

BILL ANALYSIS

Senate Research Center

C.S.S.B. 586
By: Perry
Business & Commerce
4/6/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current statutory arrangement for the small and rural telephone companies will expire on September 1, 2017. Without the passage of new legislation, the 45 small and rural telephone companies impacted will immediately lose \$23 million in annual support from the Texas Universal Service Fund (TUSF).

If this amount of support is lost, many stakeholders believe the development and maintenance of the basic telecommunications infrastructure across rural Texas will be negatively impacted. Additionally, there is worry the 45 small companies will need to file traditional regulatory "rate cases" at the Texas Public Utility Commission (PUC) if TUSF support is reduced. This could trigger full rate cases that are expected to average, or exceed, \$500,000 per company and take up to a year or more to complete. These costs and time consumption will burden the resources of the companies and the PUC.

S.B. 586 proposes a long-term, regulatory-efficient, and "needs-based" support program to replace the current expiring plan. Under the bill, each company will submit timely financial reporting mechanisms to the PUC and if necessary as required by law or by PUC initiation, will provide an open and accountable review of their regulated financial affairs for "re-setting" of the company's support from the TUSF.

As public utilities, the small companies will remain subject, at all times, to the full rate-and-revenue jurisdiction of the PUC.

S.B. 586 addresses only how support for small and rural local exchange companies are examined. S.B. 586 does not affect the support of companies with over 31,000 access lines.

For: Texas Statewide Telephone Cooperative, Inc.

Oppose: AT&T, Verizon, Sprint, Texas Cable Association (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 586 amends current law relating to the distribution of universal service funds to certain small and rural incumbent local exchange companies.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Public Utility Commission in SECTION 1 (Section 56.032, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 56.032, Utilities Code, as effective September 1, 2017, as follows:

Sec. 56.032. ADJUSTMENTS: SMALL AND RURAL INCUMBENT LOCAL EXCHANGE COMPANY UNIVERSAL SERVICE PLAN. (a) Defines "rate of return" and "small provider."

(b) Authorizes the Public Utility Commission of Texas (PUC) to revise certain monthly support amounts after notice and an opportunity for hearing, except as provided by Subsections (c) through (j), rather than except as provided by Subsections (d) and (e).

(c) Requires PUC, on the written request of a small provider that is not an electing company under Chapter 58 (Incentive Regulation) or 59 (Infrastructure Plan), to determine and disburse support to the small provider in fixed monthly amounts based on an annualized support amount PUC determines to be sufficient, when combined with regulated revenues, to permit the small provider the opportunity to earn a reasonable return in accordance with Section 53.051 (Establishing Overall Revenues). Requires a small provider that makes a request under this subsection to continue to receive the same level of support it was receiving on the date of the written request until PUC makes a determination or adjustment through the mechanism described by Subsection (d).

(d) Requires PUC to, not later than January 1, 2018, initiate rulemaking proceedings to develop and implement a mechanism to determine the annualized support amount to be disbursed under Subsection (c). Requires the mechanism to:

(1) require the annual filing of a report by each small provider that submits a request under Subsection (c) for certain purposes relating to support levels;

(2) provide requirements for the annual filing, which are authorized to include annual earnings reports filed with PUC under 16 T.A.C. Section 26.73 and any underlying data that PUC, during the rulemaking process, determines to be necessary for the purposes of Subdivision (1); and

(3) provide requirements and procedures for adjustment proceedings that are consistent with Subsections (h) and (i); and

(4) provide a procedure for PUC to assess, as necessary, whether the reported return of a small provider is based on expenses that are not reasonable and necessary.

(e) Authorizes PUC, in a proceeding to adjust support levels using the mechanism described by Subsection (d), to consider the small provider's data for a period not to exceed three fiscal years before the date the proceeding is initiated.

(f) Provides that for the purposes of the mechanism described by Subsection (d), a return is deemed reasonable if the return is within two percentage points above or three percentage points below the rate of return as defined in this section. Provides that a small provider's reported return is subject to assessment under the procedures described in Subsection (d)(4).

(g) Prohibits PUC from approving a support adjustment under Subsection (h) or (i) if PUC determines that a small provider's return for the previous fiscal year was reasonable under Subsection (f).

