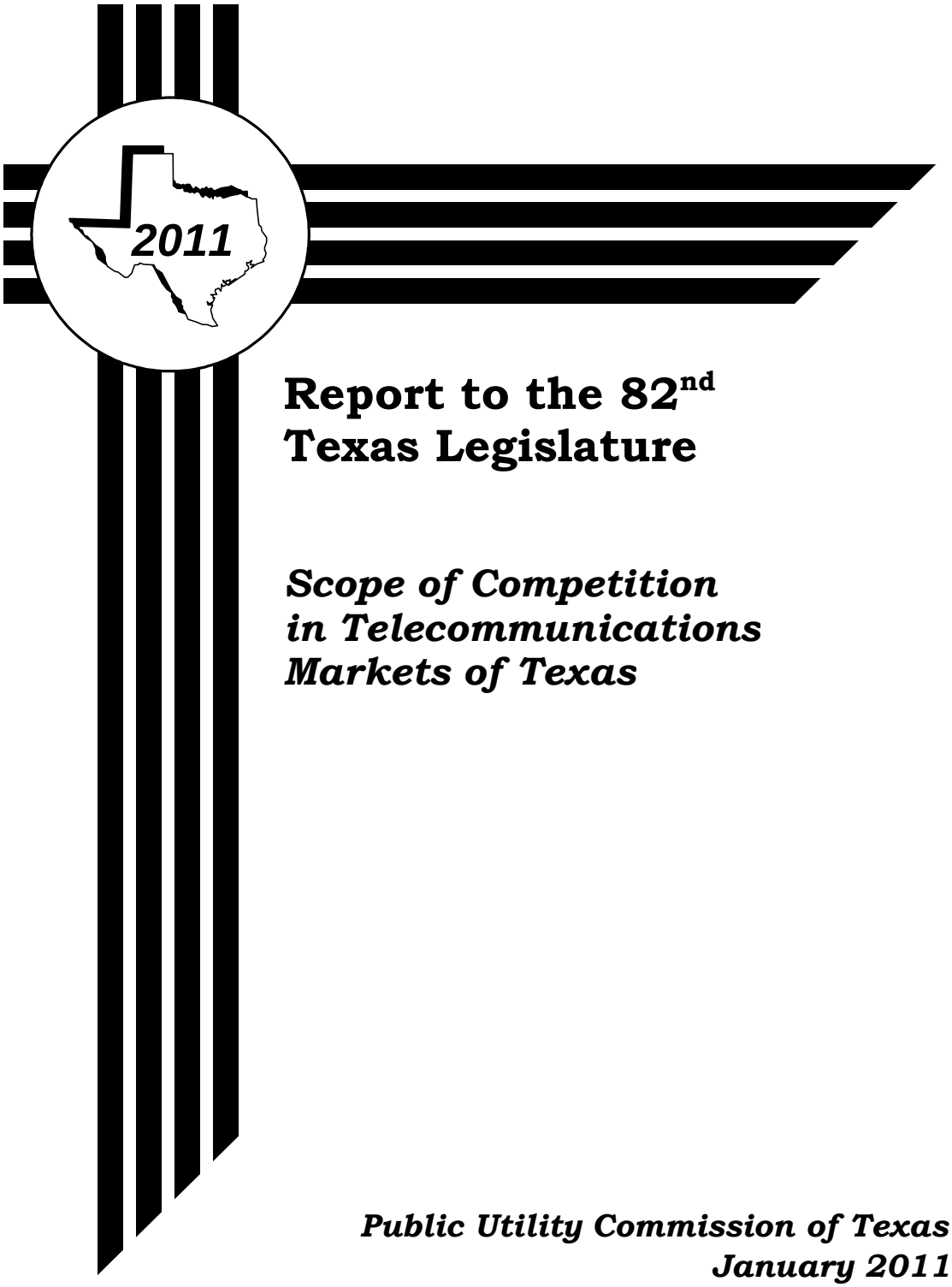


# Report to the 82nd Texas Legislature

## *Scope of Competition in Telecommunications Markets of Texas*

***Public Utility Commission of Texas***
***January 2011***

## *ACKNOWLEDGEMENTS:*

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# *Public Utility Commission of Texas*

**Rick Perry**
Governor

January 14, 2011

Honorable Members of the Eighty-Second Texas Legislature:

We are pleased to submit our 2011 Report on the Scope of Competition in Telecommunications Markets as required by Section 52.006 of the Public Utility Regulatory Act.

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 telephone service provided by cable television and non-facilities based Internet-protocol providers has become an important feature of the telephone market. Additionally, some companies are using other technologies, such as satellite, to provide telecommunications services to rural customers and customers residing in previously unserved areas of the state. The availability of broadband service, principally from local exchange companies, cable companies, and mobile wireless companies, at affordable prices has resulted in significant growth in the number of broadband subscribers in Texas.

In the video services market, the state-issued certificates of franchise authority (SICFA) that were introduced though legislation enacted in 2005 have eased the entry of competitors and have encouraged investment in the video/cable market. As their municipal franchise agreements expire, cable companies may apply for a state-issued franchise. SICFAs also provide a vehicle for a telecommunications provider to enter the market for cable television services As a result, competition in the video/cable market is emerging across Texas.

This report discusses the competitive offerings prevalent in the industry such as bundling of multiple services and pricing trends in the industry. The report highlights major state and federal regulatory activities since the previous Scope of Telecommunications Report, and summarizes the status of the Texas Universal Service Fund. The report concludes with Commission recommendations for the Legislature to consider in the 82nd 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 the report, please do not hesitate to call on us.

Sincerely,

Barry T. Smitherman
Chairman

Donna L. Nelson
Commissioner

Kenneth W. Anderson, Jr.
Commissioner

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**2011 Scope of Competition in Telecommunications Markets of Texas**
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# 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 by providers in mobile wireless and broadband technologies. Key indicators for these changes are the increase in mobile wireless and broadband subscribers and the decline in land-line telephone subscribers, so that today in Texas there are over twice as many mobile wireless subscribers as land-line subscribers served by incumbent local exchange carriers (ILECs). Broadband subscribers in Texas have increased from 2005 to 2008 by 254 percent (going from about 3 million to about 7.5 million subscribers).

Competition in local telecommunication markets has become increasingly intermodal-competition among companies using different types of telecommunication facilities rather than competition between telephone companies using traditional wireline-based technology. The competition that was envisioned in the Federal Communications Act of 1996 relied heavily on competitive local exchange carriers (CLECs) using portions of the wireline 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 is being used to provide 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 (DSL) 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

[1] Act of September 7, 2005, 79th Leg., 2nd C.S., Ch. 2, Tex. Gen. Laws (Senate Bill 5).

new environment by offering television services in partnership with direct broadcast satellite operators, while investing in fiber optic network upgrades to offer Internet access and video programming on landline facilities. As of August 2010, 46 percent of the counties in Texas (116 counties) are or will be served by at least two video and cable providers. Smaller markets have also benefited from the entry of telecommunications companies into the video market. ILECs are increasing their presence in the video markets 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 pursuing a "quadruple play" marketing strategy that 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 is over 265 million subscribers.[2] Texas ranked second in the nation in June 2009 with 21.5 million wireless subscribers,[3] nearly 86 percent of its population.[4] 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.[5] Technological advances and investments in wireless network capacity in the last decade have permitted wireless providers to offer a range and quality of service that is comparable to wireline technologies, including voice, data, and even video services, with the added benefit of mobility. 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.[6] 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, libraries, hotels, airports, convention centers, and city parks that have wireless access points.[7]

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[2] *Local Telephone Competition: Status as of June 30, 2009*, Federal Communications Commission (FCC), (*Local Telephone Competition Report*) at Table 17, (September 2010). Available online at: www.fcc.gov/wcb/stats.

[3] *Id.*

[4] Texas Department of State Health Services, Estimated Texas Population by Area, (2009).

[5] *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 (CDC), (*Wireless Substitution Report*, (May 6, 2009). Available online at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.htm.

[6] *Commercial Mobile Radio Service Competitive Analysis*, Twelfth Report, FCC, (*CMRS Competitive Analysis Report*) at pages 5-8, (February 4, 2008). Available online at: http://wireless.fcc.gov/index.htm?job=cmrs_reports .

[7] *Id.* at ¶ 253.

In sum, the competitive landscape continues to be transformed through intermodal competitors, such as wireless and cable providers. Intermodal competitors actively 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 continues to be focused on 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 and has adopted policies that encourage competition in the telecommunications and video markets.

### 1. Regulatory Activities in Texas

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

#### *a. Revision of Texas Universal Service Fund Support*

The Texas Universal Service Fund 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.

The Texas High Cost Universal Service Plan (THCUSP) subsidizes rates in high cost, rural areas and is the largest program within the TUSF. In 2005, the Legislature authorized the Commission to revise the Texas High Cost Universal Service Plan (THCUSP) after September 1, 2007. 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 the total amount of available THCUSP support by approximately $63.3 million beginning on January 1, 2009 and by approximately $144.35 million once all reductions are fully implemented over a four-year period.[9] This change equates to approximately a 36.5 percent reduction

[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, (April 25, 2008).

[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 that seek support in the THCUSP ILECs' territory will be reduced, not just the ILECs' support, and therefore the total THCUSP support

in current THCUSP disbursements and a 25 percent reduction in disbursements for the entire TUSF.[10] These reductions have resulted in a lower TUSF surcharge on customers' bills. For example, the TUSF assessment on customer phone bills was reduced from 4.4 percent to 3.4 percent of the intrastate portion of the customer's bill, effective January 1, 2009.

To offset the reduced THCUSP, affected incumbent telephone companies were permitted to gradually increase basic telephone rates, so that basic rates would be 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.

### *b. State-Issued Cable and Video Franchise*

Since 2005, PURA has allowed a person to obtain from the Commission a state-issued certificate of franchise authority (CFA) to provide cable and video service. The availability of a CFA makes it easier for incumbent telephone companies to enter the video market today because, under the prior regime, a provider had to obtain franchise authority from each municipality in which the provider intended to operate. The Commission issued 15 new state-issued CFAs from August 2008 to August 2010.[11] In 26 counties, at least four different companies have received CFAs.

After entering the video market, the telephone companies have been able to offer a "triple play" of bundled services (voice, data, and video) to compete with the cable companies' triple play. Cable companies have also obtained state-issued CFAs 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 a cable or video provider operating under a state-issued CFA 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 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 holders of state-issued CFAs not to include the Commission's name, address, and telephone number on monthly bills to subscribers.

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reductions will be greater than the amounts estimated. The assumptions underlying the parties' estimates are set forth in the Agreement.

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

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

## 2. Federal Regulation

### *a. Federal Universal Service Reform*

On March 16, 2010, the FCC released a Joint Statement on Broadband stating that the nearly $9 billion federal universal service fund (FUSF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, and encourage targeted investment in broadband infrastructure.[12] On the same day, in response to the directive issued in 2009 by Congress, the FCC issued its National Broadband Plan (NBP).[13] The NBP was developed to ensure that every American has access to broadband capacity.

The FCC identified the goals of the NBP as providing: 1) broadband in unserved areas; 2) broadband-enabled health information technology; 3) broadband in schools; 4) a broadband-enabled smart electricity grid; and 5) a nationwide public safety mobile broadband communications network.

The steps outlined in the NBP that will be employed to ensure universal access to broadband network services are: 1) creating the Connect America Fund (CAF) to support the provision of affordable broadband and voice by shifting up to $15.5 billion over the next decade from the existing FUSF program to support broadband; 2) creating a Mobility Fund to provide targeted funding to ensure no states lag behind the national average in 3G (third generation) wireless coverage; 3) eliminating the "legacy" High-Cost component of the FUSF over the next 10 years and shifting all resources to the new funds; 4) reforming intercarrier compensation; 5) designing the new CAF and Mobility Fund in a tax-efficient manner to minimize the size of the broadband availability gap and thereby reduce contributions borne by consumers; 6) broadening the FUSF contribution base to ensure that the FUSF remains sustainable over time; 7) expanding the Lifeline and Link-Up programs by allowing subsidies to low-income Americans to be used for broadband; and 8) ensuring that every American has the opportunity to become digitally literate. Additionally, the FCC discussed modernization of the electric grid with broadband, making it more reliable and efficient.

### *b. Intercarrier Compensation Reform*

ICC is a system of regulated payments in which carriers compensate each other for the origination, transport and termination of telecommunications traffic. One of the recommendations made by the FCC in the National Broadband Plan was to conduct a comprehensive reform of universal service and ICC in three stages to close the broadband availability gap. Stage One would occur in 2010-2011 and would lay the foundation for reform by: 1) improving FUSF performance and accountability; 2) creating the CAF; 3) creating the Mobility Fund; and 4) designing new FUSF funds in a tax-efficient manner to minimize the size of the gap. The FCC explained that during this process, it should adopt a framework for long-term ICC reform that creates a glide path to eliminate per-

[12] *Joint Statement on Broadband*, GN Docket No. 10-66, FCC 10-442, at 2 (Mar. 16, 2010).

[13] *Connecting America: The National Broadband Plan*, FCC (*National Broadband Plan*) (Mar. 16, 2010). Available online at: http://www.broadband.gov/plan/.

minute charges, while providing carriers an opportunity for adequate cost recovery, and establishing interim solutions to address arbitrage.[14] Stage Two would occur in 2012-2016 and would accelerate reform by: 1) beginning to make disbursements from the CAF; 2) broadening the USF contribution base; and 3) beginning a staged transition of reducing per-minute rates for intercarrier compensation. Stage Three would occur in 2017-2020 and would complete the transition from the "legacy High-Cost program" to the CAF. In that stage, the FCC would: 1) manage the total size of the CAF to remain close to its current size (in 2010 dollars); 2) eliminate the legacy High-Cost program; and 3) continue reducing ICC rates by phasing out per-minute rates for the origination and termination of telecommunications traffic.[15]

To begin implementation of its recommendation, the FCC issued a notice of inquiry (NOI) and notice of proposed rulemaking (NPRM) on April 21, 2010. This issuance was the first in what will be a series of such NOIs and NPRMs. The NOI/NPRM sought comment on: 1) whether the FCC should consider revenues earned from broadband-capable network infrastructure, including voice, data and video revenues, and take into account other regulatory reforms that may impact revenue flows, such as ICC and funding from other sources, such as Recovery Act grants; and 2) the relationship between universal service reforms and carriers' rates, including ICC rates under the FCC's current pricing rules.[16]

### *c. VoIP Rulings*

VoIP technology uses a broadband connection to transmit voice calls over the Internet, bypassing a portion of the public switched telephone network. The regulatory status of VoIP remains uncertain at this time. However, the FCC has determined that "VoIP-in-the-middle" is a telecommunications service.[17] "VoIP-in-the-middle" calls occur when an interexchange call is initiated in the same manner as a traditional interexchange call, by an end user who dials 1 + the called number from a regular telephone. The call is converted into an IP format to be transported over an Internet backbone, and the telephone provider then converts the call back from the IP format, prior to delivering it to the called party through local exchange carrier (LEC) local lines.[18]

Federal law makes a distinction between "information services," which are not regulated, and "telecommunications services," which are subject to common carrier regulation. Additional decisions made by the FCC since 2004, in particular regarding Enhanced 911 (E911) and USF contributions, tend to show that VoIP is being compared

[14] *Id.* at 135-136.

[15] *Id.*

[16] *In the Matter of Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, and *High-Cost Universal Service Support*, WC Docket No. 05-337 Notice of Inquiry and Notice of Proposed Rulemaking (NOI and NPRM), (2010), 25 FCC Rcd, at 23.

[17] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC, (April 21, 2004).

[18] *Id* at 1.

to traditional telephone service.[19] The FCC has an ongoing proceeding to determine how VoIP should be treated in the overall telecommunications regulatory framework.

### *d. 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, 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.[20] 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. Under the terms of the merger agreement, this commitment expired on December 2008. While the issue continues to be debated in Congress, legislation has not yet been enacted on net neutrality.[21] On December 21, 2010, the FCC adopted rules that require internet service providers to disclose their network management practices, and to refrain from blocking or discriminating among internet content providers, except as necessary reasonably to manage network bandwidth.[22] These new rules were made applicable only to wireline internet service providers. Wireless broadband internet service providers are required to disclose network management practices, but are not prohibited from discriminating among content providers.

## 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, permits the Internet to be used 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 offer VoIP service by using their

[19] *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 (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, (June 3, 2005).

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

[21] For further detail on this topic, please see the Commission report, *Study To Determine Whether Title 2, Utilities Code Adequately Preserves Customer Choice in the Internet-Enabled Applications Associated with Broadband Service,* Project No. 32527 (December 5, 2006).

[22] *In the Matter of Preserving the Open Internet Broadband Industry Practices*, Report and Order. GN Docket 09-191, WC Docket 07-52, FCC 10-201 (December 23, 2010).

broadband data services, while third-party service providers such as Vonage rely on their customers' existing broadband connections to provide VoIP service. 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 E911 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 by the FCC.

- **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 is often 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 users of the radio spectrum because, unlike the coaxial cable used by cable companies, electric wires are not shielded and the BPL signals may generate radio waves.
- **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 but has since expanded into existing neighborhoods.
- **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 and video to

customers. This approach provides much higher capacity than the DSL service at a lower cost than FTTH.

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# II. STATUS OF COMPETITION

## A. Introduction

Communication used to be dominated by landline delivery of telephone calls and faxes; however, communication today involves traditional landlines, coaxial cable, fiber optics, and wireless technologies, delivering calls, television programming, Internet content, and other data. 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. 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 video and cable providers to analyze the impact of the state-issued certificate of franchise authority provisions enacted by the Legislature in 2005 in spurring investment and competition in the video and cable 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 (21,460,000 as of June 2009)[23] significantly exceeds the number of access lines provided by Texas ILECs and CLECs (9,333,000 as June 2009),[24] and wireless substitution has grown significantly in recent years, many customers continue to subscribe to landline service, even though

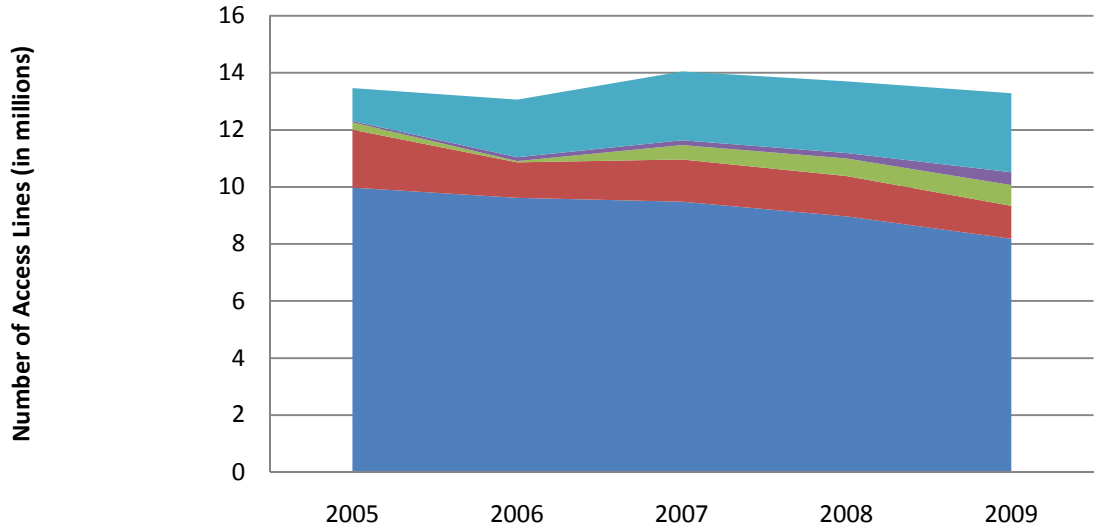
[23] *Local Telephone Competition Report* at Table 17.

