforcement are:

1) Slamming, cramming, and other billing issues;
2) Improper disconnection or suspension of customers;
3) Service quality;
4) No-Call violations;
5) Municipal access line reporting; and
6) Pre-paid calling card issues.

The Commission's primary enforcement tool is imposition of administrative penalties. The Commission's enforcement and administrative penalty authority is outlined in Chapter 15 of PURA, which provides for administrative penalties of up to $25,000 per violation per day. For violations of the Texas No-Call statute, the Commission may impose administrative penalties of up to $1,000 per day.[86]

[86] Tex Bus. & Comm. Code, §44.102(b).

a. Oversight

The O&E Division has set up programs and processes to accomplish oversight of the industry. The O&E Division coordinates with other Commission divisions regarding information on potential violations, and reviews and/or audits formal reports submitted to the Commission.

b. Investigations

O&E has several sources of information regarding potential law or rule violations that might generate an investigation by the Division. These include other PUC divisions, filed reports, industry stakeholders, and other sources.

Once O&E has received information regarding a potential violation, the information is reviewed to determine if an investigation is warranted. If warranted, an investigation is opened and the provider is notified of the investigation. The investigation is conducted through research, meetings, and requests for information to the provider. An investigation concludes with a recommendation for action if needed, or the investigation is closed with no further action if it is determined no violation occurred. If a violation is found, the provider may be sent a warning letter for a minor violation. Otherwise, the Notice of Violation (NOV) process begins.

c. Notices of Violation

The first step in the NOV process is to send a Pre-NOV letter to the provider describing the alleged violation and recommending an administrative penalty. The provider has the opportunity to meet with PUC Staff to resolve the matter. The Staff and the provider may enter into a settlement agreement resolving the issues of the violation, the amount of administrative penalty, and any other appropriate remedies, such as a mitigation plan. Settlement documents are filed at the PUC, and the Commission rules on the settlement agreement in an Open Meeting. PURA provides for a three-level classification system for violations that includes a range of administrative penalties. The classification system contains the following bases for penalty levels:

1) Seriousness of the violation;
2) Economic harm caused;
3) History of previous violations;
4) Amount of penalty necessary to deter future violations;
5) Efforts to correct the violation; and
6) Any other matter justice may require.

If the issues are not resolved through a settlement agreement, the NOV is sent to the provider by the Executive Director and filed at the PUC. This action initiates a contested case proceeding to resolve the issues of the violation and the administrative penalty. The NOV is referred to the State Office of Administrative Hearings (SOAH) and a hearing is conducted. The SOAH judge issues a Proposal for Decision which is subsequently ruled on by the Commissioners at an Open Meeting.

B. Oversight and Enforcement Activities: 2007–2008

Over the past two years, Commission oversight and enforcement activities resulted in payments to the Texas Universal Service Fund (TUSF) of over $24 million. This was the result of investigations into various providers' failure to deduct Federal Universal Service Funds from TUSF disbursement requests, resulting in TUSF overpayment to the providers, and/or improper claims for Lifeline reimbursement.

Also, currently pending at SOAH is a contested case on the FUSF deduction issue with Windstream-Valor.[87] This case potentially involves reimbursement to the TUSF as well as administrative penalties.

As of September 2008, fourteen investigations have been opened on potential telephone violations and thirteen investigations have been closed.

[87] *Notice of Violation by Valor Telecommunications of Texas, d/b/a Windstream Communications Southwest of P.U.C. SUBST. R. 26.403(f)(1)(C) relating to Texas High Cost Universal Service Plan*, Docket No. 34921 (pending).

CHAPTER VII. LEGISLATIVE RECOMMENDATIONS

A. Customer Specific Contracts and Contracts for Private Network Services

PURA § 52.057 requires Commission approval of customer specific contracts offered by an incumbent local exchange company for the provision of central office based PBX-type services for a system of 200 stations or more, billing and collection services, high-speed private line services of 1.544 megabits or greater, and customized services. These services are competitive services, usually involving contracts between large telecommunications companies and large business customers, and volume pricing. The Commission has implemented this provision by requiring ILECs to file quarterly report on the Customer Specific Contracts. The quarterly reports provide the detail of customer-specific contracts, such as types of service and customers, locations and quantities for the services, and rates and terms. (These reports are generally treated as confidential documents). Given the highly competitive market for these services, it would be appropriate to repeal the requirement for Commission approval of these contracts and to limit the filing of these contracts to cases in which an inquiry or complaint is filed by an affected party or the Commission has a need for the information.

Similarly, PURA §§ 58.255 and 59.074 require Chapter 58 and Chapter 59 electing companies, respectively, to file with the Commission contracts for private networks. However, Commission approval of such contracts is not required. Given the highly competitive market for these services, it would be appropriate to repeal the requirement to file these contracts on a routine basis and, instead, to require the companies to provide these contracts only in the event of an inquiry or complaint filed by an affected party or if the Commission has a need for the information.

Therefore, the Commission recommends that PURA §§ 52.057, 58.255 and 59.074 be revised to require the companies to maintain the customer specific contracts and contracts for private networks for specific time periods and require that these contracts be filed in the event of an inquiry or complaint filed by an affected party or upon request by the Commission.

B. Adjustment for Changes in Tax Liability

PURA § 53.202 relating to Adjustment for Change in Tax Liability was enacted by the 72nd Legislature in 1991. The purpose of this provision was to adjust the utilities' billings to reflect increases or decreases in their state franchise tax amount owed pursuant to changes to the franchise tax law passed during that session (HB 11). Only a few companies still make these annual filings and the amount of each utility's adjustment is generally de minimus. In comparison, the cost of filing the adjustments and associated true-ups is high because of the complicated nature of the calculations. Additionally, the replacement of the previous state franchise tax with the new margins tax in 2007 (HB 3) renders this provision obsolete. The Commission recommends the repeal of § 53.202 and the associated required billing adjustment.

