SUBJECT: Universal Service Fund payments to certain telephone companies

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Cook, Giddings, Farrar, Frullo, Geren, Harless, Huberty, Smithee, Sylvester Turner

0 nays

4 absent — Craddick, Hilderbran, Menéndez, Oliveira

SENATE VOTE: On final passage, April 17, 2013 — 30-1 (Fraser nay)

WITNESSES: For — (*Registered, but did not testify*: Jose Camacho, Texas Telephone Association; Byron Campbell and Drew Campbell, TW Telecom; Donna Chatham, Association of Rural Communities in Texas; Velma Cruz, Sprint; Robert Digneo, AT&T; David Eichler and Eric Glenn, Windstream Communications; Rob Eissler, Consolidated Communications; Daniel Gibson, Texas Statewide Telephone Cooperative, Inc.; Rick Hardcastle, Texas Statewide Telephone Co-Ops; Sheri Hicks, TEXALTEL; Helen Knaggs, Small Rural USF Coalition; Richard Lawson, Verizon; Stephen Minick, Texas Association of Business; Scott Stringer, CenturyLink; Catherine Webking, Texas Rural Cooperative CLECs; Shayne Woodard, Big Bend Telephone Company)

Against — None

On — (*Registered, but did not testify*: Pam Whittington and Joseph Younger, Public Utility Commission of Texas)

BACKGROUND: The Utilities Code directs the Public Utility Commission (PUC) to regulate phone companies based on their rates of return. It provides a framework for deregulation where the market establishes rates, and it creates incentive-based regulation for companies that do not wish to be deregulated but desire flexibility to make certain investments and business decisions not available under ch. 53.

Utilities Code, sec. 56.022 provides funding for the Universal Service

Fund (USF) through a statewide uniform charge in the form of a 4.3 percent fee payable by consumers on landlines and wireless services through telecommunications providers. The PUC determines the uniform charge rates and the services to which it applies.

Utilities Code, sec. 56.021 governs the USF which requires telecommunications companies to charge a universal service fee to help finance or reimburse providers for programs such as:

- providing telephone service at reasonable rates to high-cost rural areas across the state;
- reducing the cost of specialized telephone equipment and services for deaf, blind, or speech-impaired individuals; and
- providing “lifeline” services or discounts on telephone installation and monthly service for eligible low-income customers.

The USF has two plans to assist local phone companies in providing service in high-cost rural areas — the Texas High Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan, both established in 1999. They provide assistance to local telephone companies that provide lines in high cost of service areas based on the number of high-cost lines a provider serves. The funds differ in that the Texas High Cost Universal Service Plan supports larger companies.

The state’s two largest telephone companies — AT&T and Verizon — have entered into agreements with the Public Utility Commission (PUC) to forgo, as part of a deregulation process, USF payments by January 1, 2017, by which time the companies will be deregulated under Utilities Code, ch. 65 and PUC final order.

An incumbent local exchange carrier (ILEC), sometimes called a “legacy carrier,” is a telecommunications provider that historically had been regulated in the Texas market. Each ILEC holds a certificate of convenience and necessity (CCN), which requires it to provide service to all areas of an exchange.

A competitive local exchange carrier (CLEC) is a nonincumbent company operating in an exchange providing competition ILECs.

DIGEST:

CSSB 583 would provide for a reduction in universal service high-cost program support for large and medium-sized local exchange carriers, with limitations and the right to appeal reductions in cases of demonstrated need. The bill would provide continued support for smaller telecommunication companies for four years.

ILECs receiving Texas High Cost Universal Service Plan payments. The bill would establish a graduated reduction schedule for an ILEC or cooperative serving more than 31,000 access lines on September 1, 2013 — other than AT&T and Verizon — and participating in the Texas High Cost Universal Service Plan. The reductions would be based on funds received from the Texas High Cost Universal Service Plan on December 31, 2016. The funds would be reduced by:

- 75 percent on January 1, 2017, from December 31, 2016 levels;
- 50 percent on January 1, 2018, from December 31, 2016 levels; and
- 25 percent on January 1, 2019, from December 31, 2016 levels.

Demonstrated need for continued support from the Texas High Cost Universal Service Plan. The bill would require the PUC to develop rules, criteria and standards for an ILEC or cooperative to demonstrate that the company had a financial need for continued support for residential lines from Texas High Cost Universal Service Program.

The amount the PUC could provide would be capped so as not to exceed:

- 100 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;
- 75 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;
- 50 percent of the amount of support the company or cooperative was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or
- 25 percent of the amount of support that the company or cooperative was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.

A company would be eligible to file only one petition. Determinations of continued need would be made through contested case hearings. The PUC would be required to make a determination within 330 days of the petition filing. Until the commission issued its final order, a company would be entitled to receive the total amount of support the company or cooperative was eligible to receive on the date the company or cooperative filed the petition. After the PUC had issued its final order, the company would be eligible for continued support at the level established by the PUC within the caps described above.

ILECs receiving payments through the Small and Rural Incumbent Local Exchange Company Universal Service Plan. The bill would establish a graduated reduction schedule for an ILEC or a cooperative participating in incentive regulation or an infrastructure plan that served more than 31,000 access lines on September 1, 2013 and participated in the small and rural ILEC's universal service plan. The reductions would be based on the funds that would be received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan on December 31, 2017. The funds would be reduced by:

- 75 percent on January 1, 2018 from December 31, 2017 levels;
- 50 percent on January 1, 2019 from December 31, 2017 levels; and
- 25 percent on January 1, 2020 from December 31, 2017 levels.