[24] *Id.* at Table 8.

they also subscribe to a mobile wireless service. For the purpose of this report, a distinction is made between mobile wireless subscribers who use their wireless service instead of 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 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 141 percent in wireless lines in Texas since 2005 and today there are approximately 2.8 million primary-use mobile wireless lines (as compared to 8 million ILEC access lines). Cable companies have experienced a 182 percent increase in their voice market share since 2005, but serve only about 733,000 customers.




| | Jun-05 | Jun-06 | Jun-07 | Jun-08 | Jun-09 |
|---|---|---|---|---|---|
| Primary-Use Wireless | 1.152 | 2.021 | 2.405 | 2.515 | 2.777 |
| VoIP Co | 0.045 | 0.134 | 0.170 | 0.185 | 0.444 |
| Cable Co | 0.260 | 0.049 | 0.509 | 0.621 | 0.733 |
| CLEC | 2.033 | 1.240 | 1.480 | 1.404 | 1.147 |
| ILEC | 9.975 | 9.618 | 9.482 | 8.973 | 8.186 |

**Figure 1 – Voice Telecommunications Access Lines in Texas[25]**

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.

[25] Public Utility Commission of Texas 2009 and 2010 Scope of Competition Data Responses, Project Nos. 35575 and 38263, *Local Telephone Competition Reports*, (June 2009), *Wireless Substitution Report* (December 2007), *Trends in Telephone Service* (September 2010).

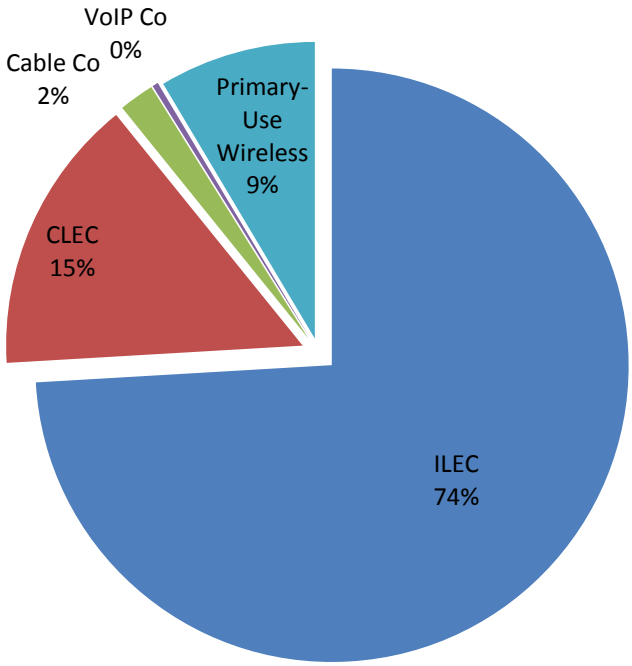



**Figure 2 – Voice Telecommunications Market Share in Texas as of June 2005**

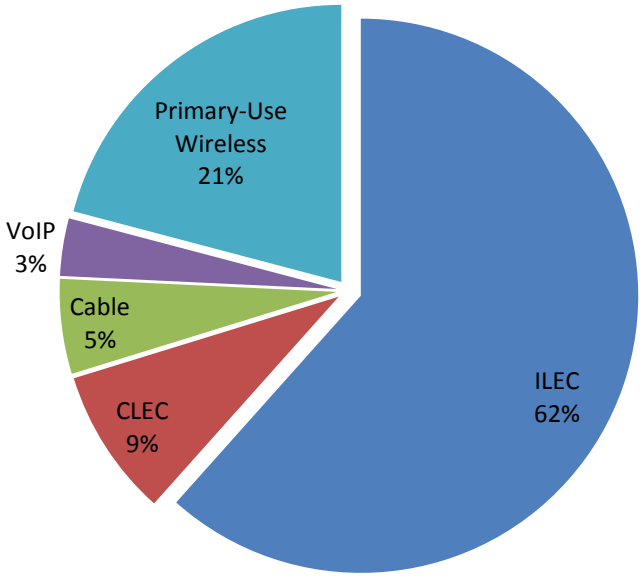



**Figure 3 – Voice Telecommunications Market Share in Texas as of June, 2009[26]**

[26] *Id.*

### *b. Wireline and Wireless Subscribership*

Over this decade, there has been significant growth in 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 48 percent of all voice service customers in 2005 to 70 percent of all voice service customers in 2009 (see Figure 4). The number of wireline subscribers in Figure 3 includes customers receiving voice service from ILECs, CLECs, and cable companies in Texas.

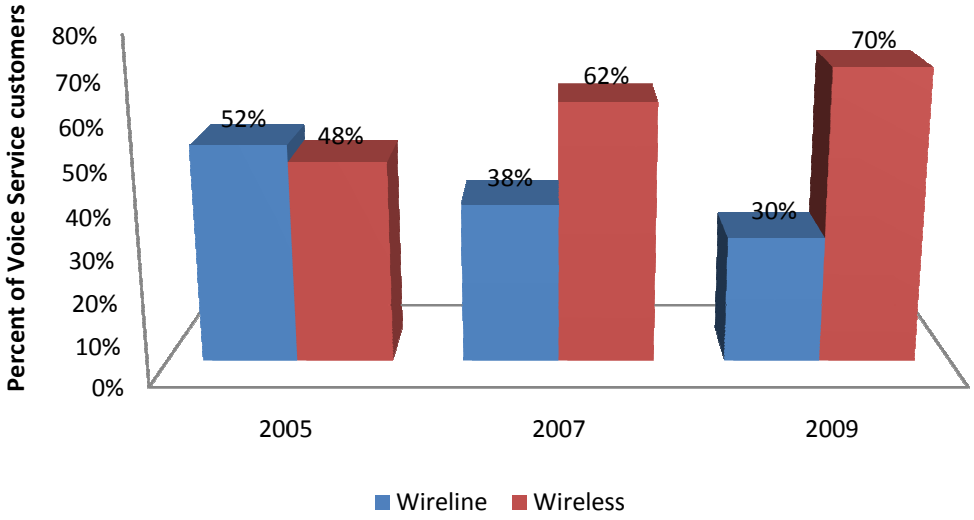



**Figure 4 - Wireline and Wireless Voice Telecommunications Subscribership in Texas**[27]

### *c. Geographic Variations*

For purposes of this report, telecommunications providers were asked to give an account of their access 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 5 examines the distribution of lines based on whether the subscribers are in metro, non-metro cities, or rural areas of the state.

[27] Public Utility Commission of Texas 2009 and 2010 Scope of Competition Data Responses, Project Nos. 35575 and 38263, *Local Telephone Competition Reports* at Tables 8 and 17, (June 2009).

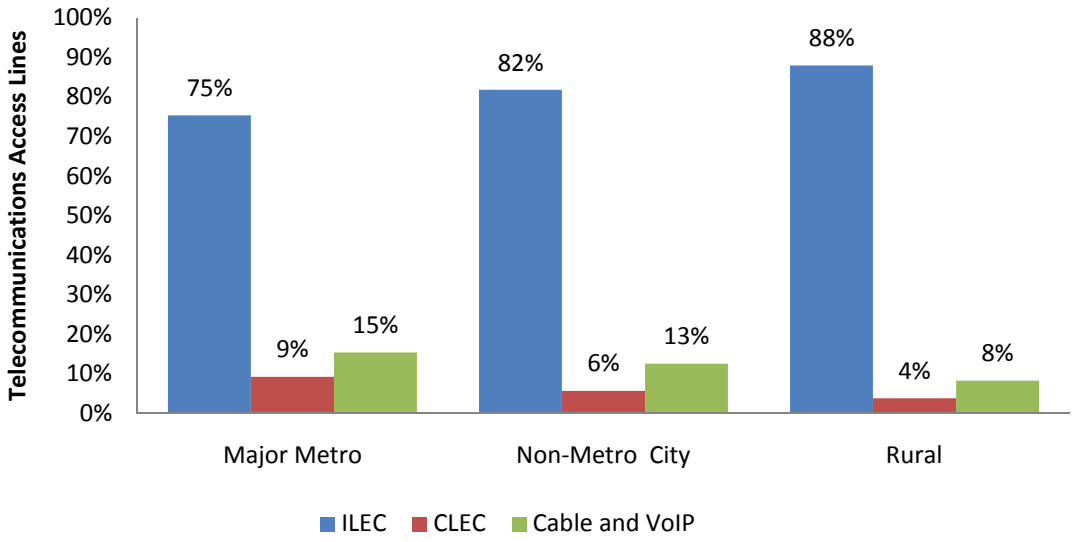



**Figure 5 – Voice Telecommunications Access Lines by Population Category in Texas as of June 2008[28]**

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 254 percent from 2005 to 2008 demonstrating a high rate of adoption of broadband service as its price continues to drop to a level that more Texans can afford.[29]

[28] Public Utility Commission of Texas 2010 Scope of Competition Data Responses, Project No. 38263.

[29] *High-Speed Services for Internet Access: Status as of December 31, 2008,* (February 2010) (*High-Speed Services for Internet Access*). Available online at: www.fcc.gov/wcb/stats.

As shown in Table 1, the number of broadband subscribers in Texas has grown from 614,704 in June 2001, to more than 7.4 million as of December 2008. In December 2008, Texas ranked second in the nation with respect to number of high-speed lines (including mobile broadband connections).[30]

**Table 1 – Broadband Subscribers in Texas as Compared to Other States (000s)**

| State | Jun. 2001 | Jun. 2002 | Jun. 2003 | Jun. 2004 | Jun. 2005 | Jun. 2006 | Jun. 2007 | Dec. 2008 | Percent Change 2005/2008 |
|---|---|---|---|---|---|---|---|---|---|
| **California** | 1,640 | 2,527 | 3,378 | 4,609 | 5,955 | 9,395 | 14,447 | 12,649 | 212% |
| **Texas** | **615** | **1,015** | **1,571** | **2,204** | **2,944** | **4,357** | **6,856** | **7,484** | **254%** |
| **New York** | 811 | 1,365 | 1,891 | 2,350 | 3,068 | 4,855 | 6,797 | 7,405 | 241% |
| **Florida** | 635 | 1,103 | 1,635 | 2,237 | 2,958 | 4,408 | 6,349 | 6,729 | 227% |
| **Illinois** | 325 | 526 | 841 | 1,271 | 1,817 | 2,666 | 4,305 | 4,265 | 235% |
| **New Jersey** | 394 | 654 | 925 | 1,195 | 1,605 | 2,656 | 4,150 | 3,517 | 219% |
| **Pennsylvania** | 249 | 502 | 756 | 1,124 | 1,579 | 2,647 | 4,121 | 4,225 | 268% |
| **National** | 9,242 | 15,788 | 22,995 | 31,951 | 42,518 | 65,271 | 100,922 | 102,043 | 240% |

SOURCE: *High-Speed Services for Internet Access*, FCC (February, 2010)

Although customers have several options available to them, cable modem service and asymmetric digital subscriber line (ADSL) service, individually, continue to hold the largest shares of the wireline 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 symmetric DSL (SDSL), wireless, satellite, Fiber-to-the-Home (FTTH), and broadband over power lines (BPL).

Figure 6 depicts the level of subscribership to various technologies used in providing broadband service from 2001 to 2008. 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 December 2008, broadband service over other media (as listed above), collectively, exceeded the market share held individually by ADSL and cable. This development points to the increasing impact of wireless and fiber to the premises technologies in the broadband market. In this year's report, the number of wireless broadband customers is shown separately, not included in the "Other" category.

[30] *Id.*

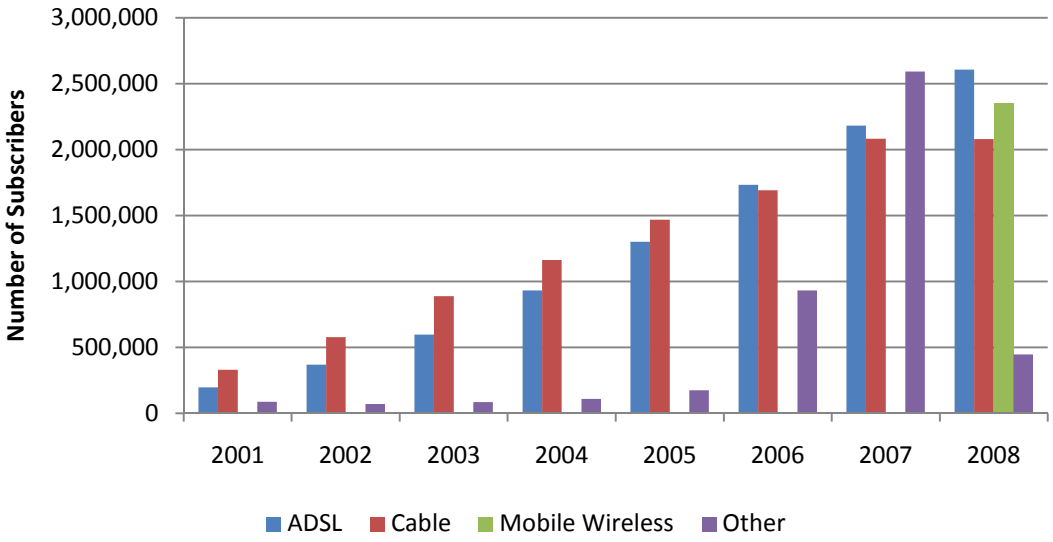



**Figure 6 – Broadband Subscribers in Texas[31]**

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 continues to increase. In 2006 there were 59 counties that had either one or no broadband provider. By 2008, that number had decreased to 35. According to the latest data, there are now no counties in Texas where broadband service is unavailable, and only 11 counties with only a single broadband provider. The number of counties with more than 15 broadband providers has remained at five. Note, however that not all customers in each county served by multiple providers have access to all broadband providers.

**Table 2 – Number of Broadband Providers in Texas[32]**

| *Number of Providers* | *Number of Counties in 2006* | *Number of Counties in 2008* | *Number of Counties in 2010* |
|---|---|---|---|
| **0** | 22 | 4 | 0 |
| **1** | 37 | 31 | 11 |
| **2-6** | 157 | 192 | 154 |
| **7-15** | 37 | 22 | 84 |
| **16-24** | 1 | 5 | 5 |

[31] *Id.*

[32] Public Utility Commission of Texas 2006, 2008, and 2010 Scope of Competition Data Responses, Project Nos. 32529, 35575 and 38263.

Data filed with the FCC by broadband service providers since the time of the last report permits a more granular analysis of broadband subscribership. All broadband providers are now required to submit information on the number of subscribers, among other things, at the census tract level. Census tracts are designed by the Census Bureau to contain between 1,500 and 8,000 persons. Census tracts vary widely in size. In densely populated urban areas they may be quite small, while in more sparsely populated rural areas, a census tract may comprise an entire county. There are 4,388 census tracts in Texas.

Figure 7 represents broadband penetration, measured by broadband lines per household, by census tract. For purposes of this report, fixed-wireless broadband connections are included, but mobile wireless broadband connections are not.

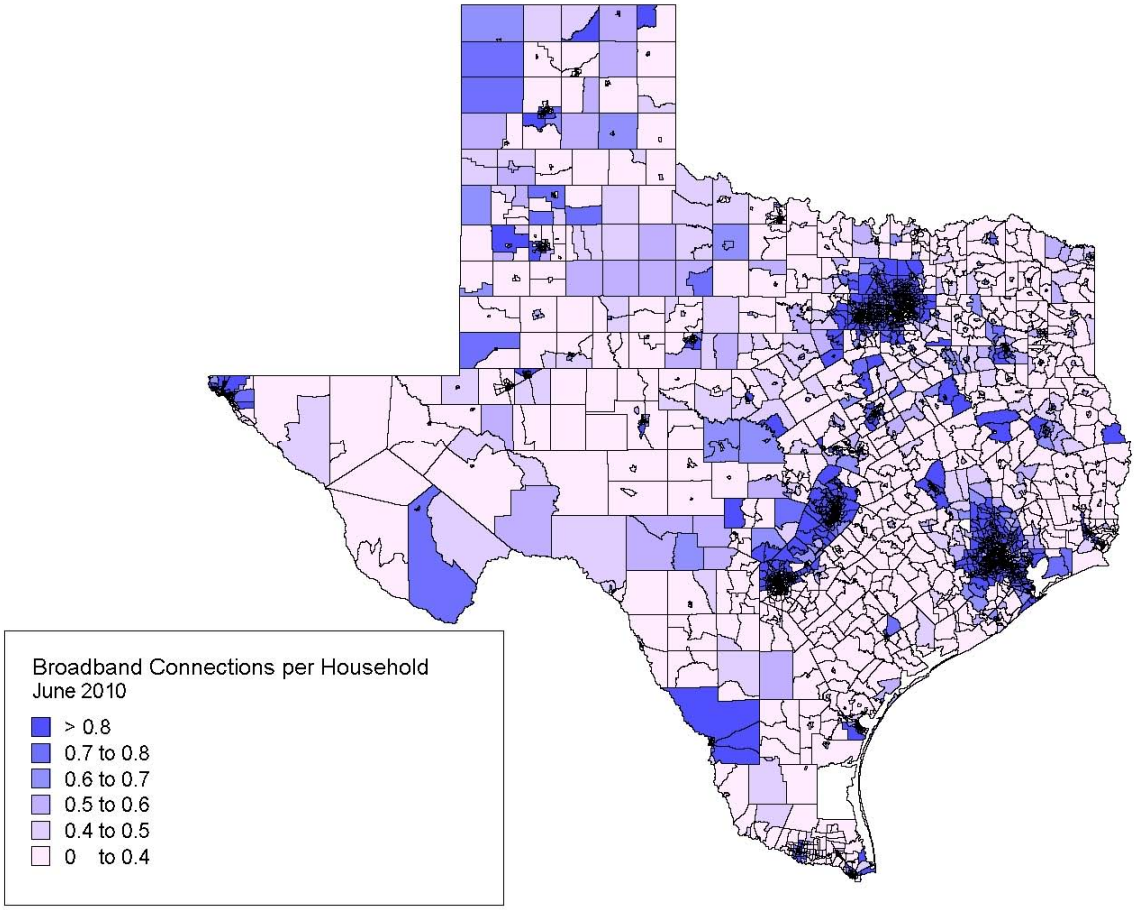



**Figure 7 – Number of Broadband Connections per Household by Census Tract as of June 2010[33]**

[33] Public Utility Commission of Texas 2010 Scope of Competition Data Responses, Project No. 38263.