C. Extended Area Service

PURA Chapter 55, Subchapter B delineates the provision of mandatory and optional extended area services by dominant carriers. The Commission may order a dominant carrier (an incumbent local exchange company) to provide mandatory extended area service in a specified metropolitan area if there is a sufficient community of interest in the area and the incumbent local exchange carrier serving the exchange can reasonably provide the service. The Commission may order optional extended area service in a specified calling area if the proposed calling area has a single, continuous boundary and there is agreement between each affected incumbent local exchange carrier and political subdivision in the proposed calling common area.

Extended area services were popular with customers in Texas before the introduction of competition in the telecommunication markets in Texas. Extended area service benefited the residents of exchanges who could petition to expand their local calling area to encompass neighboring exchanges including contiguous metropolitan exchanges and pay an additional fixed monthly charge, in lieu of long distance rates. However, expanded area service has increasingly been rendered obsolete by competitive options available to customers in the form of "all-distance" and nation-wide calling plans as well as the unlimited or high-volume calling plans offered by wireless companies and VoIP companies. Furthermore, the last petition requesting extended area service to a metropolitan exchange was filed with the Commission in May 1998.[88] The Commission, therefore, recommends that PURA Chapter 55, Subchapter B, be revised to eliminate the process for establishing new extended area service, while at the same time permitting exchanges to retain existing service plans.[89]

D. Revisions to Deadlines for Infrastructure Goals

PURA §§ 58.203 and 58.204 require Chapter 58 electing companies to achieve certain infrastructure goals by January 2000. Similarly, PURA § 59.052 requires Chapter 59 electing companies to achieve specific infrastructure goals by January 2000. The Commission recommends that the Legislature grant authority to the Commission to establish reasonable deadlines for the achievement of the infrastructure goals outlined in PURA §§ 58.203, 58.204 and 59.052 for companies that make an election under Chapter 58 or Chapter 59 in the future.

E. Repeal of Outdated PURA Language

Among the entities included in definition of the term "Telecommunications Utility" in PURA § 51.002(11) is a separated affiliate or an electronic publishing joint

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[88] *Original Resolution from the Burnet County Commissioners Court requesting Extended Area Service from Marble Falls to Austin*, Project No. 19372.

[89] This recommendation does not impact the provision of Expanded Toll-Free Local Calling Area service, set forth in PURA Chapter 55, Subchapter C, which is typically offered in rural areas and small exchanges in Texas.

venture as defined in Chapter 63. In light of the repeal of Chapter 63 in 2005, the Commission recommends the repeal of PURA § 51.002(11)(G).

F. Confidentiality of Enforcement Investigations

The Commission believes that vigorous, fair, and appropriate enforcement of Texas statutes and Commission rules will lead to compliance which is critical to ensuring well-functioning marketplaces and a level playing field for companies competing for customers. To help insure compliance, the Commission has expended significant resources to enhance its investigations and prosecutions in the telecommunications and electric markets in Texas. In October of 2007, the Commission created a new division, the Oversight and Enforcement Division, to handle all enforcement duties. In the electric arena, the Commission also retained an Independent Market Monitor (IMM) for the ERCOT wholesale electric market, pursuant to the requirements of PURA § 39.1515. The IMM monitors the wholesale electric market and investigates possible instances of market manipulation or violation of certain Commission or ERCOT rules. In addition, the Commission works closely with the Texas Regional Entity (TRE), which has been authorized by the Commission to investigate compliance with ERCOT protocols and operating guides.

The Commission is concerned that the release of information related to investigations while those investigations are underway would hamper the ability of the agency to perform its enforcement duties and could unfairly impugn the business practices of telecommunications or electric providers before all the facts have been determined.

Section 552.101 of the Public Information Act exempts from disclosure information that is considered confidential by law. The enabling statutes of many state agencies provide that the investigation files of those agencies are confidential as a matter of law. The state agencies that are provided with this protection during their investigations include the State Securities Board, the Health and Human Services Commission, the Texas Department of Health, the Texas State Board of Veterinary Medical Examiners, the Texas State Board of Acupuncture Examiners, and the Texas Board of Chiropractic Examiners.

The Commission believes it would be sound public policy and would enhance confidence in the telecommunications and electric markets for the Legislature to make the investigation records of the Commission, the IMM, and the TRE confidential as a matter of law.

G. Commission's Deliberation Concerning Confidential Information

In executing its duties under PURA, the Commission is often required to examine information that is confidential by law or otherwise excepted from public disclosure under the Texas Public Information Act (TPIA). See, TEX. GOV'T. CODE ANN. Chapter 552 (Vernon 2004 & Supp. 2008). Additionally, PURA § 39.001(b)(4) declares that it is in the public interest to protect the competitive process "in a manner that ensures the

confidentiality of competitively sensitive information." As a result of the move to competitive markets in the Texas electric industry, the Commission has seen a very large increase in the amount of information reviewed by the Commission for which a claim of confidentiality is asserted. The Commission also has agreed to act as the Hearing Body in enforcement proceedings for the ERCOT region related to electric reliability standards under the Energy Policy Act of 2005 (federal Act).[90] The Federal Energy Regulatory Commission (FERC) has adopted rules implementing the federal Act that require that certain information be treated as "nonpublic information" during the hearing process, including information that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed.