(h) Authorizes a small provider whose return is not reasonable under Subsection (f) because the return is more than three percentage points below the rate of return as defined in this section to file an application that is eligible for administrative review or informal disposition to adjust support or rates to a level that would bring the small provider's return into the range that would be deemed reasonable under Subsection (f), except that the adjustment is prohibited from setting a small provider's support level at more than 140 percent of the annualized support amount the provider received in the 12-month period before the date of adjustment. Prohibits a rate adjustment under this subsection from adversely affecting universal service. Prohibits a small provider that files an application for

adjustment under this subsection, except for good cause, from filing a subsequent application for adjustment before the third anniversary of the date on which the small provider's most recent application for adjustment is initiated.

(i) Provides that there is no presumption that the return is unreasonable for a small provider whose return is more than two percentage points above the rate of return as defined in this section. Authorizes PUC, on its own motion, to initiate a proceeding to review the small provider's support level and regulated revenues and after notice and an opportunity for a hearing, adjust the provider's level of support or rates, if appropriate. Prohibits a rate adjustment under this subsection from adversely affecting universal service. Prohibits PUC, except for good cause, from initiating a subsequent adjustment proceeding for a small provider under this subsection before the third anniversary of the date on which the small provider's most recent adjustment proceeding is initiated.

(j) Requires a small provider that is eligible to have support determined and distributed under Subsection (c) to continue to receive the same level of support it was receiving on August 31, 2017, until the earlier of certain dates.

(k) Provides that a report or information PUC requires a small provider to provide under Subsection (d) is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code. Provides that in any proceeding related to Subsection (d), a third party's access to confidential information is subject to an appropriate protective order.

(l) Provides that this section, except as provided by Subsection (m), does not affect PUC's authority under Chapter 53 (Rates) or this chapter or limit PUC's authority to initiate a review of a small provider under another provision of this title (Public Utility Regulatory Act).

(m) Authorizes PUC in a proceeding for a small provider initiated under Subchapter A (General Provisions), B (Computation of Rates), C (General Procedures for Rate Change Proposed by Utility), or D (Rate Changes Proposed by Commission), Chapter 53, to recalculate the annualized support amount to be disbursed to the small provider and to be used as the basis for adjustment in any subsequent proceeding under Subsections (c) through (j).

(n) Provides that Subsections (a), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) and any monthly amounts approved under those subsections expire September 1, 2023.

Deletes existing Subsection (h) relating to the expiration of certain subsections on September 1, 2017.

SECTION 2. (a) Defines "commission."

(b) Requires PUC, on or after January 1, 2022, and before July 1, 2022, to initiate a proceeding to review and evaluate whether:

(1) Section 56.032, Utilities Code, as amended by this Act, including any rules adopted to implement that section, accomplishes the purposes of the establishment of the universal service fund under Section 56.021(1)(B) (relating to requiring PUC to adopt rules relating to certain rates under the Small and Rural Incumbent Local Exchange Company Universal Service Plan), Utilities Code, and allows each small provider, as defined by Section 56.032 Utilities Code, as amended by this Act, the opportunity to earn a reasonable return in accordance with Section 53.051, Utilities Code, and should be continued; or

(2) changes in law to amend or replace the mechanism created by Section 56.032, Utilities Code, are necessary to accomplish the purposes described in Subdivision (1).

(c) Provides that PUC has all authority necessary to conduct the review under Subsection (b) of this section.

(d) Requires PUC to, after the review conducted under Subsection (b) of this section, and not later than September 1, 2022, to submit to the legislature a report on:

(1) the continued appropriateness of using the Federal Communications Commission (FCC) prescribed rate of return for the mechanism established under Section 56.032(d), Utilities Code, as added by this Act, if the FCC still prescribes a rate of return that may be used for that mechanism;

(2) the efficiency and frequency of adjustment proceedings conducted under Section 56.032(h), Utilities Code, as amended by this Act, and Section 56.032(i), Utilities Code, as added by this Act;

(3) the frequency and efficiency of determinations made on reasonable and necessary expenses under Section 56.032(d)(4), Utilities Code, as added by this Act;

(4) the effect of changes in technology on regulated revenue and support needs or determinations made under Section 56.032, Utilities Code, as amended by this Act; and

(5) any other relevant information PUC determines is necessary for inclusion in the report and is in the public interest.

(e) Provides that, notwithstanding Subsection (b) of this section or Section 56.024 (Reports; Confidentiality), Utilities Code, a party to a PUC proceeding under this section examining the universal service fund and the effectiveness of Section 56.032, Utilities Code, as amended by this Act, is entitled to access confidential information provided to PUC under Section 56.024(a) (relating to authorizing PUC to require a telecommunications provider to provide certain information), Utilities Code, if a protective order is issued in the proceeding for the confidential information.

SECTION 3. Effective date: September 1, 2017.