A statewide map does not clearly present information for the urban areas of the state. Figures 8-13 present the same information for six large metropolitan areas: Dallas/Ft. Worth, Austin, San Antonio, El Paso, Houston and Corpus Christi.

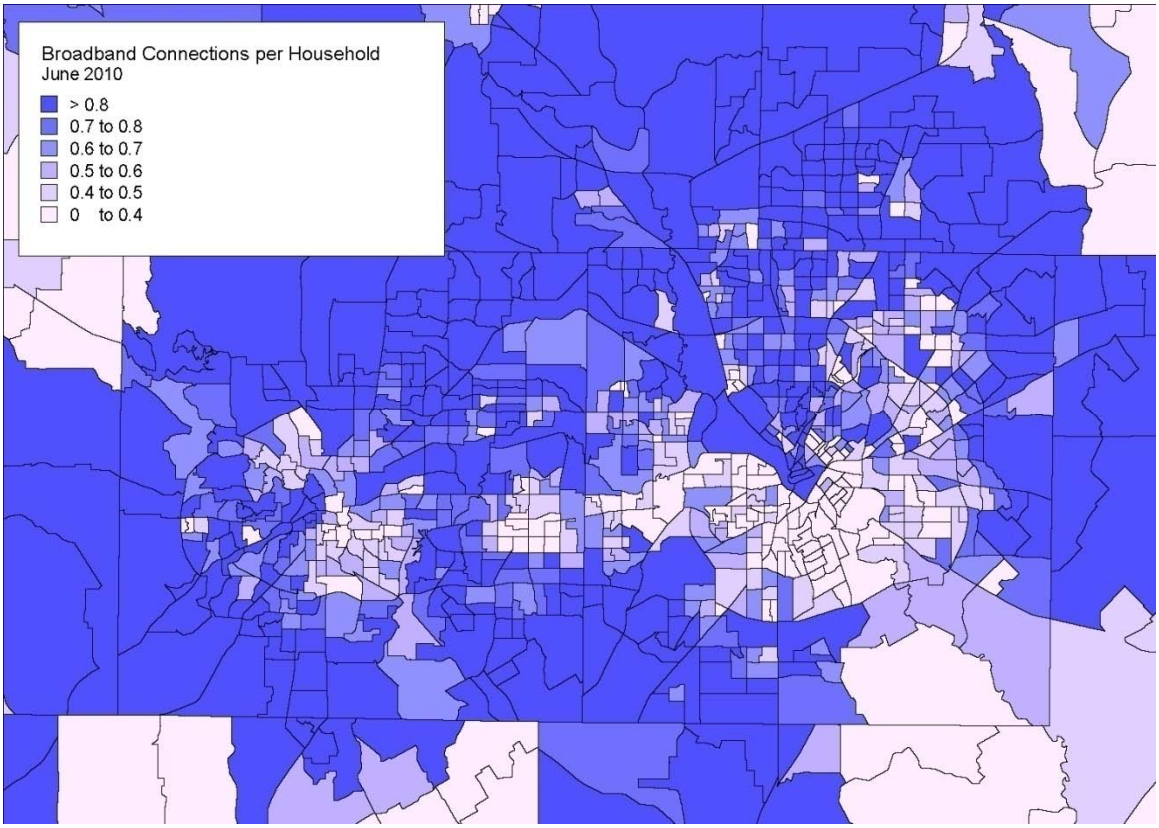



**Figure 8 – Number of Broadband Connections per Household by Census Tract as of June 2010 – Dallas/ Ft. Worth area[34]**

[34] *Id.*

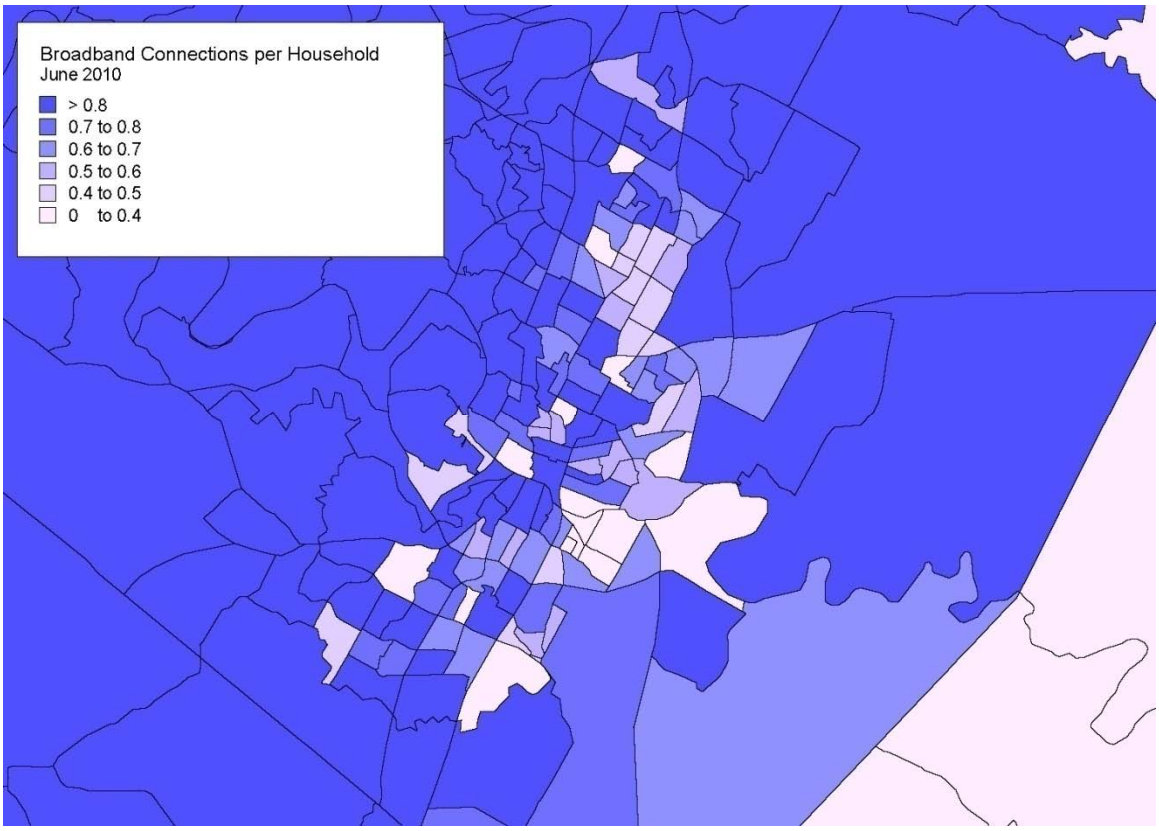



**Figure 9 – Number of Broadband Connections per Household by Census Tract as of June 2010 – Austin area[35]**

[35] *Id.*

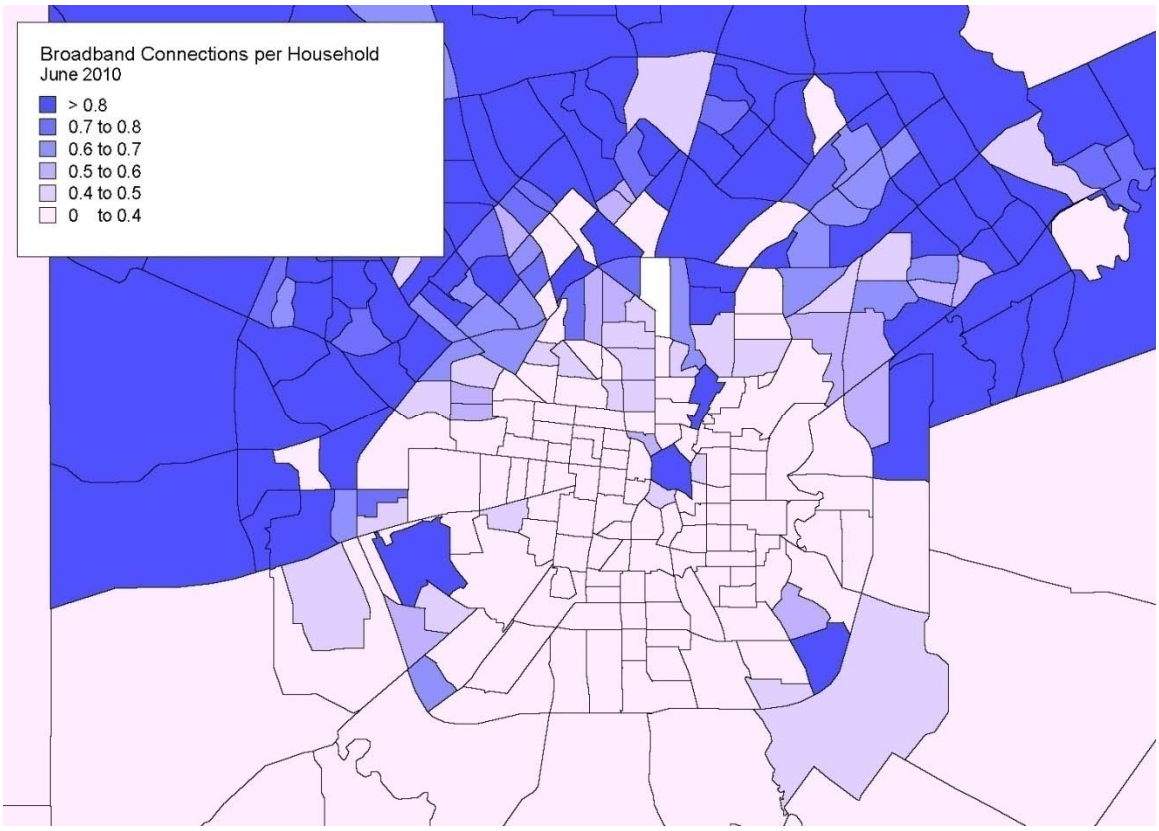



**Figure 10 – Number of Broadband Connections per Household by Census Tract as of June 2010 – San Antonio area[36]**

[36] *Id.*

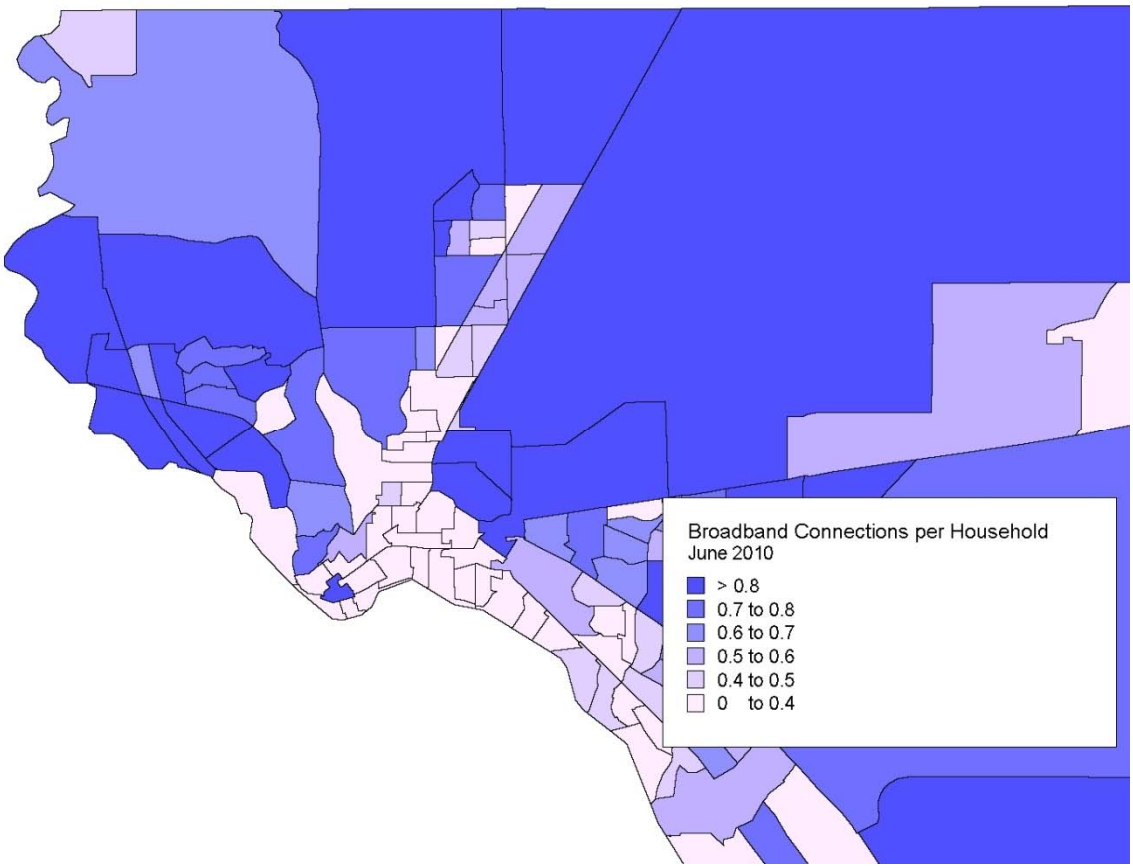



**Figure 11 – Number of Broadband Connections per Household by Census Tract as of June 2010 – El Paso area[37]**

[37] *Id.*

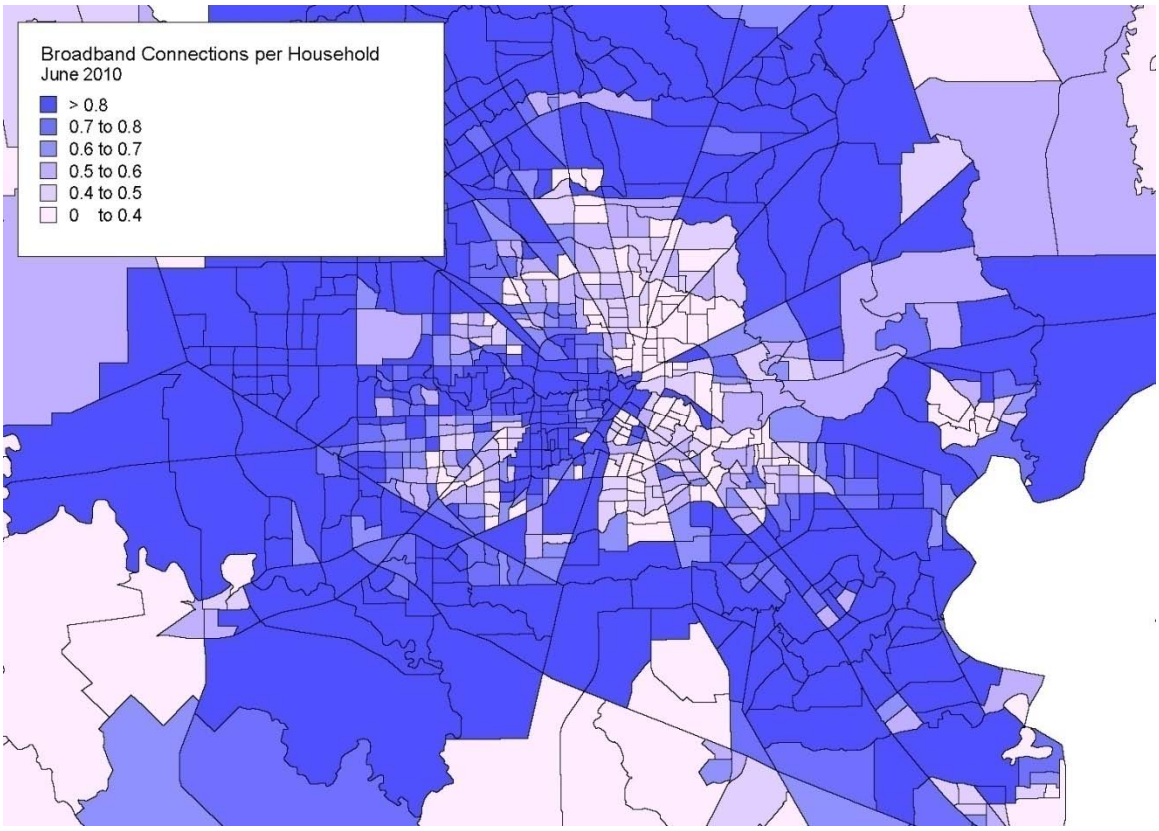



**Figure 12 – Number of Broadband Connections per Household by Census Tract as of June 2010 – Houston area[38]**

[38] *Id.*

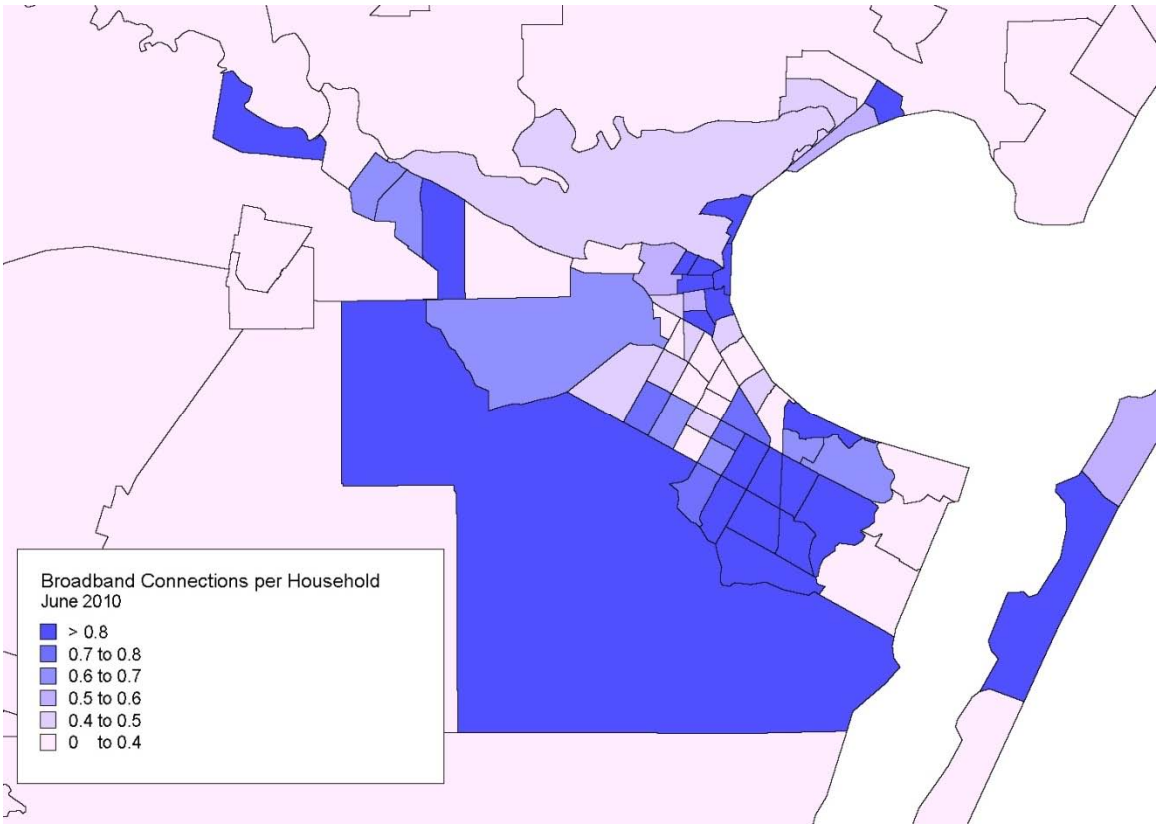



**Figure 13 – Number of Broadband Connections per Household by Census Tract as of June 2010 – Corpus Christi area[39]**

The information presented here has some significant limitations. Because Census 2010 data are not yet available, the household counts used are from the 2000 census. A second limitation is that not enough broadband providers submitted data that would permit separation of business from residential broadband lines. Because of these two factors, the penetration levels shown are likely to overstate the actual residential penetration. The penetration levels shown should not be regarded as absolute levels; but the relative penetration levels shown should be meaningful.