There is no provision in the Open Meetings Act (TEX. GOV'T CODE ANN. Chapter 551 (Vernon 2006)) allowing a state agency to hold a closed meeting or executive session to consider information that is excepted from disclosure under the TPIA. The Attorney General has held that there is no implied authority in the Open Meetings Act for an agency to meet in executive session to consider information that is excepted from disclosure under the TPIA and that the exceptions from disclosure under the TPIA do not permit a closed session where none is authorized by law.[91] The Attorney General has also held that the Administrative Procedure Act creates an exception to the Open Meetings Act for "contested cases" so that claims of privilege may be reviewed in a closed meeting.[92] The claim must be made during the course of a contested case and resolution of the claim must require examination and discussion of the allegedly privileged information. The Attorney General stated, "Only that portion of the deliberations which would reveal the information can be closed; the remainder must be held in public."[93] If the claim can be deliberated and decided in public without disclosing the information, the meeting must be open to the public.

The Commission is currently operating as required by law but is concerned that the proliferation of confidential information may inhibit its ability to discuss confidential information without revealing its content. The Commission notes that some regulatory agencies have been granted express authority to conduct closed meetings to consider information that is confidential by law. *See*, *e.g.*, TEX. GOV'T CODE ANN. §§ 551.079 and 551.081 (Vernon 2006). The Commission recommends amending PURA to make it clear that the Commission has the authority to conduct a closed meeting to deliberate on matters involving confidential information.

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[90] FPA, 16 USC §824.

[91] AG Opinion Nos. MW-578 and GA-0019.

[92] AG Opinion No. JM-645.

[93] *Id*. at 6.

Appendix A. Research Methodology

This appendix discusses the methodology used by the Commission for collecting data for the 2009 Scope of Competition Report. As in past years, the Commission collected data on voice and broadband service from incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) operating in Texas. A data collection form was developed to obtain information about a telephone company's service offerings, revenues, lines, minutes of use, and broadband offerings.[94] By Commission Order, all ILECs and CLECs operating in Texas were required to complete the survey form. This group consists of certificated telecommunications utilities (CTUs) in the State of Texas, i.e., holders of a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or service provider certificate of operating authority (SPCOA). Only those providers who receive these certificates are eligible to offer basic local exchange services in Texas. In addition to regulated entities, data from non-regulated data affiliates of the ILECs and CLECs, cable companies, Internet service providers, and Voice-over-Internet-Protocol providers were gathered. The Texas Cable Association submitted information on voice and broadband service provided by cable companies as well as a list of counties with cable-based, high-speed data service and the total number of such high-speed data lines in Texas. From these data, the Commission was able to determine the number of telecommunications access lines by geographic area and the number of broadband access providers by county. Because of the issues associated with providing competitively sensitive information to the Commission, CLECs and ILECs were allowed to use aggregators to represent groups of companies and report the requested information to the Commission in an aggregated form.

Of the 531 CTUs in Texas, 170 submitted responses to the data request for the 2009 Scope of Competition Report. Of the responding CTUs, 144 were CLECs as compared with 125 who responded to the data request in July 2006. Of the 144 CLECs responding to the data request, 26 claimed to not have any lines in Texas as of June 30, 2008. Overall, the Commission considers that it has received data from carriers providing effectively all of the access lines served in Texas. This conclusion is based on the comparison of the total of 10,997,877 lines as of June 2008 reported to the Commission with 11,272,775 lines reported by the FCC as of December 2007 (the number of lines is understood to be decreasing over time).[95]

The form collected both aggregated and disaggregated information on the number of retail "plain old telephone service" (POTS) lines provided over local loops owned, leased, and resold, and the number of wholesale lines. Both ILECs and CLECs were required to provide information aggregated as metro, non-metro cities, and rural population areas. Major metros areas were cities with populations over 200,000 and their surrounding communities. The cities of Houston, Dallas, San Antonio, Austin, El Paso, Fort Worth, Corpus Christi, Laredo, and Lubbock fell into this category. Non-metro cities were those with populations between 200,000 and 30,000. Forty-five cities fell into

[94] The Commission's 2008 Data Request Form can be found on the Commission webpage for Project No. 35575, Report to the 81st Legislature on the Scope of Competition in the Telecommunications Market. http://www.puc.state.tx.us/telecomm/projects/35575/35575.cfm.

[95] FCC Local Telephone Competition Report at Table 7 (September 2008).

the non-metro category. Finally, there were 1995 rural communities, those towns and cities with populations of less than 30,000.

In addition to classifying lines based on population category, carriers were also required to identify whether those lines were provided to residential or non-residential customers. Non-residential customers consist of businesses, school districts, universities, churches, government entities and non-profit organizations. Residential lines consist of those lines that serve single-family or multi-family dwelling units.

To obtain a historical context, the 2008 data were supplemented with data from the 2007 data request. Historical cable company access line data were acquired from the responses to the 2004, 2005, 2006, and 2007 Scope of Competition data requests. Data for this report also came from three FCC reports on competition in the local telephone service, high-speed Internet service and the wireless service markets. *High-Speed Services for Internet Access: Status as of June 30, 2007* (released March 2008) provided the Commission with the number of broadband subscribers nationwide and in various states, including Texas, and the number of broadband lines provided by various technologies (for example, Asymmetrical Digital Subscriber Line, or ADSL, versus cable modem). Data from this report has enabled the Commission to develop time-series charts on broadband use in Texas. The Commission used *Local Telephone Competition: Status as of December 31, 2007* (released September 2008) to determine the number of mobile wireless users in Texas. The FCC's *Twelfth Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, in WT Docket 07-17 (released February 4, 2008), *Local Telephone Competition: Status as of December 31, 2007*, Table 14, and *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey*, July-December 2007, National Health Center for Health Statistics, Centers for Disease Control and Prevention were used to determine the proportion of mobile wireless service users who had moved from using traditional wireline access to using only wireless service. Finally, the Commission gathered data on the number of Vonage subscribers from the Vonage web site, http://www.vonage.com/corporate/index.php?lid=footer_corporate.