Demonstrated need for continued support for companies receiving payments from the Small and Rural Incumbent Local Exchange Company Universal Service Plan. Carriers and cooperatives would have similar rights of appeal under PUC-developed rules and contested cases as companies seeking continued support from the Texas High Cost Universal Service Plan (see above), except that the cap would be imposed one year later. The amount the PUC could provide would be capped so as not to exceed:

- 100 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;
- 75 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;
- 50 percent of the amount of support the company or cooperative

was eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2018, and before January 1, 2019; or

- 25 percent of the amount of support that the carrier or cooperative was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.

Deadline for rulemaking to demonstrate need for continued payments from either plan. The PUC would be required to start the rulemaking process by January 1, 2014, and adopt rules by December 1, 2014.

Support for small carriers (31,000 access lines or fewer). Small or rural ILECs, unless they were participating in incentive deregulation or an infrastructure plan, would be entitled to USF support that was adjusted based initially on the support received on January 1, 2013, and then adjusted by a percentage change of the consumer price index.

CLEC support. The bill would provide that if an ILEC or cooperative became ineligible for support from the Texas High Cost Universal Service Program, a CLEC would be eligible to continue to receive support for 24 months after the local exchange provided or cooperatives ceased to receive support. The support would be provided at the same level in effect for that competitive exchange as of the date the carrier or cooperative ceased to receive funding in that exchange. If the competitor was a cooperative or an affiliate of a cooperative, the competitor would continue to receive support until December 31, 2017, at which point support would cease.

Make-whole provisions. The PUC would be required to adopt rules to protect USF payments in certain circumstances for an ILEC or cooperative that served 31,000 or fewer access lines and, as of June 1, 2013, had opted not to participate in incentive deregulation or an infrastructure plan. Circumstances could include a significant drop in assistance from the federal government universal service fund.

Determination of need contested case authority. The bill would grant the commission authority to conduct rate case hearings to determine high-cost support.

Existing dockets. CSSB 583 would provide that nothing in Utilities Code, sec 56.023, as amended by the bill, would affect a company’s obligations under PUC Docket No. 40521 (final order regarding AT&T, Verizon, and other large companies) and PUC Docket No. 41097 (current rate rebalancing procedures for smaller companies).

Limitations on PUC authority. The bill would prohibit the PUC from reducing USF support beyond the reductions specified in CSSB 583.

Information requests, confidential business information, and nondisclosure. A telecommunications provider would be required to file with the commission the provider's annual earnings report:

- if the provider was not a local exchange company participating in a total reduction support plan or had decided to opt out of receiving universal service fund payments;
- served more than 31,000 lines; and
- received support from the Texas High Cost Universal Service Plan.

The report would be confidential and not be subject to public disclosure.

Effective date. This bill would take effect June 1, 2013, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the Legislature (August 26, 2013, if the Legislature adjourned sine die on May 27).

SUPPORTERS SAY:

CSSB 583 would allow the Texas Universal Service Fund to continue to support various programs, including providing financial support to telecommunications companies of various sizes in rural or high-cost areas, while gradually reducing the amount of support certain companies received unless they demonstrated need. The approach in the bill eventually would lead to lower USF costs, while maintaining support for high-cost rural areas, as the state's population continues to trend more urban and suburban.

CSSB 583 would reduce the USF by nearly $100 million by 2017, and ensure that the need by certain companies for any funding beyond 2017 was demonstrated to the PUC. Because the fund is paid by consumers who use wireless and line phone services, getting the fund to the right size is critical.

The bill would provide guidance to the PUC and telecommunication companies and provide certainty to companies regarding the USF. Its provisions have been agreed to by large, medium, and small telephone companies and cable providers. For the state's two largest companies —

AT&T and Verizon — which already have agreed to receive zero USF support as part of the companies' efforts to deregulate, the bill would maintain the plan that they agreed to with the PUC.

For medium-sized phone companies, the bill would maintain the reductions in funding that were agreed to in a settlement at the PUC last year. The bill would look beyond that four-year settlement. Beginning in 2017, funding for these companies would be based on a showing at the PUC of their financial need for continuing to receive USF support.

For very small companies, serving 31,000 lines or fewer, SB 583 would maintain their funding and allow increases based on inflation. Depending on the overall receipts of USF fees coming into the state, the bill could result in a lower costs to consumers.

For competitive local exchanges that receive high-cost funding today in service areas of larger incumbent companies in which they compete, the bill would provide security of several more years of funding, even if the local exchanges eventually received no USF funding under the bill.

OPPONENTS SAY:

The bill could result in a slight increase in costs to consumers of medium-sized phone companies as USF support was decreased. The gradual reductions in USF support should be calibrated so that no consumer would be disproportionately affected.

NOTES:

The Senate-passed version of CSSB 583 differs from the House committee substitute in that if an ILEC or cooperative had become ineligible for the Texas High Cost Universal Service Program under the Senate version, a CLEC would have been eligible to continue to receive support for a period of 48 months, rather than the 24 months provided in the House committee substitute. Under the House committee substitute, a CLEC that was a cooperative would be entitled to receive monthly per-line USF support from the date the ILEC stopped receiving support through December 31, 2017.

The committee substitute does not contain a provision in the Senate version that would have required a standing committee of the Senate with primary jurisdiction over telecommunications to conduct an interim study regarding CLECs.