A similar mapping project is being undertaken by a non-profit organization known as Connected Texas, under a commission from the Texas Department of Agriculture. That project is focused on the availability of broadband services, that is, whether there are facilities capable of providing service.[40] A draft version of those maps and a description of the project are available at http://connectedtx.org.

The FCC has pointed to household income as a significant factor influencing broadband adoption. In the National Broadband Plan released in March of 2010, the FCC

[39] *Id.*

[40] The analysis presented here focuses on broadband subscribership – the actual proportion of households that have subscribed to broadband services, rather than just availability. While there should be a broad correspondence between the maps produced by the two projects, it should not be expected that the maps will be exact replicas of each other.

presented data showing that low-income households – those earning less than $20,000 annually – had a broadband adoption rate of 40%, compared to a nationwide average adoption rate of 65%.[41] The FCC survey also found that race, education, and age of householders were significant factors influencing broadband adoption.

Similar factors appear to affect broadband adoption in Texas. Figure 14 shows the average number of broadband connections per household by income decile.[42] Labels above each bar in the chart represent the median household income for that decile.

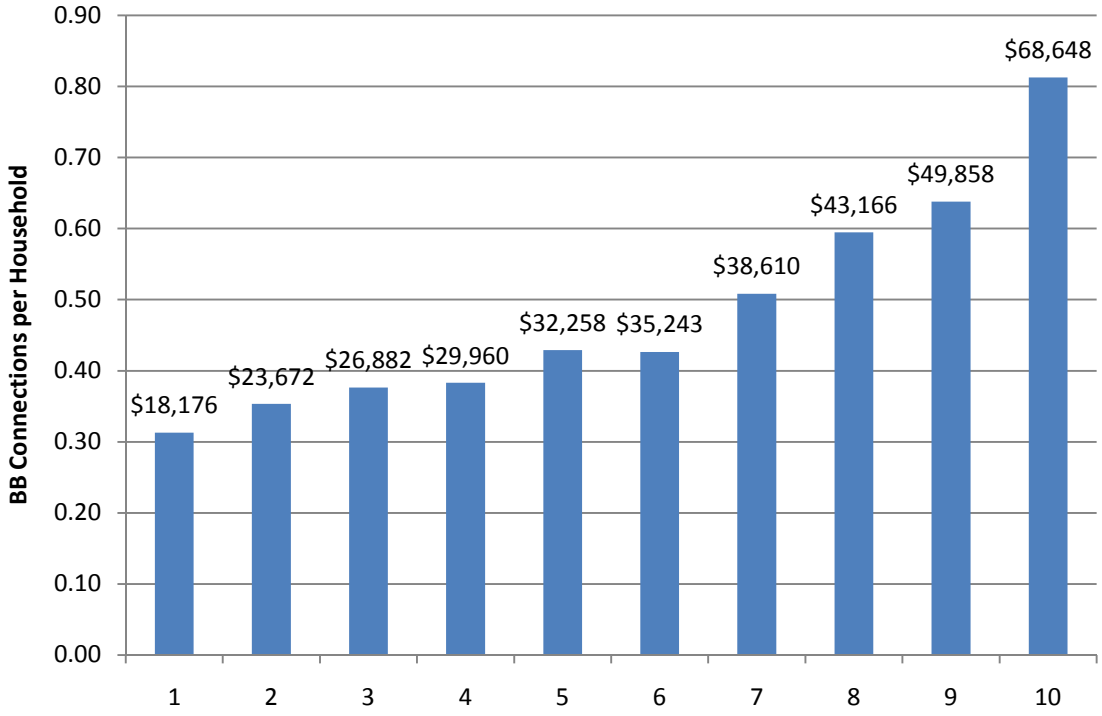



**Figure 14 – Broadband Connections per Household by Household Income Decile; Texas, June 2010[43]**

Figure 15 shows similar information for the United States as a whole.

[41] *The National Broadband Plan*, at 167 (March 16, 2010).

[42] Deciles are constructed by dividing a rank-ordered sample into 10 equal parts. Each decile shown in the chart contains the same number of census tracts, ordered from tracts with the lowest household income to the highest household income.

[43] Public Utility Commission of Texas 2010 Scope of Competition Data Responses, Docket No. 38263, US Census Bureau.*1999 Household Income Statistics*.

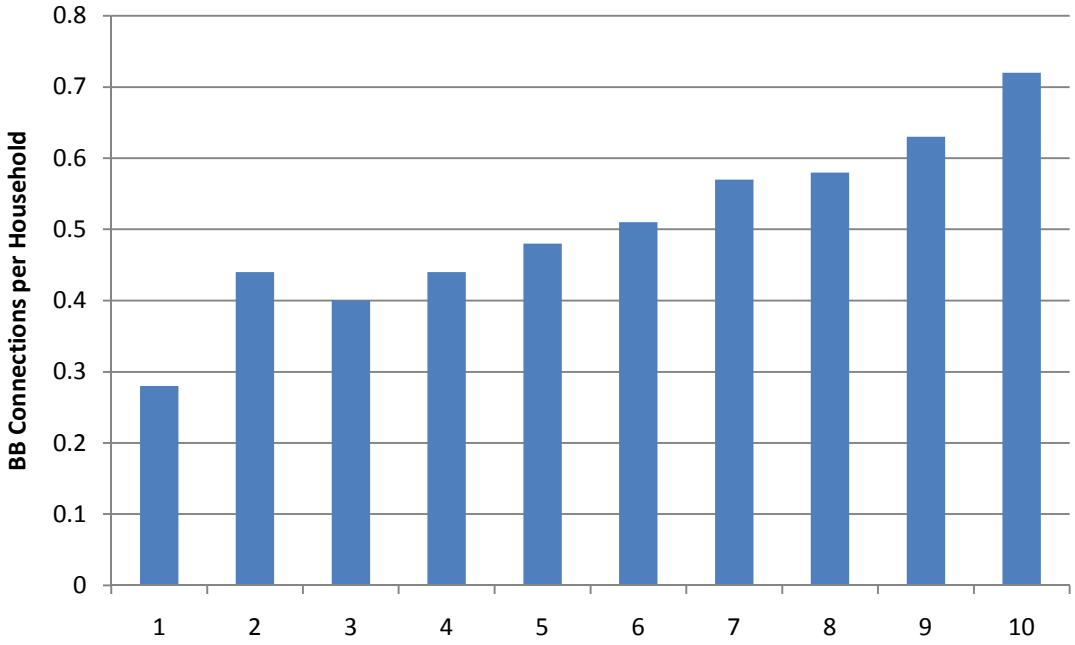



**Figure 15 – Broadband Connections per Household by Household Income Decile; United States, December 2008[44]**

Figure 16 shows the effect of population density on broadband subscribership. The chart shows the average number of broadband connections per household, by population density (persons per square mile) decile. The label above each bar in the chart represents the median number of persons per square mile for the census tracts in that decile.

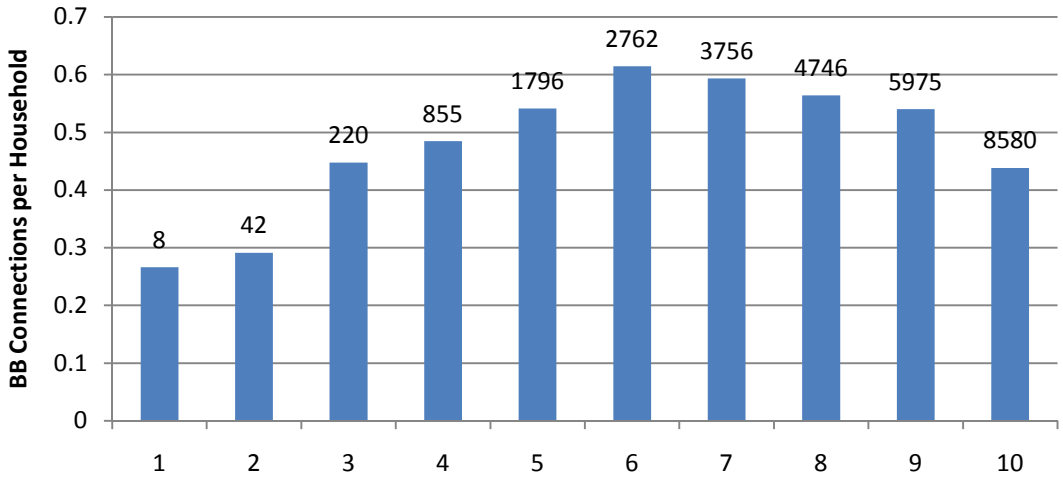



**Figure 16 – Broadband Connections per Household by Population Density Decile; Texas, June 2010[45]**

[44] *High Speed Services for Internet Access (*February 2010).

The chart shows that broadband subscribership increases as population density increases to a point, then begins to decline.

### 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, video and cable service providers spent over $1.5 billion in Texas in 2009 improving and expanding their cable and broadband infrastructure that carries cable and video service. By the end of 2009, 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.

**Table 3 – Number of Cable and Video Providers in Texas[46]**

| Number of Providers | Number of Counties in 2010 |
|---|---|
| 0 | 54 |
| 1 | 84 |
| 2-3 | 84 |
| 4-6 | 26 |
| 7-11 | 6 |

### 4. Conclusion

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 has grown. 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

[45] Public Utility Commission of Texas 2010 Scope of Competition Data Responses, Docket No. 38263, US Census Bureau *Population Density Statistics* (2000).

[46] State-issued certificate of franchise authority's filed with the PUCT. Available online at: http://www.puc.state.tx.us/cable/directories/index.cfm.

video market is beginning to emerge in many Texas counties as a result of numerous providers receiving franchises to operate under PURA Chapter 66.

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

As with the previous two reports to the legislature, there has been very little change to the way incumbent local exchange carriers are regulated. Sixty-nine markets of three incumbent local exchange carriers have been deregulated since December of 2005, the most recent in October 17, 2006. The deregulated exchanges are served by AT&T Texas (SBC), Verizon, and Embarq (Central Telephone of Texas), which are presently classified as "transitioning" companies whereby at least one, but not all of the company's markets have been deregulated.[47] Fifty-seven incumbent local exchange telephone companies that elected to remain regulated at the last report are still regulated.[48] Of those fifty-seven companies, ten are regulated under Chapter 58[49] "incentive regulation" and four are regulated under Chapter 59[50] "incentive regulation". This change reflects the desire of some smaller local telephone companies to have the "flexibility" to change non-basic service rates in a relatively short time frame free of regulatory delays. The introduction of competition into both the regulated and deregulated markets of the State continues to have very little effect on the affordability and availability of basic local telephone service, or universal service because other options, cellular telephone service and voice over internet protocol services provided over high-speed data lines, have lured customers away from the "traditional" incumbent local telephone company network. Rates for individual "Vertical Services" such as Caller ID Service and Call Waiting Service continue to increase under PURA Chapters 58 and 59

[47] *Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831 (December 28, 2005). On December 28, 2005, an Order was issued by the Commission classifying SBC, Verizon and Central Telephone as "transitioning" companies. Effective January 1, 2006 fifty-three markets (exchanges) were declared deregulated, thirty-nine SBC markets, eleven Verizon markets and three Sprint-Centel markets. *AT&T Texas' Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) with Populations Less than 30,000 Should Remain Regulated*, Docket No. 32977 (October 17, 2006). On October 17, 2006, an Order was issued by the Commission deregulating seventeen additional SBC and Centel markets.

[48] *Affidavits of Incumbent Local Exchange Carriers (ILECs) Filed Pursuant to PURA§ 65.053*, Project No. 31869 (December 19, 2005). An Order was issued by the Commission that classified fifty-seven (57) ILECs as "regulated" companies.

[49] Chapter 58 ILECs are companies that elect to be subject to incentive regulation and agree to make extensive infrastructure commitments under Chapter 58 of PURA. Chapter 58 companies cannot increase rates for basic network services (i.e. flat rate basic residential local service), but can increase rates for non-basic services (i.e. caller ID). Chapter 58 also provides the framework for a transition from the traditional rate-of-return on invested capital to a fully competitive telecommunications market place.

[50] Chapter 59 ILECs are companies that have elected to make an infrastructure commitment under the condition that the company not be subjected to rate-of-return regulatory review. Chapter 59 companies cannot increase rates for the services it offers.

incentive regulation and the new Chapter 65[51] deregulation. This is because telecommunications providers continue to guide subscribers to both packages of services and bundles of different services that, in most instances, provide clearly identifiable discounts to both residential and business customers with higher spending habits for telecommunications services.

## A. Effects of Competition on Rates

The legislative report of January 1, 2009 indicated that rates for basic local telephone service would be increasing over the next few years in exchanges where all general exchange and local exchange rates had been completely deregulated after January 1, 2007. The introduction of Chapter 65 allows a "transitioning" incumbent local exchange carrier (ILEC) to modify the rates for basic local telecommunications service with one or more features upward. That has in fact been the case for the largest telephone company in Texas. More importantly, however, monthly rate increases have been reviewed and approved over the past two years for the four largest telephone companies in the state as a result of changes in the Texas Universal Service Fund (TUSF). Additional increases will occur in January of 2011 for those companies transitioning toward deregulation and those companies regulated under Chapter 58 that have elected to reduce their subsidies from the Texas Universal Fund. Those companies make up over 90% of the markets in the state. The changes that will result in increases for basic residential local telephone service are discussed in Section C below.

For the smaller telecommunications providers regulated under Chapters 58 and 59, rates for vertical services and other services continue to rise. Six small telephone companies filed for rate increases in the 2010 fiscal year and two partially deregulated cooperatives filed for rate changes in that same period. As with past reporting, transitioning and partially regulated companies continue promoting and introducing new packages, bundles, and term agreements that offer discounts to residential and business customers.

### 1. Local Telephone Service Rates

In the more rural areas of the state, basic local telephone service rates are priced below the economic cost of providing the service and are supported through universal-service-fund mechanisms at both the Federal and State level. Two prior reports indicated that competition was not likely to drive the price of basic local telephone service lower in those areas, and in fact, if anything, deregulation in these areas would drive the price of local service higher. In these areas, universal service subsidies and subsidies from Switched Access Charges have not been reviewed since 2000.[52]

[51] Chapter 65 ILECs are companies whose markets or a portion of their markets are fully competitive. Unlike Chapter 58 companies, these companies are allowed to increase rates for basic network services through an informational notice filing.

[52] *Compliance Proceeding for Implementation of the Small and Rural ILEC Service Plan*, Docket No. 18516, Final Order (January 14, 2000).

During the next two years, basic telephone service rates should rise for three of the four largest telephone companies in the state as the subsidy for the service decreases through a reduction in TUSF support. Economically speaking, the gradual elimination of subsidies is necessary for true competition to exist in the partially regulated and deregulated markets affected by these changes.

The election of PURA Chapter 58 and 59 regulations by a majority of the medium-sized ILECs (eight companies) continues to restrict increases in residential basic local service rates for the customers of those companies. Chapters 58 and 59 regulations "cap" basic local service rates for these companies. 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 to more than 1.5 million access lines within the boundary of an exchange.[53] 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. In the past, the mandatory expansion of the calling scope often has included the assessment of an additional monthly fee. The assessment of an additional monthly fee is changing for the three largest companies. In some cases, the expanded local calling scope, the additional fee for extended area services, and mandatory extended area service have been consolidated into the basic rates of three of the largest telephone companies, in connection with the TUSF changes. (These changes were discussed in the previous report to the legislature on the scope of competition in telecommunications markets.) However, for the companies not involved in the TUSF proceeding, mandatory extended area service monthly fees are capped under Chapter 58 and 59 regulations, thereby restricting any increases in an electing ILEC's rates.

Chapter 65 ILECs still have the option of classifying mandatory extended area service as basic and continue to offer optional two-way extended area service in the major metropolitan areas of the state. This optional two-way service continues to provide economic benefits to the areas where the service is available, particularly to business and local government entities that frequently communicate across contiguous exchange areas within their regions. As mentioned in the previous report, how the provisioning and pricing of this service will change in the future is yet to be seen. Even though there are more alternatives to mandatory extended area service available in today's telecommunications marketplace, the two-way aspect is, as mentioned above, extremely important to local businesses and local governments.[54]

Basic local telephone service rates have been kept below the national average 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

[53] 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.

[54] AT&T Texas offers Unlimited Nationwide, one-way calling that is available within a package for a flat rate of $10.00 to $15.00 monthly.

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.