In addition, for the first time, Commission Staff created a Cable/Video Data Request form that was used to gather information from many state-issued certificate of franchise authority (CFA) holders in the State of Texas. Cable and video service providers and the Texas Cable Association were urged to voluntarily submit information on investment, number of homes passed, number of subscribers, as well as number of counties in Texas served by cable or video service providers. The Commission contacted 21 major cable or video service providers with the data request in August and September of 2008, receiving responses from all of the companies to the request. Because the issues associated with providing competitively sensitive information to the Commission, cable and video service providers were allowed to use aggregators to represent groups of companies and report the requested information to the Commission in an aggregated form.

This data request will be part of an ongoing effort to assess the impact of the state-issued certificate of franchise authority pursuant to Chapter 66 enacted by the Legislature in 2005. Current and historical data about the investment in cable/video delivery infrastructure and subscribership as well as number of homes passed will

provide an understanding on the effectiveness of state-issued certificate of franchise authority in facilitating market entry and customer choice in cable and video service.

Appendix B. Deregulated ILEC Markets

Deregulated Markets with Population of at least 100,000

Company	Markets with Population ≥ 100,000					
AT&T Texas	Houston	Dallas	Fort Worth	San Antonio	Austin	El Paso
	Corpus Christi	Mission	Lubbock	Waco	Laredo	Amarillo
	Brownsville	Spring	Tomball	Frisco	McAllen	Tyler
	Pharr	Odessa	Abilene	Beaumont	Midland	Wichita Falls
	Longview	McKinney				
Verizon	Plano	Garland	Lewisville	Irving	Bryan/College Station	Carrollton
	Denton	San Angelo				
Embarq	Humble	Killeen				

Deregulated Markets with Population of at least 30,000 but less than 100,000

Company	Markets with Population of ≥ 30,000 and < 100,000					
AT&T Texas	Allen	Bastrop	Big Spring	Cypress	Donna	Edinburg
	Harlingen	Mercedes	Nederland	New Braunfels	Rockwall	San Benito
	Seguin	Temple				
Verizon	Grapevine	Keller	Rowlett			
Embarq	Copperas Cove					

Deregulated Markets with Population of less than 30,000

Company	Markets with Population < 30,000					
AT&T Texas	Alice	Anthony	Beeville	Belton	Bridge City	Lockhart
	Luling	Orange	San Diego	Silsbee	Smithville	Snyder
	Sweetwater	Taylor	Vidor			
Embarq	Nolanville					

Appendix C. Incumbent Local Exchange Carriers

ILECs	Chapter 65 Status	Incentive Regulation Election/PURA Chapter
AT&T Texas (formerly Southwestern Bell)	Transitioning	Chapter 58
Embarq – Central Telephone Co. of Texas, Inc.	Transitioning	Chapter 58
Verizon Southwest	Transitioning	Chapter 58
Alenco Communications (d/b/a A.C.I.)	Regulated	Chapter 52
Big Bend Telephone Company, Inc.	Regulated	Chapter 59
Blossom Telephone Company, Inc.	Regulated	Chapter 52
Border to Border	Regulated	Chapter 52
Brazoria Telephone Company	Regulated	Chapter 52
Brazos Telecommunications, Inc.	Regulated	Chapter 52
Brazos Telephone Cooperative, Inc.	Regulated	Chapter 52
Cameron Telephone Company	Regulated	Chapter 52
Cap Rock Telephone Cooperative, Inc.	Regulated	Chapter 52
Central Texas Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
CenturyTel of Lake Dallas, Inc.	Regulated	Chapter 59
CenturyTel of Northwest Louisiana, Inc.	Regulated	Chapter 52
CenturyTel of Port Aransas, Inc.	Regulated	Chapter 59
CenturyTel of San Marcos, Inc.	Regulated	Chapter 59
Coleman County Telephone Cooperative, Inc.	Regulated	Chapter 52
Colorado Valley Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Comanche County Telephone Company, Inc.	Regulated	Chapter 52
Community Telephone Company, Inc.	Regulated	Chapter 52
Consolidated Communications of Texas, Company	Regulated	Chapter 58
Consolidated Communications of Fort Bend County	Regulated	Chapter 58
Cumby Telephone Cooperative, Inc.	Regulated	Chapter 52
Dell Telephone Cooperative, Inc.	Regulated	Chapter 52
Eastex Telephone Cooperative, Inc.	Regulated	Chapter 52
Electra Telephone Company, Inc.	Regulated	Chapter 52
Embarq – United Telephone Co.	Regulated	Chapter 58
ENMR Telephone Cooperative, Inc.	Regulated	Chapter 52
Etex Telephone Cooperative, Inc.	Regulated	Chapter 52
Five Area Telephone Cooperative, Inc.	Regulated	Chapter 52
Ganado Telephone Company, Inc.	Regulated	Chapter 52
Guadalupe Valley Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Hill Country Telephone Cooperative, Inc.	Regulated	Chapter 52

