

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 985
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Voice over Internet Protocol (VoIP) is a telephone call that travels over the Internet. It is an application that uses a broadband Internet connection to transmit voice telecommunications service. With the exception of one contract arbitration case delegated to the Public Utility Commission of Texas (PUC) from the Federal Communications Commission (FCC), PUC has not taken action relative to VoIP. C.S.S.B. 985 codifies longstanding state policy by explicitly exempting Internet Protocol (IP)-enabled services and VoIP from state regulation regarding rates, service, terms, conditions, or market entry.

In 2004, the FCC ruled that a type of Internet telephone service offered by Vonage (Digital Voice) is not subject to traditional state public utility regulation, and indicated that other types of IP-enabled services with basic characteristics similar to DigitalVoice also would not be subject to state regulation. This rule was upheld by the Eighth Circuit Court of Appeal in March 2007, with a decision that the agency charged with overseeing the industry, the FCC, should make the decisions regarding regulations.

C.S.S.B. 985 creates Sections 51.002(3-a) and (13) to define IP-enabled services and VoIP. The bill also codifies standing state policy by prohibiting state regulation of rates, service, terms, conditions or market entry for IP-enabled services and VoIP. The bill clarifies that new sections do not affect payment of right-of-way fees on VoIP under Chapter 283 (Management of Public Right-of-Way Used by Telecommunications Provider in Municipality), Local Government Code, obligations for the provision of video service, or require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on VoIP.

C.S.S.B. 985 amends current law relating to the regulation of Voice over Internet Protocol service.

RULEMAKING AUTHORITY

Rulemaking authority is expressly prohibited by a department, agency, or political subdivision of this state in SECTION 2 (Section 52.002, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.002, Utilities Code, by adding Subdivisions (3-a) and (13), to define, respectively, "Internet Protocol enabled service" and "Voice over Internet Protocol service."

SECTION 2. Amends Section 52.002, Utilities Code, by adding Subsections (c) and (d), as follows:

(c) Prohibits the Public Utility Commission of Texas (PUC) from requiring a telecommunications utility that is not a public utility, including a deregulated or transitioning company, to comply with a requirement or standard that is more burdensome than a requirement or standard PUC imposes on a public utility.

(d) Prohibits a department, agency, or political subdivision of this state, notwithstanding any other law, by rule, order, or other means from directly or indirectly regulating rates

charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice over Internet Protocol (VoIP) services or other Internet Protocol (IP)-enabled services. Provides that this subsection does not:

- (1) affect requirements pertaining to use of a right-of-way or payment of right-of-way fees applicable to VoIP services under Chapter 283 (Management of Public Right-of-Way Used by Telecommunications Provider in Municipality), Local Government Code;
- (2) affect any person's obligation to provide video or cable service, as defined under applicable state or federal law;
- (3) require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on VoIP service;
- (4) affect any entity's obligations under Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), or a right granted to an entity by those sections;
- (5) affect any applicable wholesale tariff;
- (6) grant, modify, or affect the authority of PUC to implement, carry out, or enforce the rights or obligations provided by Section 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), or of an applicable wholesale tariff through arbitration proceedings or other available mechanisms and procedures;
- (7) require or prohibit payment of switched network access rates or other intercarrier compensation rates, as applicable;
- (8) limit any PUC authority over the subjects listed in Subdivisions (1)-(7) or grant the PUC any authority over those subjects; or
- (9) affect the assessment or collection of a tax or fee over which the comptroller has authority.

SECTION 3. Effective date: September 1, 2011.