**Table 4 – Sample of Basic Telephone Service Rates in Texas[55]**

| *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 | $20.00 | $43.00 | $52.50 |
| AT&T Texas – Chapter 65 | Dallas/Dallas LATA | Dallas Metropolitan Exchange-fixed | $18.05 | n/a | n/a |
| AT&T Texas - Chapter 65 | Donna/Brownsville LATA | Donna Exchange - flexible | $19.00 | $39.75 | $48.25 |
| AT&T Texas - Chapter 65 | Donna/Brownsville LATA | Donna Exchange - fixed | $16.10 | n/a | n/a |
| AT&T Texas – Chapter 65 | Ft. Davis/Midland LATA | Fort Davis Exchange | $15.15 | $39.75 | $48.25 |
| Verizon – Chapter 58/65 | Gonzales/San Antonio LATA | Gonzales Exchange | $12.10 | $29.60 | $43.95 |
| 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 | $8.66 | $12.89 | $20.42 |
| Verizon – Chapter 58/65 | Tawakoni - Dallas LATA | Tawakoni Exchange | $14.60 | $29.60 | $43.95 |
| CenturyTel of Port Aransas - Chapter 59 | Port Aransas – Corpus Christi LATA | Port Aransas Exchange | $6.45 | $11.95 | $18.55 |

Over the next two years basic telephone service rates in exchanges served by the four largest incumbent telephone companies in the state are expected to continue 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, under the terms of the Commission's order in Docket No. 34723, to gradually increase unbundled basic rates so that basic rates are within a range of $15.50 to $17 per month. This range was found to be reasonable by participating parties in Docket No. 34723.[56] Most of the competition in telephone services is in connection with wireless service and service packages from wireline companies that provide customers enhanced services like caller ID, unlimited long distance, or with bundled services, such as Internet or video. It seems clear that competition is strong in metropolitan areas for premium packages that

[55] Texas PUC tariff filings.

[56] *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, Motion for Approval of the Unanimous Settlement Agreement (April 8, 2008).

include telephone service. It is not as clear that competitive forces are influencing basic local telephone service rates in smaller exchanges.

Chapter 65 also allows "transitioning" ILECs to increase the rates for basic local telephone service, 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 in limited circumstances.

### 2. Vertical Services Rates

Vertical Service rates are not capped under Chapters 58, 59, and 65 of PURA. Thus, 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, SBC Texas and Verizon, indicate that some price changes have been made to the monthly rates for the most popular services over the past two years as shown in the tables following. 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 a list of common and popular vertical service rates changes for Verizon and SBC Texas since those companies' election of incentive regulation.

## Table 5 – Sample of Changes in Verizon's Pricing for Vertical Services[57]

| Service | Texas Residential Retail Price | | |
|---|---|---|---|
| | Before September 1999 | As of September 2006 | As of September 2010 |
| 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 | $5.25 |
| 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 | $1.50 |
| National Directory Assistance – Per Event | Not Available | $1.25 | $1.50 |
| Additional Directory Listing – Per Listing | $0.55 | $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 |

## Table 6 – Sample of Changes in AT&T Texas's Pricing for Vertical Services[58]

| Service | Texas Residential Retail Price | | |
|---|---|---|---|
| | Before September 1999 | As of September 2006 | As of September 2010 |
| 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 | $6.00 |
| Auto Redial - Monthly | $2.00 | $5.99 | $6.99 |
| Call Waiting - Monthly | $2.80 | $3.99 | $7.50 |
| Call Waiting ID - Monthly | $3.00 | $6.00 | $4.50 |
| 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 | $6.00 |
| 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 | $1.79 each after 2 calls |
| Rate for Non-published Numbers - | | | |

[57] Texas PUC tariff filings.

[58] Texas PUC tariff filings.

| Service | Texas Residential Retail Price | | |
|---|---|---|---|
| | Before September 1999 | As of September 2006 | As of September 2010 |
| Monthly | $1.10 | $5.50 | No change |
| Directory Assistance Call Completion | $0.30 additional each use | $0.25 additional each use | $0.00 |

### 3. Packages, Bundles, Term Commitments, and Promotions

Over the past eight years the market has stressed and continues to stress packaging of residential and business basic local service with vertical features and long-distance services, and bundling this telephone package with video services and high speed internet access. The three product package of TV Service, High Speed Internet Access and Phone Service continues to be the offering of choice. And convincing the customer to commit to a one or two year term is the most desirable outcome for the service provider.

Many of the packages and bundles shown in the tables that follow illustrate how a customer may consolidate many services into one package or bundle and save $5.00 to $25.00 off the single service prices if purchased separately. Four years ago it was reported that "intensified competition from digital telephone service offered by the cable companies and voice-over-internet protocol service have continued to bring the introduction of lower cost telecommunications service packages and a greater array of discounts for bundles of internet service, local and long distance phone service, video service" to the marketplace. Although the advertising of better prices for packages and term commitments has continued to remain robust, the competition for customers has not resulted in further reductions to consumer prices for the packages and bundles. In most cases, competition has resulted in competitors offering "more" for the same price (*e.g.*, more features, larger calling scopes, more channels, higher bandwidth).

Cable companies and VoIP providers continue to offer special promotions to lure customers away from the incumbent, while the incumbent continues to regularly offer special promotions to former residential and business customers to "win-back" their business. Both forms of promotions generally provide temporary economic incentives to induce customers to switch their local telephone service, video service and/or high speed internet service. As reported two years ago, the term agreement continues to be a common offering for large and small companies and provides revenue security for competitive telecommunications carriers.

The following tables illustrate some of the residential and business packages available over the past four 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, albeit with the same or very similar features.

## Table 7 – Residential Packages and Rates as of September 2008 and August 2010

| 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 |
| | All Distance Select with High Speed Internet Express in 2010 | 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. | $49.95 per month for 12 months $74.95 after 12 months |
| 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 |
| | Triple Freedom for 2010 | High Speed Internet, TV and Phone: Unlimited calling, up to 7 Mbps Internet transmission and 210+ TV channels. | $99.99 |

| Landline Telephone Providers | | | |
|---|---|---|---|
| **Company** | **Package Name** | **Description Provided by Company** | **Price/Mo** |
| CenturyLink (f/k/a Embarq f/k/a 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) |
| | Double Savings Bundle 2010 | Unlimited Local and Long Distance, Unlimited Calling Features (Voicemail, Caller ID, etc.), and High Speed Internet | $54.95 |
| 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.<br>Options: faster Internet, more channels, and entertainment packages. | $90.00 |
| | U-verse 2010 | Voice Communications –250 minutes per month, U.S, Puerto Rico, U.S.V.I., Guam and Canada, Basic high speed internet access up to 3Mbps and Basic 70 channel internet TV.<br>Options: faster internet, more channels and entertainment packages | $99.00 for 6 months |
| 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 |
| | Residential VOIP Phone Service | Unlimited U.S, calling, Caller ID, Three Way Calling, Call Waiting, Speed Calling, Voice Mail, etc. | $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 |
| | Quad Pack 2010 | Choice Plus: U-verse TV 300 channels with DVR, U-verse High Speed Internet AT&T Nation 450, wireless voice with unlimited messaging; and unlimited nationwide home phone calling with U-verse Voice Unlimited | $172 for 12 months |
| | | Choice Plus: U-verse TV 450 channels with DVR and HD, U-verse High Speed Internet AT&T Nation, 450 wireless voice with unlimited messaging; and unlimited nationwide home phone calling with U-verse Voice Unlimited | $192 for 12 months |
| 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 |
| Sudden Link 2010 | Bundle and Save 2010 | Basic Cable, High Speed Internet 10Mbps, and Phone with unlimited nationwide LD | $109 |

| Landline Telephone Providers | | | |
|---|---|---|---|
| **Company** | **Package Name** | **Description Provided by Company** | **Price/Mo** |
| 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).<br><br>Including Canada and Puerto Rico<br>In a Package With Cable TV<br>In a Package With Cable TV and High Speed Internet | <br><br>$49.95<br>$44.95<br>$39.95 |
| | Three services 2008 | Digital Local Phone, Internet Basic (3Mbps), and HD Digital Cable. In addition, 7 cent per minute nationwide LD.<br><br>OR<br><br>Unlimited Nationwide Phone, 7 Mbps Internet, and Digital Cable (300 channels). | $89.95<br><br>$129.95 |
| | All the Best 2010 | HD Digital Cable, Road Runner High Speed Internet, Digital Home Phone Unlimited | $99.99 for 12 months |
| 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 |
| | Premium Plan 2010 | Same as above but now includes 60 countries | $25.99 |

## 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 |
| | "Business Unlimited" 2010 | Package unchanged from 2008 | $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 |
| | Unlimited Local & LD for Business 2010 | Unlimited Local and Long Distance for Business, Unlimited local and local toll, and nationwide long distance, popular calling features included. | $50.00 |
| | | | |
| **Voice Over Internet Protocol (VOIP) or Digital Phone Service**[59] | | | |
| **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 |
| | Galaxy 2010 | No change from 2008. | $39.95 |

[59] Prices and descriptions identified for VoIP may be found at the company's website or contact the company's customer service department.

| Landline Telephone Providers | | | |
|---|---|---|---|
| **Company** | **Package Name** | **Description Provided by Company** | **Price/Mo.** |
| 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.)<br>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 |
| | Small Business Basic 2010 | No change in 2010 | $39.99 |

### 4. Other Service and Feature Rates

The fees for directory-assistance service continue to climb with prices hovering at about $1.50 per directory assistance call, an increase of $0.25 per call over the past two years for local directory assistance. Late-fee assessments have generally not changed from the 2004 levels. Rates for services such as directory listings, non-published-number service and non-listed-number have generally remained unchanged or have experienced very slight increases over the past two years.

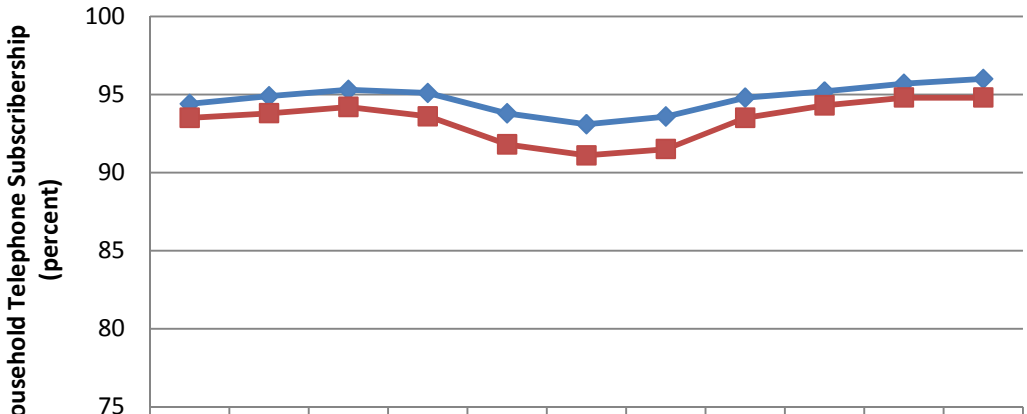
## B. Service Availability and Programs Supporting Service Availability

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 widespread. 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 percentage of households that have telephone service (telephone penetration) is one of the fundamental measures of the extent of universal service. The FCC reports this data based on surveys conducted by the Census Bureau. 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 telephone subscribership in Texas since 2005, as shown in the figure below. Texas, like the rest of the country, has experienced

an explosion in the number of wireless customers – in June 2009, nearly 70 percent of the population in Texas had wireless phones. In December 2007 there were approximately 19.6 million mobile wireless telephone subscribers in Texas. By June 2009, that number increased to approximately 21.5 million subscribers for an increase of almost 10 percent over a two-year period.[60] Mobile voice and data services have been very popular, and the addition of video service applications to the wireless product may continue to change the telecommunications landscape over the next ten years and increase the level of subscribership levels overall.




| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| US | 94.4 | 94.9 | 95.3 | 95.1 | 93.8 | 93.1 | 93.6 | 94.8 | 95.2 | 95.7 | 96 |
| Texas | 93.5 | 93.8 | 94.2 | 93.6 | 91.8 | 91.1 | 91.5 | 93.5 | 94.3 | 94.8 | 94.8 |

**Figure 17 – Percentage of Telephone Subscribership[61]**

## 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.[62] Retail rates for the basic telecommunications service in these uncertificated areas range from $15 to $20 per month.

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[60] *Local Telephone Competition Report* at Table 14.

[61] *Telephone Subscribership in the United States* at Table 3(August 2010).

[62] *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*

In September 2005, the Commission authorized DialTone Services, L.P. to receive TUSF funding for the purpose of providing satellite telephone service to uncertificated areas. The Commission established monthly per-line support amounts for 17 different uncertificated areas located in 19 Texas counties in rural areas near Amarillo, Midland, San Angelo, and San Antonio.[63] Since that time, DialTone Services has provided approximately 45 satellite-telephone service connections for basic local service in these uncertificated areas of the state.

No additional applications to serve uncertificated areas have been received since the 2009 Scope of Competition Report.

### 3. Aid to Construction for Uncertificated Areas

PURA § 56.210 and its implementation in P.U.C. SUBST. R. 26.423 establishes procedures for the Commission to designate an Eligible Telecommunications Provider (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 if potential subscribers agree to pay a portion of the ETP's start-up costs.[64] Once an ETP volunteers or is designated to serve the area, construction costs and monthly assistance rates may be approved for the new service.

To date four such petitions have been filed by potential subscribers living in uncertificated areas of the state. The most recent case involved the denial of aid to construction costs to provide telephone service to a residential area located in Big Lake in Reagan County. The Commission denied the application because the reimbursement to provide the service exceeded the statutory limit, 0.02 percent of the annual gross revenue reported to the TUSF in the preceding fiscal year, as prohibited by PURA § 56.209(e).[65]

## 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 were developed to provide financial support to eligible carriers in a competitive environment, to ensure that all customers throughout the State of Texas have access to basic local telecommunications service at just, reasonable, and affordable rates, and these plans

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*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, Final Order (October 30, 2000) 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).

[63] *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).

[64] Other requirements include actions such as 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.

[65] *Application of Cathryn Cope Kesslet For Telecommunications Service in Uncertificated Area Pursuant to P. U. C. SUBST. R. 26.421*, Docket No. 36097, Order (May 17, 2010).

provide substantial support to eligible carriers. Appendix F sets forth the TUSF disbursements for these high-cost support programs.

### 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.[66] 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). To receive support from the TUSF, a telecommunications carrier has to be designated by the Commission as an ETP. Prior to the enactment of Senate Bill 5 in 2005, 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.[67] Total Service Resale (TSR) providers, which were not previously required to provide Lifeline service, but must now do so under PURA § 55.015, may also qualify to receive TUSF support for providing Lifeline service.[68]

Lifeline enrollment has steadily increased since 1999 when legislation directed the Commission to establish an automatic enrollment for qualified clients of the Texas Health and Human Services Commission (HHSC). 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 2006.

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[66] 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).

[67] 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.*

[68] 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, 2006 - 2009[69]**

| 2006 Lifeline | 2007 Lifeline | Percent Increase/ Decrease 2006 - 2007 | 2008 Lifeline | Percent Increase/ Decrease 2007 - 2008 | 2009 Lifeline | Percent Increase/ Decrease 2007 - 2008 |
|---|---|---|---|---|---|---|
| 624,073 | 673,825 | 5.3% | 856,216 | 27% | 899,011 | 5.0% |

## 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, supported by FUSF. As shown in Table 10, this discount of the non-recurring installation charge, has supported the installation of telephone service for a large number of qualifying consumers.

**Table 10 – Link Up Enrollments, 2004-2007[70]**

| 2006 Link-Up | 2007 Link-Up | Percent Increase/ Decrease 2006 - 2007 | 2008 Link-Up | Percent Increase/ Decrease 2007 - 2008 | 2009 Link-Up | Percent Increase/ Decrease 2007 - 2008 |
|---|---|---|---|---|---|---|
| 122,455 | 165,853 | 35.4% | 240,034 | 45% | 220,503 | -8.0% |

[69] Solix – Low-Income Discount Administrator (LIDA).

[70] Universal Service Administrative Company (USAC).

# IV. COMMISSION ACTIVITIES: 2008-2010

This chapter provides an overview of some of the Commission's activities since the *2009 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 911 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 related to the regulatory mandate of fair access to incumbent local exchange carrier (ILEC) networks, under the Federal Telecommunications Act of 1996 (FTA),[71] and the deregulation of markets required by PURA Chapter 65. Specifically, these activities include approval of interconnection agreements developed through negotiation or arbitration, monitoring of a dominant certificated telecommunications utility's performance with respect to allowing access to its network by competitors, and deregulation of 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 of their respective networks and access to certain elements of the ILEC's network. ILECs and CLECs are required to negotiate ICAs under the FTA. In addition, the FCC determined that an ILEC may demand negotiation of an ICA with Commercial

[71] 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).

Mobile Radio Service (cell phone) providers.[72] If negotiations are unsuccessful, either party can petition the Commission to arbitrate open issues.

#### *a. Negotiated Interconnection Agreements*

In many instances, parties successfully reach agreement through voluntary negotiations. During the two years ending August 2010, 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 187 interconnection agreements and 45 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 arbitration or dispute resolution 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 a CLEC may interconnect with or otherwise use the ILEC's network. During the two years ending August 2010, the Commission arbitrated 10 interconnection agreements and 7 post-interconnection disputes.

### 2. Deregulation of ILEC Markets

The Commission regulates the ILECs that serve in Texas under one of five different regulatory regimes. The 62 ILECs operating in Texas are listed in Appendix C.[73] Of those 62 companies, ten are regulated under Chapter 58[74] "incentive regulation" and four are regulated under Chapter 59[75] "incentive regulation." Five cooperatives are partially deregulated under Chapter 53.[76] Three Chapter 58 ILECs are

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[72] *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 (February 24, 2005).

[73] *Affidavits of Incumbent Local Exchange Carriers*, Project No. 31869, (October 2005) and *Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831 (October 4, 2005). In these two proceedings, the Commission determined that 59 of these companies would be classified as a "regulated" company.

[74] Chapter 58 ILECs are companies that elect to be subject to incentive regulation and agree to make extensive infrastructure commitments under Chapter 58 of PURA. Chapter 58 companies cannot increase rates for basic network services (i.e. flat rate basic residential local service), but can increase rates for non-basic services (i.e. caller ID). Chapter 58 also provides the framework for a transition from the traditional rate-of-return on invested capital to a fully competitive telecommunications market place.

[75] Chapter 59 ILECs are companies that have elected to make an infrastructure commitment under the condition that the company would not be subjected to rate-of-return regulatory review. Chapter 59 companies cannot increase rates for the services it offers.