ILECs	Chapter 65 Status	Incentive Regulation Election/PURA Chapter
Industry Telephone Company	Regulated	Chapter 52
Windstream Communications Kerrville (d/b/a Kerrville Telephone Co.)	Regulated	Chapter 58
La Ward Telephone Exchange, Inc.	Regulated	Chapter 52
Lake Livingston Telephone Company	Regulated	Chapter 52
Leaco Rural Telephone Cooperative, Inc.	Regulated	Chapter 52
Lipan Telephone Company	Regulated	Chapter 52
Livingston Telephone Company	Regulated	Chapter 52
Mid-Plains Rural Telephone Cooperative, Inc.	Regulated	Chapter 52
Nortex Communications	Regulated	Chapter 52
North Texas Telephone Company	Regulated	Chapter 52
Panhandle Telephone Cooperative, Inc.	Regulated	Chapter 52
Peoples Telephone Cooperative, Inc.	Regulated	Chapter 52
Poka-Lambro Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Riviera Telephone Company, Inc.	Regulated	Chapter 52
Santa Rosa Telephone Cooperative, Inc.	Regulated	Chapter 52
South Plains Telephone Cooperative, Inc.	Regulated	Chapter 52
Southwest Arkansas Telephone Cooperative, Inc.	Regulated	Chapter 52
Southwest Texas Telephone Company	Regulated	Chapter 52
Windstream Sugarland (d/b/a Sugar Land Telephone Company)	Regulated	Chapter 58
Tatum Telephone Company	Regulated	Chapter 52
Taylor Telephone Cooperative, Inc.	Regulated	Chapter 52
Texas Windstream (d/b/a Texas Alltel, Inc.)	Regulated	Chapter 58
Valley Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Windstream Communications Southwest (d/b/a Valor Telecommunications of Texas, L.P.)	Regulated	Chapter 58
West Plains Telecommunications	Regulated	Chapter 52
West Texas Rural Telephone Cooperative, Inc.	Regulated	Chapter 52
Wes-Tex Telephone Cooperative, Inc.	Regulated	Chapter 52
XIT Rural Telephone Cooperative, Inc.	Regulated	Chapter 52

Appendix D. State-Issued Certificates of Franchise Authority (CFAs)

Company Name	Date Granted	Type
Guadalupe Valley Communications Systems	10/03/05	Cable and Video
GTE Southwest Incorporated d/b/a Verizon Southwest	10/21/05	Cable Service
Grande Communications Networks, Inc	10/25/05	Cable and Video
Southwestern Bell Telephone, L.P. d/b/a SBC Texas (AT&T Texas)	11/01/05	Video Service
Pathway Com-tel, Inc	11/03/05	Cable and Video
ETS Cablevision, Inc. d/b/a En-Touch Systems	11/07/05	Cable and Video
Millennium Telcom, LLC. d/b/a One Source Communications	12/15/05	Cable and Video
Time Warner Cable San Antonio, L.P. d/b/a Time Warner Cable	12/30/05	Cable Service
Time Warner Cable - Time Warner Entertainment - Advance/Newhouse Partnership (TWEANP-Austin)	01/03/06	Cable Service
Time Warner Cable - Texas and Kansas City Cable Partners, L.P. (TKCCP-Houston)	01/04/06	Cable Service
Time Warner Cable - Texas and Kansas City Cable Partners, L.P. (TKCCP-Southwest)	01/02/06	Cable Service
NTS Communications, Inc.	01/13/06	Cable and Video
FEC Communications, LLP.	01/19/06	Cable Service
Grayson CableRocket, LLC.	01/26/06	Cable Service
Cable One, Inc.	02/01/06	Cable Service
Cox Communications	02/02/06	Cable and Video
Time Warner Cable - Time Warner Entertainment-Advance/Newhouse Partnership (TWEANP-Waco)	2/9/2006	Cable Service
Northland Cable Ventures LLC. d/b/a Northland Cable Television and Northland Cable TV	2/21/2006	Cable Service
Comcast of Texas II, LP. d/b/a Comcast Cable of Texas II, LP.	2/22/2006	Cable Service
Comcast of Texas I, LP. d/b/a Comcast Cable of Texas I, LP.	2/22/2006	Cable Service
Comcast of Plano, LP. d/b/a Comcast Cable of Plano, LP.	2/22/2006	Cable Service
Optical Entertainment Networks, Inc.	2/6/2006	Video Service
Friendship Cable of Texas, Inc. d/b/a Cebridge Connections	3/15/2006	Cable Service
Charter Communications VI, LLC. d/b/a Charter Communications	4/19/2006	Cable Service
Universal Cable Holdings, Inc. d/b/a Cebridge Connections	4/26/2006	Cable Service

Company Name	Date Granted	Type
Rapid Acquisition Company, LLC.	4/28/2006	Cable Service
Phonoscope, Ltd.	5/19/2006	Cable Service
Northland Cable Television, Inc. d/b/a Northland Cable Television and Northland Cable TV	5/31/2006	Cable Service
Consolidated Communications Network Services, Inc.	6/26/2006	Video Service
ETAN INDUSTRIES, INC. d/b/a CMA Communications	7/20/2006	Cable Service
Northland Cable Properties, Inc.	9/7/2006	Cable Service
XIT Communications	9/22/2006	Cable and Video Service
Cameron Communications, LLC.	11/6/2006	Video Service
North Texas Broadband, LLC.	11/21/2006	Cable Service
Rapid Communications, LLC.	11/21/2006	Cable Service
SilverLining Communications, LLC.	2/22/2007	Video Service
Mid-Coast CableVision, L.P.	2/13/2007	Cable and Video Service
NTS Telephone Company, LLC. d/b/a NTS of Levelland	5/17/2007	Cable and Video Service
BYOTV Media Corporation	8/15/2007	Video Service
Cequel III Communications, LLC. d/b/a Suddenlink Communications	8/13/2007	Cable Service
Baldwin County Internet/DSSI Service, LLC.	9/6/2007	Cable and Video Service
VTX Communications, L.P.	11/7/2007	Cable and Video Service
M. Brown Enterprises, Inc. d/b/a Level 1 Wireless Networks	12/14/2007	Cable and Video Service
James Cable, LLC.	1/16/2008	Cable Service
Advanta Technologies, Inc.	2/14/2008	Cable and Video Service
T-N-T Cable	3/12/2008	Cable Service
Telecom Cable, LLC.	6/24/2008	Cable Service
Coastal-Link Communications, LLC.	8/13/2008	Cable Service
Central Texas Cable Partners, Inc. d/b/a Reveille Broadband	10/7/2008	Cable and Video Service
Windjammer Communications, LLC.	11/7/2008	Video Service

