

## BILL ANALYSIS

Senate Research Center

S.B. 1829  
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Business & Commerce  
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### DIGEST AND PURPOSE

Currently, when a telecommunications provider goes out of business there is no provision for the Public Utility Commission (PUC) to name a company to take over service in the area. This may create safety and reliability concerns for the customers of the outgoing telecommunications provider if they no longer have a provider of local phone service. As proposed, S.B. 1829 authorizes PUC to name a provider of last resort to provide telecommunications service to customers whose telecommunications provider has gone out of business.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 54.251, 54.252, and 54.253 of Title II, Subtitle C, Chapter 54F, Utilities Code, as follows:

Sec. 54.251. (b) Provides that, unless specifically determined otherwise by the Public Utility Commission of Texas (PUC) pursuant to this subchapter, the holder of a certificate of convenience and necessity for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area.

Sec. 54.252. (a) Replaces the phrase "unless the commission issues a certificate of convenience that the present and future convenience and necessity will not be adversely affected" with "except to the extent otherwise ordered by the commission pursuant to this subchapter."

Sec. 54.253. (b) Requires a telecommunications utility, before the utility ceases operations or discontinues an optional service, to, in the manner required by PUC, give notice of the intended action to certain individuals and entities.

(d) Prohibits the telecommunications utility from ceasing operations in its certificated area unless PUC authorizes the utility to cease operations and another provider of basic local telecommunications services has adequate facilities and capacity to serve the customers in the certificated area or the utility is an exiting utility under Section 54.262, and it acts in good faith to provide for a transition of its existing basic local telecommunications service customers to another holder of a certificate for that area. Deletes language authorizing PUC to authorize an utility to cease operations.

SECTION 2. Amends Title II, Subtitle C, Chapter 54, Utilities Code, by adding Subchapter G, as follows:

#### SUBCHAPTER G. PROVIDER OF LAST RESORT

Sec. 54.262. DEFINITIONS. Defines "exiting utility," "provider of last resort," and

“successor utility.”

**Sec. 54.263. PROVIDER OF LAST RESORT - FACILITIES-BASED PROVIDERS.**

(a) Authorizes the holder of a certificate of convenience and necessity to petition PUC for an order relieving it of its provider of last resort designation in that geographic area, notwithstanding any other provision of this title, if a telecommunications utility installs facilities to serve customers located in a defined geographic area for the provision of telecommunications services including basic local telecommunications service at a time before the holder of the certificate of convenience and necessity installs facilities to serve customers located in that geographic area.

(b) Requires the holder of the certificate of convenience and necessity to be relieved of the obligations of provider of last resort for a defined geographic area, and another facilities-based telecommunications utility to be designated as provider of last resort, upon PUC's determination of certain information.

(c) Requires PUC to complete proceedings necessary to make the determinations set forth in this section within 90 days of the filing of the petition.

**Sec. 54.264. SUCCESSOR TELECOMMUNICATIONS UTILITY WHERE NO**

**SUFFICIENT FACILITIES EXIST.** (a) Provides that when PUC obtains notice as required under Section 54.253 or otherwise that a utility intends to become an exiting utility as defined in Section 54.262, then PUC is required to open a contested case proceeding for the purpose of determining certain information.

(b) Requires PUC, upon designation under this section, where applicable, to provide the successor utility a reasonable time in accordance with industry practices to modify, construct, or obtain facilities necessary to serve the customers of the telecommunications utility seeking to cease operations in all or part of the utility's certificated area and an exemption on a transitional basis from any obligation to unbundle its network elements or to provide service for resale within that defined geographic area for a period of nine months or such other reasonable period of time as may be authorized by PUC to modify the network to provide such unbundling or resale.

(c) Requires a customer within the defined geographic area to be deemed to have applied for service from the successor utility upon the effective date of the utility's designation as the successor utility by PUC. Requires that such customer enjoy all of the rights, privileges and obligations of being a customer of the successor utility, including but not limited to, being subject to the successor utility's applicable terms and conditions of service as specified in tariff or contract.

**Sec. 54.265. ABANDONMENT OR CESSATION BY FACILITIES PROVIDER -**

**EMERGENCY RESTORATION.** (a) Authorizes PUC, upon its own motion or upon the petition of an interested party, to institute an expedited proceeding under this section upon a finding that a holder of a certificate of operating authority or service provider certificate of operating authority is the predominant provider of basic local telecommunications service in a defined geographic area where the holder provides such service using its own facilities and where no other telecommunications utility has facilities sufficient to provide basic local telecommunications service in that geographic area, and the holder of the certificate of operating authority or service provider certificate of operating authority has ceased providing basic local telecommunications service to its customers in a defined geographic area or abandoned the operation of its facilities in a geographic area used to provide basic local telecommunications service.

(b) Authorizes PUC, in a proceeding under this section, to declare an emergency to exist and issue those orders necessary to protect the health, safety and welfare of affected customers of the utility in order to expedite the restoration and continuation of basic local telecommunications service to affected customers.

Authorizes such orders to include certain provisions.

(c) Authorizes PUC, in a proceeding under this section, to designate a successor utility pursuant to Section 54.263.

Sec. 54.266. COMMISSION PARTICIPATION IN BANKRUPTCY PROCEEDINGS. Authorizes PUC, upon written notice that a certificated telecommunications utility has filed a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy, to inform the appropriate court and parties of its interest in obtaining notice of proceedings. Authorizes PUC, within the time prescribed by the applicable statutes, rules, and court orders, to intervene and participate in any bankruptcy proceedings that may affect customers or providers of telecommunications services in this state.

SECTION 3. Amends Sections 56.021 and 56.023, Title II, Subtitle C, Chapter 56A, Utilities Code, as follows:

Sec. 56.021. Includes “reimburse a successor utility under Subchapter G” in the list requiring PUC to adopt and enforce rules requiring local exchange companies to establish a universal service fund to.

Sec. 56.023. (d) Requires a successor utility under Section 54.264 which is or becomes an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, to be entitled to receive universal service fund distributions for costs defined in Section 56.302.

(e) Created from existing text.

SECTION 4. Amends Title II, Subtitle C, Chapter 56, Utilities Code, to add Subchapter G, as follows:

#### SUBCHAPTER G. FUNDING SUCCEEDING UTILITIES.

Sec. 56.301. PROVIDERS ELIGIBLE TO RECEIVE USF PURSUANT TO THIS SUBCHAPTER. Authorizes only a provider eligible to receive universal service funds under Section 56.023(b) and designated as the successor utility pursuant to Sec. 54.263 to receive funds under this subchapter.

Sec. 56.302. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO BE RECOVERED. Requires PUC, at the time PUC designates the successor utility pursuant to Section 54.264, to determine the extent to which the successor utility should recover its costs that will be incurred by the successor utility in accepting and establishing service to the affected service area. Requires PUC, in making this determination, to consider, among other things, the costs of acquiring and restoring or upgrading the facilities in the geographic area necessary to make the facilities both compatible with those of the successor utility in its other certificated areas, and comply with PUC quality of service standards.

Sec. 56.303. RECOVERY OF COSTS. Requires the PUC order designating the successor utility pursuant to Section 54.264 to authorize the successor utility to recover those costs determined pursuant to Section 56.302. Authorizes these costs to be amortized and recovered from the state universal service fund, together with interest at the prevailing commercial lending rate on a certain date.

SECTION 5. Effective date: September 1, 2003.