[76] Chapter 53 regulation is available only to certain cooperative corporations and allows the electing cooperative to become partially deregulated. Chapter 53 provides electing cooperatives the ability

also classified as "transitioning companies" as defined in Chapter 65.[77] The remaining 43 ILECs are regulated under Chapter 52[78] 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.[79] 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" because at least one, but not all the company's markets have been deregulated.[80] 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 a new petition for deregulation of markets since October 2006.

### 3. 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.[81] On May 16, 2006, the Commission adopted a new substantive rule relating to these franchises.[82] 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 August 2010, 15 new CFAs were issued and 163 requests for changes to service areas were granted. Appendix D lists the companies issued new CFAs.

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to raise its rate for any service as long as the cooperative follows certain requirements outlined in Chapter 53.

[77] Chapter 65 ILECs are companies whose markets or a portion of their markets are fully competitive. Unlike Chapter 58 companies, these companies are allowed to increase rates for basic network services through an informational notice filing.

[78] Chapter 52 ILECs are companies that have elected not to be regulated pursuant to PURA Chapters 58, 59, or 65. Chapter 52 companies may only increase rates if done so: 1) under another chapter of PURA such as Chapter 53; 2) through a rate case; or 3) as authorized by a change-of-law.

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

[80] *Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831, Final Order (December 28, 2005). In this project AT&T, Verizon and Embarq-Centel were classified as "transitioning" companies.

[81] PURA, Chapter 66.

[82] *Rulemaking Regarding the State-Issued Certificate of Franchise Authority*, Project No. 32171, Order (May 16, 2006).

## 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, financial assistance for telephone services for low-income customers, and support for programs such as relay services for hearing-impaired customers.

### 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 provides telephone service to customers. The Commission oversees the ongoing administration of the TUSF and delegated the ministerial functions to Solix 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 2004. The disbursements have decreased over the last two years because the rate for THCUSP reimbursement was reduced by the settlement agreement in Docket No. 34723. The fund's disbursement total in fiscal year 2010 was approximately $461.6 million. As of fiscal year 2010, disbursements from the THCUSP accounted for approximately 65.5 percent of the fund's total disbursements. Disbursements from the program for small companies accounted for 17.9 percent of the fund's total. The remaining nine programs and administration costs account for the remaining 16.6 percent of the fund's disbursements, which amounted to approximately $76.8 million. The cost to administer the TUSF in fiscal year 2010 was approximately $4.6 million, or about one percent of the total fund disbursements. Both ILECs and CLECs are eligible for support payments from the two high cost funds if they meet the program 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.[83] 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

[83] PURA § 56.029.

qualified Eligible Telecommunications Providers (ETPs) from the THCUSP, the largest of the programs within the TUSF.[84]

Ultimately, the parties to the proceeding entered into a unanimous settlement agreement (Agreement) providing that THCUSP support amounts available to eligible providers would be reduced over a four-year period. 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.[85] 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. 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 with assumed gradual increases to basic rates to levels within this range.[86] To offset this reduced THCUSP support, affected ILECs were permitted to 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 reduced the TUSF charge on customers' bills.

### 2. ETC/ETP/RETP Designation

The Commission is responsible for issuing three designations of eligibility to participate in TUSF and FUSF programs.

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[84] *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 (September 10, 2007).

[85] The four ILECs that receive THCUSP support are Verizon, Embarq, Windstream, and AT&T Texas. Under the Agreement, the support for all ETPs serving these wire centers will be reduced, not just the ILECs' support. Therefore, the total THCUSP support reductions will be greater than the amounts estimated.

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

### *a. Eligible Telecommunication Carrier*

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

### *b. Eligible Telecommunication Provider*

An ETP designation is required 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.

### *c. Resale Eligible Telecommunication Provider*

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 for certificated providers of local exchange telephone service that provide this service solely through the resale of an ILEC's service. With this change, a certificated TSR may receive funds from the TUSF for Lifeline Service. Because it cannot qualify as an ETC, a TSR is not eligible to receive support from the FUSF.

**Table 11 – ETC/ETP/RETP Designations, August 2008-August 2010**

| | ***ETC*** | ***ETP*** | ***RETP*** |
|---|---|---|---|
| Applications for Designation(s) Approved | 12 | 7 | 4 |
| Application for Designation(s) Pending for Designation or Relinquishment | 5 | 2 | 2 |
| Relinquishments or Applications Withdrawn or Dismissed | 3 | 1 | 4 |
| Applications Denied | 1 | 3 | 0 |

## 3. ARRA

The American Reinvestment and Recovery Act, which was enacted in January 2009, funded two programs to foster investment in broadband facilities in the United States. The Broadband Technology Opportunities Program (BTOP), carried out by the

Department of Commerce, was appropriated $4.7 billion nationwide for grants and loans to providers to expand broadband facilities. In addition, $2.5 billion was appropriated for the Broadband Initiatives Project (BIP), carried out by the US Department of Agriculture. Governor Perry designated the Texas Department of Agriculture as the lead agency with respect to BTOP and BIP activities, and directed the Public Utility Commission and Public Safety Commission to work with TDA on broadband activities.

Within the BTOP program, the following amounts were set aside for broadband activities that are not directly related to investment in infrastructure:

- $200 million to support public computer centers;
- $250 million for projects to foster sustainable use of broadband; and
- $350 million to produce state maps of broadband facilities.

TDA issued a request for proposals (RFP) to identify organizations that would be capable of obtaining information from telecommunications providers and creating a Texas broadband map. A number of organizations responded to the RFP, and Connected Nation was selected to create the broadband map. Connected Nation applied for a grant for the Texas mapping project, and in January 2010 the Department of Commerce awarded it $2.5 million for mapping broadband facilities and $0.5 million for broadband planning activities. In September 2010, Connected Nation received an additional $5 million grant to extend the mapping activities and conduct broader planning activities for extension of broadband service in Texas. Connected Nation has created a draft broadband map that is available at http://www.connectedtx.org. The map includes interactive features that permit consumers to determine what broadband services and service providers are available in their neighborhood. The additional funding for mapping activities will permit Connected Nation to improve the coverage of telecommunications providers, update the map to reflect new installations of broadband facilities, and make other enhancements to the map.

The Departments of Commerce and Agriculture have made a large number of grants and loans under these broadband programs, including a number of projects in Texas. The table below summarizes the projects that have been approved for Texas.

**Table 12 – ARRA-funded Projects in Texas**

| Company | Loan | Grant | Total | Area | Description |
|---|---|---|---|---|---|
| **Commerce Department** | | | | | |
| Allegiance Communications | | 28,619,485 | 28,619,485 | AR, KA, OK, TX | Infrastructure project to deploy broadband technology. |
| Deaf Action League of Louisiana | 1,381,252 | 1,380,513 | 2,761,765 | AL, CA, LA, TX | Public Computer Center Project to serve individuals who are deaf or hard-of-hearing. |
| ENMR Telephone Cooperative | | 11,252,066 | 11,252,066 | E. NM and W. TX | Infrastructure project to deploy broadband technology. |

| Company | Loan | Grant | Total | Area | Description |
|---|---|---|---|---|---|
| Level3 EON | 5,194,691 | 4,677,788 | 9,872,479 | TX and AR | Middle mile broadband infrastructure project. |
| Mission Economic Development Agency | | 3,724,128 | 3,724,128 | Multi-state | Public Computer Center Project in ten states, including projects in San Antonio and Laredo. |
| One Economy | | 28,519,482 | 28,519,482 | Multi-state | Sustainable Broadband Adoption grant for a comprehensive program of computer training, wireless Internet access, broadband awareness marketing, and online content in 50 cities. |
| University Corp. for Advanced Internet Development | | $62,540,162 | $62,540,162 | Multi-state | Infrastructure project to create a national-scale network of middle mile broadband facilities. |
| Valley Telephone Cooperative | | $15,697,856 | $15,697,856 | S. Texas | Broadband infrastructure project to serve Harlingen, Brownsville, Edinburg, Weslaco and McAllen. |
| Communication Service for the Deaf | | $14,988,657 | $14,988,657 | Multi-state | Project to expand broadband adoption among people who are deaf and hard of hearing. |
| Texas State Library and Archives Commission | | $7,955,941 | $7,955,941 | Texas | Public Computer Center project to provide broadband to libraries across the state. |
| Peoples Telephone Cooperative | | $28,825,356 | $28,825,356 | East Texas | Infrastructure project to serve residents of Camp, Delta, Fannin, Franklin, Hopkins, Hunt, Lamar, Rains, Smith, Titus, Van Zandt, and Wood Counties. |
| City of Brownville | | $865,920 | $865,920 | Brownsville, Texas | Public Computer Center project in collaboration with Texas Southmost College and the United Way of Southern Cameron County. |
| ENMR Telephone Cooperative | | $16,460,815 | $16,460,815 | E. NM and W. Texas | Infrastructure project to deploy broadband technology. |

| Company | Loan | Grant | Total | Area | Description |
|---|---|---|---|---|---|
| Texas A&M University | | $6,550,775 | $6,550,775 | Texas | Infrastructure project to serve campuses and communities in Corpus Christi, Kingsville, College Station/Bryan, Waco, Canyon, Prairie View, Laredo, Texarkana, Commerce, Galveston, Stephenville, San Antonio, and Killeen. |
| **Agriculture Department** | | | | | |
| PRIDE Network | 22,720,551 | 21,829,549 | 44,550,100 | S. TX Plains | Infrastructure project to bring advanced broadband services to rural communities. |
| PRIDE Network | 12,811,071 | 6,309,931 | 19,121,002 | Burkburnett, TX and adjacent areas of OK | Infrastructure project to bring advanced broadband services to rural communities. |
| Panhandle Tel. Coop | 3,336,188 | 10,098,562 | 13,434,750 | OK and Texas Panhandle | Extend and improve broadband service in small towns in the Panhandles of OK and Texas. |
| XIT Rural Telephone Cooperative | | 3,065,440 | 3,065,440 | Dalhart and Stratford | Infrastructure project to expand broadband service in Dalhart and Stratford. |
| Valley Telephone Cooperative | 40,093,153 | 38,520,868 | 78,614,021 | S. Tx | Develop broadband infrastructure in South Texas. |
| Wes-Tex Telephone Cooperative | 16,891,875 | 16,891,875 | 33,783,750 | Stanton area | Provide a broadband infrastructure to increase Internet availability and access speeds in rural areas of W. Texas. |
| Blossom Telephone Company | $833,303 | $1,944,373 | $2,777,676 | NE Texas | Project to provide broadband infr astructure in Blossom, TX and serve customers in rur al areas in NE Texas. |
| Medicine Park Telephone Company | | $2,658,210 | $2,658,210 | OK, TX | Project to provide broadband service in the area adjacent to Sterling, Oklahoma and Scotland, Texas. |
| ATSI Communications, Inc. | | $833,176 | $833,176 | TX | Wireline broadband network infrastructure to provide service in the area of Progreso. |
| Five Area Telephone Cooperative, Inc. | | $2,454,223 | $2,454,223 | TX | W. Texas broadband infrastructure project to serve Bledsoe, Bula, Clays Corner, Lazbuddie, Maple, and Needmore. |

| Company | Loan | Grant | Total | Area | Description |
|---|---|---|---|---|---|
| Hill Country Telephone Cooperative, Inc. | | $12,234,217 | $12,234,217 | TX | Infrastructure project to bring advanced broadband services to rural communities. |
| Telecom Cable, LLC | | $634,050 | $634,050 | TX | Broadband infrastructure project in the rural areas of Corrigan, Fulshear and Weston Lakes. |
| Mid-Plains Rural Telephone Cooperative, Inc. | | $2,809,000 | $2,809,000 | TX | Project to provide broadband to customers in six rural areas of the Texas Panhandle. |
| XIT Rural Telephone Cooperative | | $2,112,950 | $2,112,950 | TX | Project to provide broadband to customers in NW Texas Panhandle. |
| Electronic Pages, Inc. | | $1,893,298 | $1,893,298 | TX | Project to provide broadband to customers in Central Texas. |
| Windstream Corporation | | $1,613,509 | $1,613,509 | TX | Infrastructure project to bring broadband services to rural communities. |
| | | | | | |
| **Total** | $103,262,084 | $357,962,175 | $461,224,259 | | |
| Texas only | $80,538,882 | $166,732,376 | $247,271,258 | | |
| Multi-state | $22,723,202 | $191,229,799 | $213,953,001 | | |

## 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. Intrastate Access Charges

Access charges are the fees paid by a telecommunications carrier to originate or terminate long-distance calls on another carrier's network. In simple terms, if an AT&T Texas customer calls a Time-Warner customer, AT&T would pay a fee to Time-Warner for connecting the call (terminating the call) to the Time-Warner customer. These fees are typically usage sensitive, that is, they vary according to the number of minutes associated with the 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 CenturyLink-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. The following table illustrates how the rates have decreased.

**Table 13 – Changes in AT&T Texas's Switched Access Rates[87]**

| 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** |

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 and medium-sized ILECs 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 14, the charges range from a total of approximately $0.04 per minute-of-use to as high as $0.13 per minute-of-use; the charges 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.

[87] Texas PUC tariff filings.

**Table 14 – Switched Access Rates of Small and Medium-Sized ILECs[88]**

| 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 |

The level of intrastate switched access rates for small and medium-sized companies has remained unchanged since 2000. Intrastate switched access rates for these companies are generally much higher than their interstate switched access rates. Unless changes are made to these switched access rates of the small and medium ILECs, the difference between the intrastate and interstate rates will provide incentives for arbitrage by carriers that wish to avoid paying the high intrastate rates for originating and terminating long-distance calls in rural areas of Texas. If left alone, the current system would actually deter investment in broadband infrastructure for small and medium-sized companies because of the disparate intra- and interstate switched access rates.

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

[88] Texas PUC tariff filings.

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. There were no changes in December of 2009, and the Commission will not review the statewide average again until the fall of 2011. Table 15 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 15 indicates, the statewide average of switched access charges was cut by 50 percent over a two-year period.

**Table 15 – CLEC Statewide Weighted Average Usage-Sensitive Switched Access Rates[89]**

| 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** |
| | | | |

## 2. 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

[89] Texas PUC tariff filings.

explicit support mechanism, with reductions in the intrastate switched access charges and increased support for carriers that needed it through the TUSF. With the 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 overhead.

Intercarrier compensations rates are typically negotiated as part of the interconnection agreement between LECs. If negotiations are unsuccessful, the 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.[90]

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 cost differences among carriers or call types. This disparity in rates creates opportunities for arbitrage. For instance, differences in intrastate and interstate switched access rates create 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 took steps to address regulatory arbitrage involving traffic to dial-up internet service providers (ISPs). Dial-up ISPs typically receive many more minutes of calls than they place, so CLECs sought to acquire ISP customers to generate revenue by terminating traffic to those ISPs. By providing service to high-volume ISPs, these CLECs generated significant traffic volumes for which other carriers were required to compensate them. 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 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, thus reducing the rate for terminating traffic and treating ISP and non-ISP traffic the same.

The potential for arbitrage caused by intercarrier compensation arrangements that include 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

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

termination rate of $0.006643 charged by AT&T Texas for the termination of long-distance calls. These rates differ by about a factor of ten, and when applied to billions of minutes of use, the impact of this price difference can be significant. For other ILECs in Texas, the disparity is likely to be even greater.

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 to avoid or reduce payments to other carriers.

As noted in Chapter 1 of this report, the FCC's National Broadband Plan includes as one of its goals reform of the intercarrier compensation system. The FCC plans to eliminate per-minute charges while continuing to ensure that providers have an opportunity for adequate cost recovery through a three-stage process. Additionally, the FCC plans to establish an interim solution to address arbitrage.[91]

## D. Homeland Security and Emergency Management

Commission Staff has actively participated in National Association of Regulatory Utility Commissioners meetings discussing the protection of critical infrastructure. 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.

During the 81st Legislative Session, House Bill 1831 amended Subchapter C, Chapter 418, Government Code. This law added a Communications Coordination Group, which facilitates interagency coordination and collaboration to provide efficient and effective planning and execution of communications support to joint, interagency and intergovernmental task forces. The Commission is a member of this group and works at the direction of the Texas Division of Emergency Management on related tasks.

The Commission also participated in updating Annex B of the State of Texas Emergency Management Plan, which is the Communications section of the Plan. The role of the Commission during emergencies as it relates to the telecommunications industry is to monitor the progress of telecommunications companies toward restoring service to affected areas and assessing telecommunications damage from Austin.

## E. 911 service – Next Generation VoIP and Wireless Phase II

Since the 2009 Scope of Competition Report, the Commission has updated its 911 rules.[92] The original rules were adopted at a time when little or no competition for 911 services existed and where the only method of providing 911 services was through legacy Time Division Multiplexing (TDM) networks.

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[91] *National Broadband Plan*, (March 16, 2010).

[92] *Rulemaking Relating to 9-1-1*, Project No. 38047, Order Adopting Proposed Amendments, (October 27, 2010).

In today's 911 services universe, local exchange carriers (LECs) have choices in how they provision access to 911 for their end-user customers and 911 administrative entities now have choices in 911 network services providers. Additionally, advancements in technology including the move toward Next Generation E911 could potentially expand the types of 911 services being offered.

In order to acknowledge technological advancements and evolution to a more competitive 911 network, the Commission adopted new definitions and clarified the roles and responsibilities of 911 service providers to establish a technologically neutral framework for 911 service that will support public safety agencies and provide regulatory oversight consistent with state and federal statutes. The amendments are also intended to help facilitate the migration to an IP-based network, ensure interoperability among various providers, and maintain network integrity and reliability of the emergency 911 system.

## F. Municipal Access Line Fees

Municipalities are permitted to assess a fee to telecommunications providers that install telephone lines in municipal rights-of-way to provide service to retail customers. The Commission is responsible for determining the fees that the municipalities may assess under Chapter 283 of the Local Government Code. Although some interpretations of when and how the fees are to be applied have been necessary over the past four years, the system has been working well since 2000 when it was put into place. However, some significant developments have occurred over the past four years that may require a more thorough review of how the fees are to be assessed and collected in the future. The introduction of two new technologies, cellular telephone service and VoIP services, have completely changed the revenue stream associated with municipal access line fees and have created what some parties believe to be an unmanageable assessment mechanism. In fact, the loss of access lines within municipal boundaries in recent years has resulted in a shortfall in revenues for municipalities. The current basis for assessing the fees is the number of access lines within a municipality.