Source: *State-Issued Certificate of Franchise Authority Directory*, available at http://www.puc.state.tx.us/cable/directories/SICFA/SICFA_Directory.htm.

Appendix E. TUSF Programs

Texas High-Cost Universal Service Plan (THCUSP) – provides financial assistance to eligible telecommunications providers (ETPs)[96] that serve high cost, rural areas of the State. The program seeks to ensure that all customers throughout the State have access to basic local telecommunications service at just, reasonable, and affordable rates.

Small and Rural ILEC Universal Service Plan – establishes guidelines for financial assistance support to ETPs that provide service in the study areas of small and rural Incumbent Local Exchange Carriers (ILECs) within the State. The program seeks to ensure that all customers throughout the State have access to basic local telecommunications service at just, reasonable, and affordable rates.

Relay Texas – a statewide telecommunications relay service to allow individuals that are hearing-impaired or speech-impaired to communicate via specialized telecommunications devices and operator translations.

Lifeline – retail local service offering in which an ETP or a RETP provides a discount of up to $7.00 per monthly bill on its local service rates and waives the Federal Subscriber Line Charge (SLC) for qualifying low-income customers. In addition, eligible customers in the service areas of AT&T Texas, Verizon Southwest, Embarq, and Windstream Communications Southwest, or their successors, will receive a discount equal to 25% of any increases to residential basic service rates in regulated exchanges of these four companies. Some or all of these discounts are reimbursed from the TUSF.

Specialized Telecommunications Assistance Program – provides reimbursement to vendors and service providers that offer reduced rates for telecommunications equipment and services for hearing-impaired customers.

Implementation of PURA § 56.025 – provides reimbursement via TUSF support to ILECs serving fewer than 31,000 access lines attributable to a reduction in the amount of the Commission's high cost assistance fund, a change in the federal universal service fund (FUSF), a change in the Commission's intraLATA dialing access policy, or other governmental action.

USF Reimbursement for Certain IntraLATA Services – provides reimbursement to ILECs that are not electing companies under PURA Chapters 58 or 59 and provisions intraLATA interexchange high capacity (1.544 Mbps) service at reduced rates.

Additional Financial Assistance (AFA) – provides additional financial assistance to ILECs serving high cost, rural areas throughout the State. The program seeks to ensure that all customers throughout the State have access to basic local telecommunications services at reasonable rates.

Service to Uncertificated Areas – provides financial assistance to ETPs that provide voice-grade services to premises that are not included within certificated areas.

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[96] An ETP is a telecommunications provider designated by the Commission to receive support from the TUSF pursuant to P.U.C. SUBST. R. 26.417.

The program seeks to enhance the availability of basic local telecommunications service throughout the State, especially in areas where service has not otherwise been provided.

Administrative Costs – permits certain agencies, such as the Commission, Solix, the Texas Health and Human Services Commission (HHSC), and the Texas Commission for the Deaf and Hard of Hearing (TCDHH) to recover their costs incurred in implementing the provisions of Chapter 56 of PURA.

Audio Newspaper Program (ANP) – a program that provides financial assistance from the Texas universal service fund to support a free telephone service that offers blind and visually impaired residents access to the text of newspapers using synthetic speech.

Appendix F. TUSF Disbursements by Program (in dollars)

TUSF Program Disbursements	FY 2002 (Actual)	FY 2003 (Actual)	FY 2004 (Actual)	FY 2005 (Actual)	FY 2006 (Actual)	FY 2007 (Actual)	FY 2008 (Actual)	Percent of Total USF (FY 2008)
Texas High Cost Universal Service Plan (THCUSP)	445,002,169	443,032,847	440,643,128	431,880,066	425,383,884	420,207,703	393,876,729	72.47%
Small and Rural ILEC Universal Service Plan (High Cost)	100,594,768	100,447,214	99,514,307	98,239,843	95,440,073	93,111,431	90,270,094	16.61%
Texas Relay Service	12,670,839	11,514,114	10,631,171	8,375,622	6,969,244	6,098,570	4,429,161	0.81%
Lifeline	15,829,769	17,664,460	21,529,197	27,459,478	26,034,089	26,455,745	34,562,621	6.36%
Specialized Telecommunica-tions Assistance Program	1,344,227	2,338,080	3,315,463	3,589,626	7,126,452	6,782,605	9,577,807	1.76%
Implementation of PURA § 56.025	4,448,772	4,683,495	4,680,411	4,728,275	4,699,968	4,633,812	4,549,439	0.84%
USF Reimbursement for Certain IntraLATA Services	1,656,968	1,694,250	1,984,816	1,998,737	1,844,331	1,853,683	1,931,418	0.36%
Additional Financial Assistance (AFA)	0	0	0	0	0	0	0	0.00%
Service to Uncertificated Areas	0	0	0	12,507	372	0	0	0.00%
Tel-Assistance	1,465	0	0	0	0		5,629	0.00%
TCDHH	455,181	488,222	592,599	578,048	685,166	739,481	675,421	0.12%
PUC	166,769	358,760	466,964	342,537	429,930	415,930	635,902	0.12%
HSSC	9,275	0	0	0	0	0	0	0.00%
Other	0	398,607	2,112,874	2,312,245	2,321,585	262,800	346,566	0.06%
Solix	773,900	740,550	780,000	804,000	828,000	2,087,881	2,671,893	0.49%
ANP	0	0	0	0	0	0	0	0.00%
TOTAL USF	582,954,102	583,360,599	586,250,930	580,320,984	571,763,094	562,649,641	543,532,680	100%

Source: Solix Reports

Appendix G. Federal Rules and Proceedings

DATE	PROCEEDING OR CASE	DESCRIPTION
February 1996	Federal Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, 47 U.S.C. §§ 252 *et seq.* (FTA)	The FTA amended the Communications Act of 1936. Its fundamental purpose was to achieve competition in local exchange services. It requires incumbent local exchange carriers (ILECs) to provide competitors access to unbundled network elements (UNEs) where a lack of access would "impair" the ability of a competitor to provide telecommunications service. The Act does not specify the particular network elements that must be unbundled but leaves that task to the FCC. It redefines the responsibilities of the state public utility commissions (PUCs) versus those of the Federal Communications Commission (FCC) essentially giving states the authority to approve rates for local calling and resale and interconnection of Bell services to competitors based on federal guidelines.
August 1996	*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (FCC August 8, 1996) (Local Competition Order); *Affirmed in part and reversed in part sub nom. Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utilities Board I*); *Affirmed in part and remanded, AT&T v. Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. 721 (1999).	In this proceeding, the FCC issued a comprehensive set of local competition rules with detailed supporting explanation. The FCC's local competition rules are codified at 47 C.F.R. Part 51. However, *Iowa Utilities Board I* vacated FCC rules prescribing a methodology for state PUCs to follow in setting wholesale prices for interconnection, UNEs and resold services. It also vacated a rule that required ILECs to provide competitive local exchange carriers (CLECs) combinations of UNEs without first separating them, and it vacated a rule which permitted a CLEC to "pick and choose" terms from an incumbent's publicly filed interconnection agreements with other carriers. The Supreme Court reversed these Eighth Circuit decisions and reinstated the FCC rules at issue. At the same time, the Supreme Court vacated the FCC's rules defining network elements that an ILEC must unbundle under Section 251(c) and remanded those rules to the FCC for reconsideration under a revised standard.
November 1999	*In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order (November 5, 1999) (UNE Remand Order)	The FCC revised its standard for determining which network elements ILECs must provide on an unbundled basis and restated its list of elements that must be unbundled. In ordering the ILECs to unbundle network elements or components for lease to CLECs, the FCC stated the test for unbundling to be the following: will a CLEC's ability to provide a competitive local service be "materially diminished" or "precluded" if the element is not unbundled?

DATE	PROCEEDING OR CASE	DESCRIPTION
December 1999 - January 2001	*In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Fourth Report and Order (December 9, 1999) (Line Sharing Order) and Fourth Report and Order on Reconsideration (January 19, 2001) (Line Sharing Reconsideration Order)	The FCC further addressed loop unbundling requirements, as they relate to a CLEC's ability to provide advanced data services using unbundled loops, by ordering the ILECs to share local loops with the CLECs. In other words, ILECs would use the lower frequency portion of the local loop to transmit voice, and the CLEC would use the higher "broadband" frequency portion of the loop to transmit high-speed data, such as connecting a customer's computer to an Internet service provider (ISP).
May 2002	*United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (USTA I)	The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found deficiencies in both the UNE Remand Order and the Line Sharing Order and remanded these orders to the FCC for further consideration. The court was critical of the FCC's "impairment" standard under Section 251(d)(2)(B) of the FTA. For instance, would a CLEC be "impaired" in competing if an element is not unbundled by the ILEC? The court was also judgmental of the FCC requiring unbundling in every geographic market without regard to the state of competitive impairment in each particular market.
August 2003	*In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 et al., Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (released August 21, 2003) (Triennial Review Order or TRO)	In the TRO, the FCC reconsidered the unbundling standard, the list of elements that must be unbundled, the line sharing issue, as well as other related issues. A divided FCC announced the outline of decision by press release in February 2003, but did not release it until several months later. The TRO again revised the "impairment" standard and made major changes in the local competition rules. Also, it required state regulatory commissions to undertake proceedings to implement some of the new unbundling rules promulgated by the FCC. The rules required state commissions to determine on a "granular" geographic basis where ILECs must provide CLECs access to obtain pieces of their networks (network elements) on a stand-alone or unbundled basis (UNEs). It was the FCC's attempt to formulate unbundling rules consistent with the FTA and its "impairment" standard. State commissions were directed to complete the proceedings within nine months of the TRO's effective date of October 2, 2003, or by July 2, 2004.