In 2010, the Commission conducted a rulemaking proceeding to revise the definition of an access line.[93] Over concerns that the rules proposed by Commission staff could have dramatically increased the cost of telecommunications services for small business, the Commission declined to adopt an amendment to the rule on access line fees. The Commission continues to work with stakeholders to formulate a rule that would both ensure that all telecommunications providers are treated equitably and stabilize revenues received by municipalities for the use of rights-of-way.

Below is a table of a sample of municipalities and their associated Category 1, 2, and 3 fees for the first year (2000) and the most recently approved fees for 2010.[94] The

[93] *Rulemaking to Revise the Definition of Access Line and the Categories of Access Lines Pursuant to Local Government Code Chapter 283*, Project No. 37498 (September 28, 2009).

[94] Category 1 fees apply to residential lines, category 2 fees to business lines, and category 3 fees to point-to-point private lines.

municipal right-of-way fees have generally increased for every category for nearly every city since the fees were initiated in 2000, and vary from city to city. It should be noted however that not all fees have increased for every single category for all of the roughly eleven hundred (1,100) municipalities. The City of Irving, for example, currently has a lower Category 3 rate than what was originally established in 2000.

**Table 16 – Municipal Right-of-Way Fees**

| | 2000 Right-of-way fees | | | 2010 Right-of-way fees | | |
|---|---|---|---|---|---|---|
| Municipality | Cat 1 | Cat 2 | Cat 3 | Cat 1 | Cat 2 | Cat 3 |
| City of Abbott | $1.30 | $2.98 | $4.52 | $1.49 | $3.35 | $5.08 |
| City of Big Spring | $0.93 | $1.94 | $1.94 | $1.08 | $2.21 | $2.21 |
| City of Dallas | $1.24 | $5.55 | $11.09 | $1.54 | $6.79 | $13.56 |
| City of Emory | $1.53 | $3.50 | $5.33 | $1.56 | $3.58 | $5.43 |
| City of Frisco | $0.53 | $1.98 | $2.62 | $0.63 | $2.26 | $3.00 |
| City of Granger | $0.18 | $0.41 | $0.62 | $0.25 | $0.50 | $0.74 |
| City of Irving | $0.61 | $1.51 | $18.08 | $1.21 | $2.37 | $14.06 |
| City of Johnson City | $1.54 | $3.54 | $5.39 | $1.68 | $3.86 | $5.83 |
| City of Live Oak | $0.84 | $1.93 | $2.94 | $0.96 | $2.20 | $3.31 |

## 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 service standards for alternate technologies.[95] The Commission solicited written comments and held a public hearing on the matter in March 2006. No new substantive rule was proposed because of insufficient data from stakholders concerning the applicable standards for the evolving alternate technologies. However, 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.[96] Subsequently, the commission adopted Substantive Rule §26.57, in Project No. 31958,

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

[96] *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).

that establishes the standards for using alternate technologies in compliance with PURA § 54.251(c).

All certificate holders that have POLR obligations are required to obtain approval for each type of alternate technology used in providing basic telecommunications service. The new rule establishes the minimum standards for the service quality for the basic telecommunications services, including 911 services, that will be provisioned using the alternate technology; and the amount a certificate holder can charge for services provided by such alternate technology.

To comply with this rule a certificate holder must file a detailed application with the commission demonstrating that it meets the standards established in the rule.

## H. Broadband Over Power Lines (BPL)

Current law authorizes an affiliate of an electric utility or a person unaffiliated with an electric utility to own, construct, maintain, and operate a BPL system.[97] 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.

[97] PURA § 43.051.

# V. CUSTOMER PROTECTION/COMPLAINT ISSUES

Commission rules permit consumers to complain to the Commission about their utility service, and the Commission is required to keep records of the complaints. This chapter discusses the number and types of complaints received.

## A. Complaints Received

As shown in the figure below, complaints remained steady from December 2007 through April 2009. A decline in the number of complaints began in May 2009 has continued through August 2010.

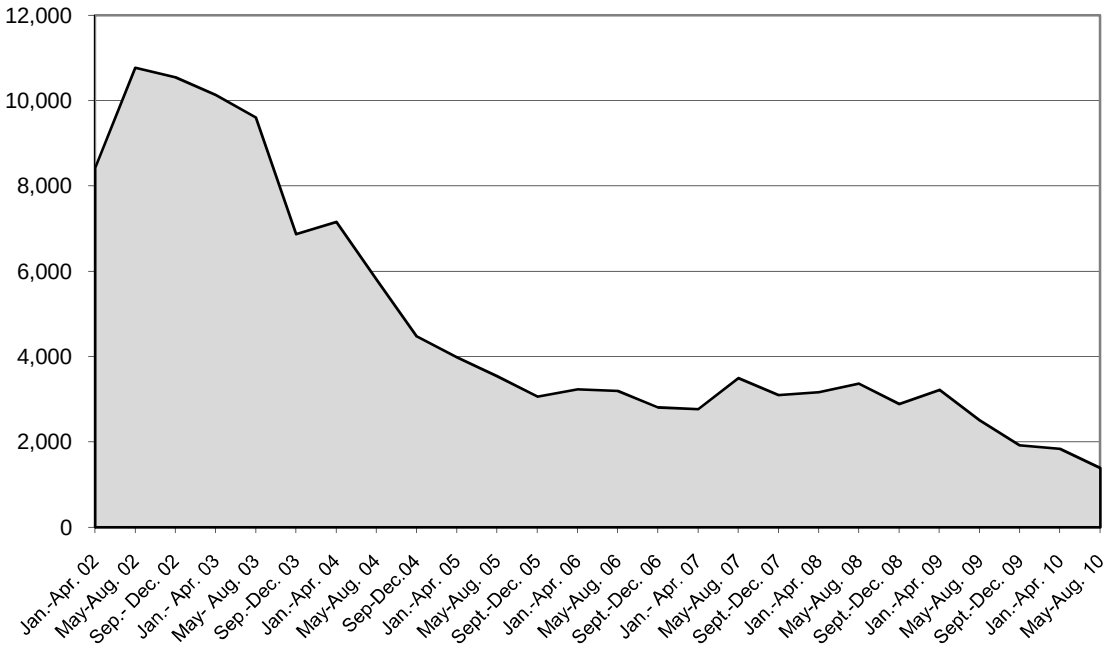


**Figure 18 – Total Telephone Complaints Received January 2002 – August 2010**

## B. Type of Complaints

A total of 14,127 telecom complaints were received over the two-year period from September 2008 through August 31, 2010. Complaints related to the "Texas No Call List" continue to constitute the largest category of telecommunications complaints at 46%. However, this is a 23% decrease when compared with the previous period of September 2006 through August 2008.

Complaints about billing decreased by 45% and complaints about slamming decreased by 33% from the prior two-year period. Slamming is the switching of a

customer's telecommunications service without proper authorization and verification. While smaller decreases occurred in all other complaint categories cramming complaints increased by 40% over the previous period. Cramming is an unauthorized charge on a customer's telecommunications utility bill without proper consent and verification of an authorization from the customer.

The ongoing decline in telephone complaints is also likely due to customers switching from basic telephone service to mobile wireless and broadband services. With the number of wireless subscribers increasing there has been a decrease in land-line subscribers. Because these advanced technologies are not under the jurisdiction of the Commission, customers wishing to file complaints regarding mobile wireless and broadband services must be referred to the Federal Communications Commission (FCC) for assistance.

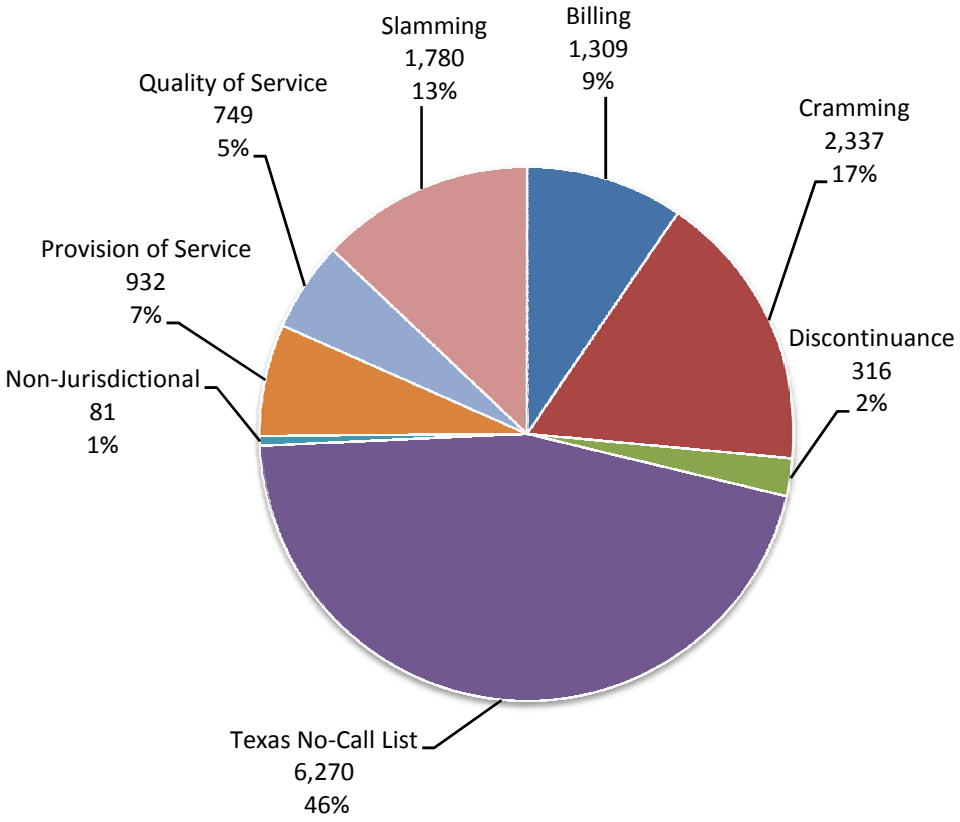


**Figure 19 – Telecommunications Complaints Received September 2006 – August 2010**

# VI. OVERSIGHT AND ENFORCEMENT ACTIONS

The Commission protects consumers, the telecommunications market, and promotes fair competition by enforcing statutes, rules, and orders applicable to entities under its jurisdiction. The Commission's enforcement efforts in the telecommunications industry focus on violations of PURA and the Commission's Substantive Rules.

## A. Commission Oversight and Enforcement Division

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

- Slamming, cramming, and other billing issues
- Improper disconnection or suspension of customers
- Service quality
- Pre-paid calling card issues
- No-Call violations

The Commission's primary enforcement tool is the 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.

## B. O&E Programs and Processes

O&E has set up programs and processes to accomplish oversight of the industries it oversees through coordination with other Commission divisions regarding information on potential violations, and review or audit formal reports submitted to the Commission. The programs may be categorized as follows:

Retail Electric
- Audit of retail electric providers
- Complaint-based investigations
- Other investigations

Wholesale Electric
- IMM-referred market power abuse investigations
- TRE-referred protocol violations
- ERCOT protocol development and revisions

Telecommunications and Miscellaneous
Telecom investigations
No-Call investigations
Service quality

O&E has several sources of information regarding potential telecommunications violations that might generate an investigation by the Division. These include the Customer Protection Division complaint database, 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 may be concluded with a recommendation for action, if needed, or 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 investigation is closed and the Notice of Violation (NOV) process begins.

The first step in the NOV process is to send a Pre-NOV letter to the provider describing the violation and recommending an administrative penalty. The provider has the opportunity to meet with Commission 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 with the Commission for its approval. PURA provides for a three-level classification system for violations that includes a range of administrative penalties. The classification system includes the following factors for determining penalty levels:

- The seriousness of the violation;
- The economic harm caused;
- The history of previous violations;
- The amount of penalty necessary to deter future violations;
- The efforts to correct the violation; and
- Any other matter justice may require.

If the issues are not resolved through a settlement agreement, the Executive Director sends a Notice of Violation to the provider. 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.[98] The SOAH judge issues a proposal for decision that is subsequently ruled on by the Commissioners to determine whether a violation has occurred and, if so, the appropriate penalty.

[98] While in most contested cases the Commission may conduct the hearing, in the Notice of Violation process the hearing must be conducted by a SOAH judge.

## C. Administrative Penalty Activity

During the period from January 2009 through December 2010, the Commission assessed over $8.5 million in penalties on, or reimbursements from, telecommunications market participants. In total during 2009 and 2010, Commission Staff opened 21 investigations for the telecommunications industry and closed 12 investigations. An investigation is considered closed if it has either been closed with no NOV having been issued, or when an NOV has been issued.

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# VII. LEGISLATIVE RECOMMENDATIONS

## 1. Statutory Test for Determination of Whether a Market is Sufficiently Competitive to be Deregulated

PURA § 65.052 sets forth the conditions under which a market with a population between 30,000 and 100,000 must be deregulated by the Commission. This section requires that a market must be deregulated if there are at least three wireline telecommunications providers offering residential service and one wireless service provider that are not affiliated with the incumbent. At the time that this formula was promulgated by the legislature (2005), it was common for competitive local exchange carriers to offer mass market residential service by reselling service offered by incumbent local exchange carriers (ILECs) under FCC rules. ILECs were required to offer for sale to competitive LECs (CLECs) the so-called UNE-P (unbundled network element platform), which combined local switching, local transport, loops and other elements into a complete service offering. Since that time, the FCC eliminated the requirement that ILECs offer the local switching unbundled network element. The result has been that CLECs have largely exited the residential service market, and today primarily serve business customers.

At the same time, ILECs have faced robust competition from facilities-based CLECs, mainly cable operators, and from wireless telephone providers. As shown earlier in this report, wireline telephone lines provided by ILECs have declined steadily in the past decade. But in many markets competition is between three telecommunications providers rather than the four or more contemplated by PURA § 65.052.

In light of the evident competition faced by ILECs, the staff of the Sunset Advisory Commission recommended in its report that the statutory test contained in PURA § 65.052 be eliminated, and that the Commission be authorized to adopt rules to determine when a market with a population between 30,000 and 100,000 should be deregulated. Although the Sunset Advisory Commission ultimately did not adopt its staff's recommendation, this Commission believes that the test currently contained in PURA is out-of-date, and recommends that the legislature adopt changes to PURA that would permit the Commission to consider the current state of competition and adopt a new standard to determine whether a market should be deregulated.

## 2. Modifications to the Texas Universal Service Fund

Because of both the slow economy and changing customer behavior, TUSF revenues have decreased dramatically in the past year. As customers rely more on texting and email than on voice telecommunications, there are fewer revenues to be assessed to support the various programs in the TUSF. If current trends continue, the reserve balance in the fund will decrease from $125 million today to $30 million by the end of 2011, and will be negative in 2012.

At the same time, the FCC has signaled its intent to transition the federal universal service fund (FUSF) from support of the traditional voice network to instead support the construction of broadband networks where it otherwise would not be profitable to do so.[99] If changes in the FUSF result in a reduction in the revenues available for high-cost support for telephone companies in Texas, PURA § 56.025(c) requires the Commission to make up such a reduction through the TUSF. The Commission thus could be faced with the unattractive prospect of constantly raising the TUSF assessment to account for decreasing revenues and/or a reduction in federal high cost support. As noted earlier, in April, 2008, the Commission approved an agreement whereby the largest telephone companies will reduce, over a period of four years beginning in January 2009, the amount of support that they receive from the TUSF by $144.35 million, in return for the ability to raise rates for basic local exchange telephone service. This agreement slowed the pace of the depletion of the TUSF reserve, but did not solve the problem.

In light of these developments, the Commission recommends that the legislature consider whether the TUSF should be continued in its current form or whether changes, either to the programs currently supported by the fund or to the entities that are subject to assessment to support the fund, would be warranted at the time that the current agreement relating to the large telephone companies expires.

[99] *In the Matter of Connect America Fund, A National Broadband for our Future High Cost Universal Service Support,* NOI and NPRM, FCC 10-58 (April 21, 2010).

## 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.[100] 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. Because of the issues associated with providing competitively sensitive information to the Commission, CLECs, ILECs, and video providers were allowed to use aggregators to represent groups of companies and report the requested information to the Commission in an aggregated form.

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 close congruence of the total of 8,223,196 lines as of July 2010 reported to the Commission with 9,333,000 lines reported by the FCC as of June 2010 (the number of lines is understood to be decreasing over time).[101]

The form collected both aggregated and disaggregated information on the number of retail basic local telephone service 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 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.

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[100] *Report to the Legislature on the Scope of Competition in the Telecommunications Market of Texas – 2010 Data Collection*, Project No. 38263, Data Request Order (July 8, 2010).

[101] *Local Telephone Competition Report* at Table 7 (September 2008).

To obtain a historical context, the 2008 data were supplemented with data from the 2007 data request. Data for this report also came from three FCC reports on competition in the local telephone service, providing 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. In addition, broadband service providers were asked to provide information on the number of subscribers to broadband service, by technology for each census tract in which they provide service.

Video and cable 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 providers.

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 | | | | |
| CenturyLink | 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 | | | |
| CenturyLink | 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 | | | |
| CenturyLink | Nolanville | | | | | |

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## Appendix C. Incumbent Local Exchange Carriers

| ILECs | Chapter 65 Status | Incentive Regulation Election/PURA Chapter |
|---|---|---|
| AT&T Texas (formerly Southwestern Bell) | Transitioning | Chapter 58 |
| CenturyLink – 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 52 |
| 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 |
| CenturyLink – 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) |

| ILECs | Chapter 65 Status | Incentive Regulation Election/PURA Chapter |
|---|---|---|
| Hill Country Telephone Cooperative, Inc. | Regulated | Chapter 52 |
| 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 |
|---|---|---|
| Delhart Corporation d/b/a Republic Communications | 4/28/2010 | Granted |
| Buford media Group, LLC d/b/a ALLIANCE COMMUNICATIONS NETWORK II | 1/21/2010 | Granted |
| Westex Telecom | 1/7/2010 | Granted |
| Telcom Supply, LLC. | 12/28/2009 | Granted |
| Centrovision, Inc. | 10/6/2009 | Granted |
| Kilgore Video, Inc. | 7/17/2009 | Granted |
| Brazos Cable TV | 6/25/2009 | Granted |
| HCS Cable T.V., Inc. | 6/18/2009 | Granted |
| Versalink Enterprises, LLC | 4/14/2009 | Granted |
| RB3, LLC | 1/14/2009 | Granted |
| ArkloakTex, LLC | 1/14/2009 | Granted |
| Hill Country Telecommunications, LLC | 12/15/2008 | Granted |
| Windjammer Communications LLC | 11/7/2008 | Granted |
| Central Texas Cable Partners, Inc. d/b/a Reveille Broadband | 10/7/2008 | Granted |
| Coastal-Link Communications, LLC. | 8/13/2008 | Granted |

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

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## Appendix E. TUSF Programs

**Texas High-Cost Universal Service Plan (THCUSP)** – provides financial assistance to eligible telecommunications providers (ETPs)[102] 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.