DATE	PROCEEDING OR CASE	DESCRIPTION
March 2004	*United States Telecom Ass'n v. FCC Commission*, 359 F.3d 554 (D.C. Cir., March 2, 2004) (*USTA II*) (The *USTA II* mandate issued on June 16, 2004); *See also United States Telecom Ass'n v. FCC*, No. 00-1012, Order (D.C. Cir. Apr. 13, 2004)(granting a stay of the court's mandate through June 15, 2004) (*USTA II Stay Order*).	The D.C. Circuit vacated significant portions of the FCC's TRO, including the FCC's sub-delegation to state commissions of decision-making authority over impairment determinations. The opinion was stayed until June 15, 2004. The D.C. Circuit further vacated portions of the FCC's TRO that required ILECs to share components of their local networks with competitors and established extensive federal standards to guide state commissions in determinations of which unbundled network components do not have to be shared. It found that states can play no role in these determinations, and that the FCC's findings are inadequate standing alone. It simultaneously upheld broad FCC determinations limiting other sharing ("unbundling") rights of competitors, such as line-sharing.
August 2004	*In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking (August 20, 2004) (Interim Order)	On an interim basis, the FCC required ILECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004. The rates, terms and conditions are to remain in place until the earlier of the effective date of publication of final unbundling rules promulgated by the FCC or six months after Federal Register publication of the Interim Order, except to the extent they are or have been superseded by (1) voluntarily negotiated agreements, (2) an intervening FCC order affecting specific unbundling obligations, or (3) with respect to rates only, a state public utility commission order raising the rates for network elements. For the six months following the interim period, the transition period, in the absence of an FCC ruling that particular network elements are subject to the unbundling regime, those elements will still be made available to serve existing customers for a six-month period at rates that will be moderately higher than those in effect as of June 15, 2004. After the transition period expires, ILECs shall be required to offer on an unbundled basis only those UNEs set forth in the FCC's final unbundling rules, subject to those rules' terms and conditions. The specific process by which those rules shall take effect will be governed by each ILEC's interconnection agreements and the applicable state commission's processes. These interim rules will remain in place for six months after Federal Register publication of the Interim Order. The FCC intends to issue permanent rules by late 2004.
February 2005	*In the Matter of Unbundled Access to Network Elements*, CC Docket No. 01-338, Order on Remand (released February 4, 2005) (Triennial Review Remand Order or TRRO)	In 2004, the D.C. Circuit Court vacated significant portions of the rules and remanded it back to the FCC. This led to the issuance of the TRRO, which specified new guidelines for requiring ILECs to make elements of their networks available to competitors.

DATE	PROCEEDING OR CASE	DESCRIPTION
March 2007	*In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992,* MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking (R&O)	The R&O was issued because the FCC found that local franchising processes in many jurisdictions constituted an unreasonable barrier to entry that impeded the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment. In the R&O the FCC set new standards applicable to the negotiations of local franchising agreements. However, the R&O only applies to county or municipal-level franchising authorities and only to negotiations with new entrants, not to negotiations to modify, renew or extend existing franchise agreements with incumbent cable operators. TEX. UTIL. CODE ANN. §§ 66.001-66.017 *et seq*, was enacted in 2005, and with few exceptions requires new entrants to obtain statewide franchise authority from the Public Utility Commission of Texas, preempts local franchising authorities for new entrants after September 1, 2005, and provides that incumbent cable providers shall seek a state issued certificate of franchise authority when their existing franchise agreement expires. Thus, the R&O is not applicable to new entrants into the cable markets in Texas.
Nov. 2007	*In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992,* MB Docket No. 05-311, Second Report and Order (2nd R&O)	The 2nd R&O provides further guidance on the operation of local franchising processes and extends some of the rules promulgated in the R&O to incumbent cable operators that seek to renegotiate or modify existing franchise agreements. Thus, the 2nd R&O is applicable to county or municipal-level franchising authorities in Texas. The 2nd R&O declined to preempt state or local customer service laws that exceeded the FCC's standards. The FCC did not extend the time limit and build-out requirements in the R&O to incumbents. However, the FCC did extend the R&O's franchise fee limitations to incumbents and portions of its PEG/I-Net requirements to incumbents. The FCC also clarified that most favored nations clauses were not affected by the R&O.

DATE	PROCEEDING OR CASE	DESCRIPTION
May 2008	*In the Matter of High-cost Universal Service Support, Federal-state Joint Board on Universal Service, Alltel communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. new Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order (Order)	The Order was issued to rein in the explosive growth in high-cost universal support disbursements. An emergency interim cap was imposed on the amount of high-cost support that competitive eligible telecommunications carriers (CETC) may receive. The interim cap is at the level CETCs were eligible to receive in their respective states during March 2008 on an annualized basis, with two exceptions. First, the cap will not apply to the extent the CETC files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier (ILEC). Second, the cap does not apply to CETCs serving tribal lands or Alaska Native regions. The interim cap remains in place only until the FCC adopts comprehensive high cost universal service reform. In the Order the FCC noted that wireless carriers, rather than wireline competitive local exchange carriers have received a majority of the CETC designations, serve a majority of CETC lines and have received a majority of CETC support. Thus CETC development was not as the FCC had envisioned, a complete substitute for traditional wireline service, instead these wireless CETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service. This development calls into question the FCC's "identical support rule." Instead of CETCs competing against ILECs for a relatively fixed number of subscriber lines, the certification of wireless CETCs has led to significant increases in the total number of supported lines. In addition, the identical support rule fails to create efficient investment incentives for CETCs because per-line support is based solely on the per-line support received by the ILEC, rather than the CETCs own network investments in the area. The FCC noted that CETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks. The FCC is considering eliminating its identical support rule. The FCC said its interim cap did not violate competitive neutrality because failure to act could cripple the universal service fund and it is not clear that identical support has resulted in competitive neutrality. The FCC declined to adopt specific requirements for CETCs regarding the provision of broadband Internet access services because there is no evidence that the interim cap will inhibit deployment of broadband services and because it is better addressed in a rulemaking of general applicability.