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[102] 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.

**Service to Uncertificated Areas** – provides financial assistance to ETPs that provide voice-grade services to premises that are not included within certificated areas. 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)[103]

| TUSF Program Disbursements | FY 2004 (Actual) | FY 2005 (Actual) | FY 2006 (Actual) | FY 2007 (Actual) | FY 2008 (Actual) | FY 2009 (Actual) | FY 2010 (Actual) | Percent of Total USF (FY 2010) |
|---|---|---|---|---|---|---|---|---|
| Texas High Cost Universal Service Plan (THCUSP) | 440,643,128 | 431,880,066 | 425,383,884 | 420,207,703 | 393,876,729 | 362,533,758 | 302,160,330 | 65.47% |
| Small and Rural ILEC Universal Service Plan (High Cost) | 99,514,307 | 98,239,843 | 95,440,073 | 93,111,431 | 90,270,094 | 86,021,726 | 82,593,449 | 17.89% |
| Texas Relay Service | 10,631,171 | 8,375,622 | 6,969,244 | 6,098,570 | 4,429,161 | 3,805,628 | 6,341,118 | 1.37% |
| Lifeline | 21,529,197 | 27,459,478 | 26,034,089 | 26,455,745 | 34,562,621 | 40,402,162 | 41,926,141 | 9.08% |
| Specialized Telecommunica-tions Assistance Program | 3,315,463 | 3,589,626 | 7,126,452 | 6,782,605 | 9,577,807 | 11,388,335 | 17,179,540 | 3.72% |
| Implementation of PURA § 56.025 | 4,680,411 | 4,728,275 | 4,699,968 | 4,633,812 | 4,549,439 | 4,519,458 | 4,485,355 | 0.97% |
| USF Reimbursement for Certain IntraLATA Services | 1,984,816 | 1,998,737 | 1,844,331 | 1,853,683 | 1,931,418 | 2,188,285 | 2,282,776 | 0.49% |
| Additional Financial Assistance (AFA) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| Service to Uncertificated Areas | 0 | 12,507 | 372 | 0 | 0 | 0 | 0 | 0.00% |
| Tel-Assistance | 0 | 0 | 0 | 0 | 5,629 | 11,712 | 10,391 | 0.00% |
| TCDHH | 592,599 | 578,048 | 685,166 | 739,481 | 675,421 | 727,986 | 718,500 | 0.16% |
| PUC | 466,964 | 342,537 | 429,930 | 415,930 | 635,902 | 472,960 | 460,247 | 0.10% |
| Other | 2,112,874 | 2,312,245 | 2,321,585 | 262,800 | 346,566 | 837,771 | 422,891 | 0.09% |
| Solix-LIDA/TUSF | 780,000 | 804,000 | 828,000 | 2,087,881 | 2,671,893 | 3,010,746 | 2,978,664 | 0.65% |
| **TOTAL USF** | **586,250,930** | **580,320,984** | **571,763,094** | **562,649,641** | **543,532,680** | **515,920,527** | **461,559,402** | **100%** |

[103] Solix Reports.

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# Appendix G. Federal Rules and Proceedings

| DATE | PROCEEDING OR CASE | DESCRIPTION |
|---|---|---|
| February 1996 | Federal Telecommunications Act of 1996, Pub. L. 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);<br>*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*);<br>*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.<br>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.<br>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. |
| 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);<br>*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. |

| DATE | PROCEEDING OR CASE | DESCRIPTION |
|---|---|---|
| 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.<br>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.<br>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.<br>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. |

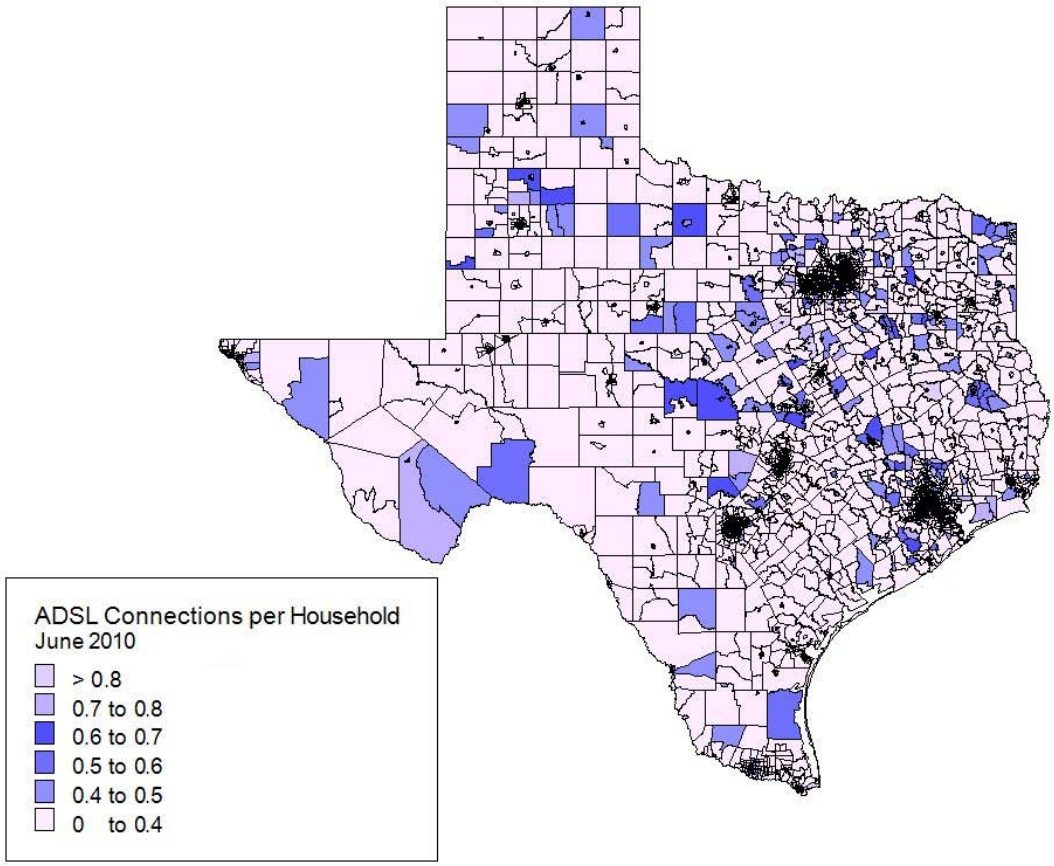
| DATE | PROCEEDING OR CASE | DESCRIPTION |
|---|---|---|
| March 2007 | *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and 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.<br>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.<br>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.<br>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.<br>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.<br>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.<br>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. |

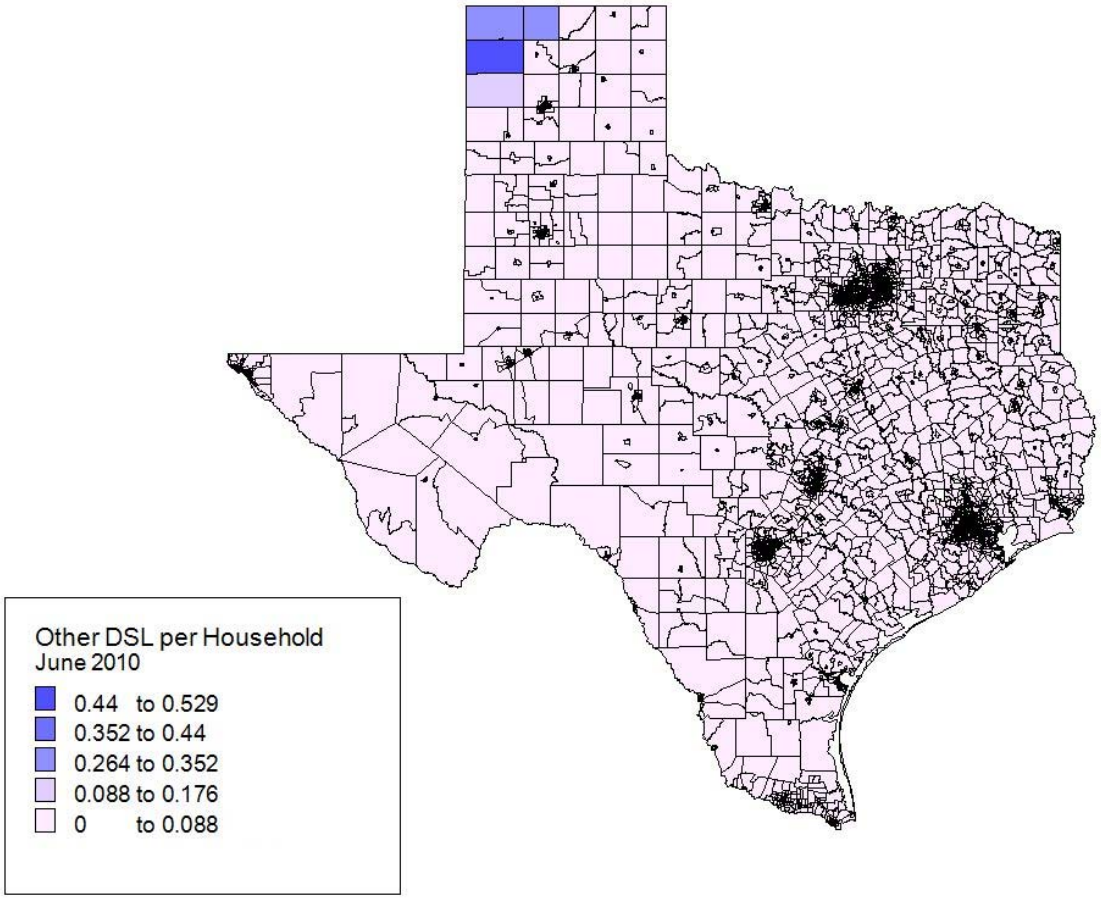
| DATE | PROCEEDING OR CASE | DESCRIPTION |
|---|---|---|
| March 2010 | Federal Communications Commission, *Connecting America: The National Broadband Plan*. | In March, 2010, the FCC released the "National Broadband Plan," a sweeping initiative to accelerate the deployment and adoption of high-speed broadband technology throughout the nation. The plan sets as goals that 100 million households should have access to 100 megabits per second broadband, that all households in the U.S. should have access to affordable, robust broadband service, and the means and skill to subscribe, that all communities should have access to 1 gigabit per second broadband service at anchor institutions such as hospitals, libraries, and government buildings, that all first responders should have access to a wireless, interoperable broadband network, and that every American should be able to use broadband service to track energy usage. |
| April 2010 | *In the Matter of Connect America Fund A National Broadband Plan for Our Future High-Cost Universal Service Support*, WC Docket No. 10-90, Notice of Inquiry and Notice of Proposed Rulemaking. | This proceeding represents one of the first steps in implementing the National Broadband Plan. The NOI seeks comment on the use of a model to determine the relationship between costs and revenues of broadband networks in underserved areas. The NPRM proposes to reduce funding for legacy telecommunications networks by limiting the number of carriers eligible for support and transitioning the Federal Universal Service Fund to support only the construction and operation of broadband networks. |
| June 2010 | *In the Matter of Framework for Broadband Internet Service*, GN Docket No. 10-127, Notice of Inquiry. | In 2007, the FCC received a complaint that Comcast was secretly degrading certain internet users' transmissions. In 2008, the FCC instructed Comcast to cease this practice, and to make public any network management techniques that it employs. Comcast appealed the FCC's order, and in April of 2010, the D.C. Circuit Court of Appeals found that the FCC had exceeded its authority in its order to Comcast. This proceeding was initiated by the FCC to find a means to reinstate the Commission's authority to require nondiscrimination in the handling of internet traffic by internet service providers. It proposes to classify the transmission component of internet access service as a telecommunications service, and to apply specific provisions of the Telecommunications Act applicable to telecommunications carriers to internet service providers, while forbearing from enforcing the remaining provisions of the Act to such providers. |

# Appendix H. Broadband Subscribership by Technology Type

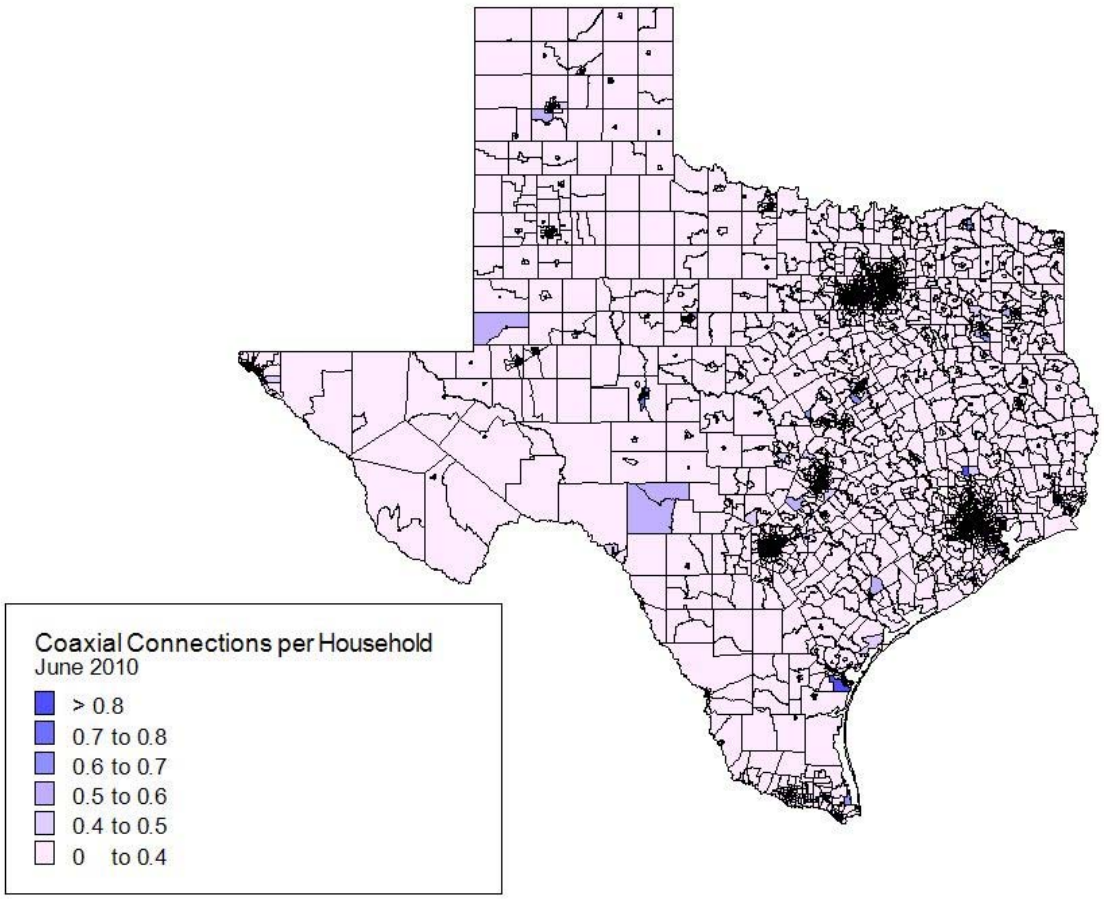
## ADSL Connections per Household



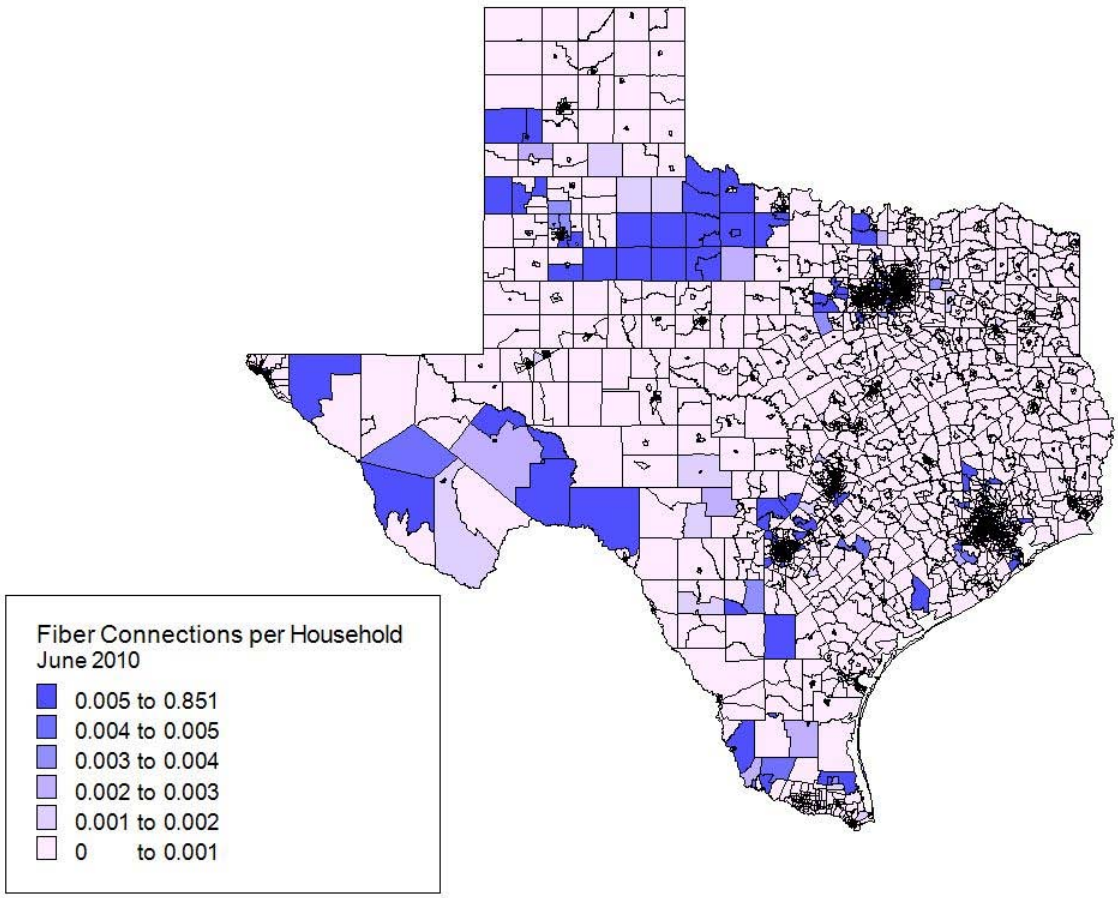
## Other DSL Connections per Household



## Coaxial Connections per Household



## Fiber Connections per Household



## Fixed Wireless Connections per Household