

**Report to the 79th
Texas Legislature**

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

***Public Utility Commission of Texas
January 2005***

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Executive Summary

This Report examines the status of competition in the local, long-distance, and broadband telecommunications markets at both the state and national levels. The Report also examines the effects of competition on rates, service availability and universal service, and discusses Commission activities of particular interest, including emerging technologies, emerging issues, customer protection and enforcement. The Report concludes with its legislative recommendations.

The highlights of the Report are that as of June 30, 2004:

1. CLECs serve 2.7 million of the 12.9 million access lines in the state, resulting in a statewide CLEC market share of 20.76 percent;
2. CLEC market share is 25 percent in urban markets, 24 percent in suburban markets, and 9 percent in rural markets;
3. CLEC growth rate rebounded to 22.41 percent after contracting 2.26 percent in the previous year;
4. CLEC mode of entry is dominated by UNE-P at 52 percent, followed by facilities-based at 25 percent (previously 20 percent in 2002) and UNE-L at 21 percent;
5. In the residential market, CLEC mode of entry is dominated by UNE-P: 78 percent in the urban market;
6. Broadband subscription exceeds 1.9 million customers, of which 1 million are served over cable facilities and 0.8 million are served by DSL facilities;
7. The growth rate for broadband subscription in Texas is comparable to the national average;
8. With phenomenal growth in mobile wireless and a relatively modest reduction in wireline subscribership, there are 11.3 million wireless subscribers and 12.9 million wirelines in Texas;
9. Competition does not appear to have affected the availability and affordability of basic local telephone service, which is constrained by regulation; and
10. Significant price increases have continued for vertical services such as Call Waiting, Caller ID, and Three-Way Calling; however, numerous packages consisting of basic local service, vertical features, long distance and other services offer discounts off of stand-alone rates.

For information on Commission activities and issues not addressed in this Report, please refer to the *2003 Scope Report*.

Chapter I. Status of Competition

A. Status of Competitive Markets in Texas

The local telecommunications market continues to develop and evolve. An increasing number of competitive local exchange carriers (CLECs) are providing additional choices for local telecommunications service while emerging technologies bring a diverse range of alternatives for Texas consumers. Current trends indicate that competition in the telecommunications industry continues to bring more choices to consumers.

1. Local Telephone Competition in Texas

Of the 557 certificated telecommunications utilities (CTUs) in Texas, 286 submitted data responses to the latest data request. 222 of the responding CTUs were CLECs¹ compared to 119 CLECs who responded in June 2003.²

a. Texas CLEC Certifications

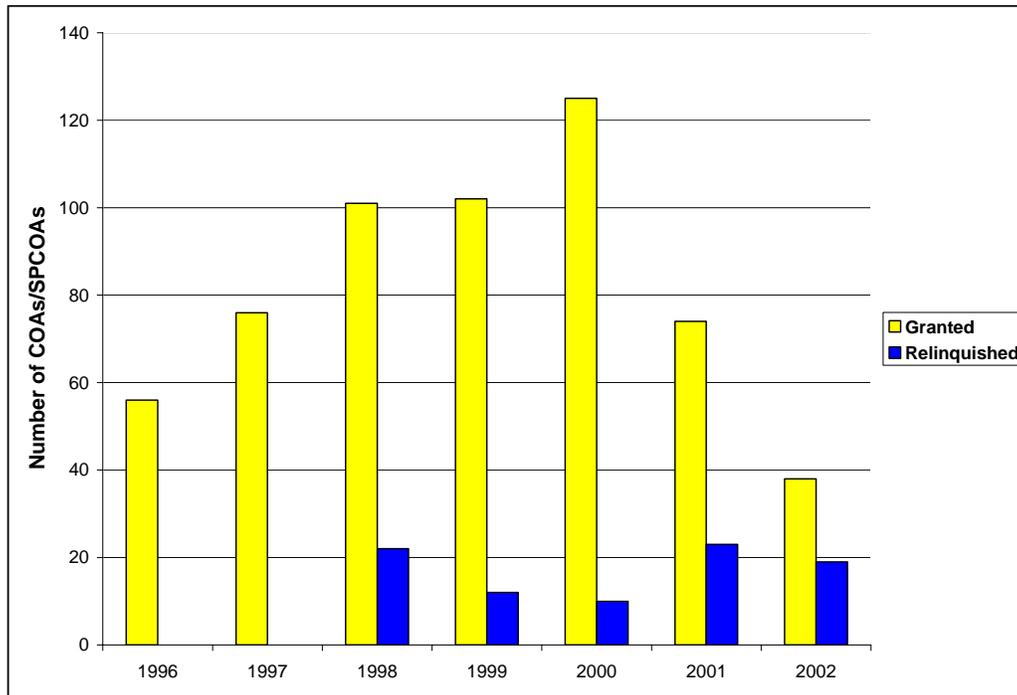
From the passage of the Federal Telecommunications Act (FTA) until 1999, Texas saw a huge influx of CLECs seeking to serve markets throughout the State. Under the Public Utility Regulatory Act (PURA) § 54.001, a CLEC must have a certificate issued by the Commission to operate and provide telecommunications service in Texas.³ As illustrated by Figure 1, the number of service provider certificates of operating authority (SPCOAs) and certificates of operating authority (COAs) applied for and granted annually has declined steadily since 2000. For the year 2003, the Commission awarded 40 SPCOAs, a slight increase from 34 SPCOAs from 2002. However, although certifications increased, so did certificate relinquishments. The number of SPCOAs and COAs relinquished by CLECs increased from 19 in 2002 to 30 in 2003.

¹ Of the 222 CLECs responding to the data request, 81 claimed to not have any lines as of June 30, 2004.

² The data compiled for this year's scope report include self-reported data from 286 ILECs and CLECs. The Commission estimates that it received data from carriers that provide 97% of the access lines served in Texas.

³ PURA § 54.001 (Vernon 1998 & Supp. 2005).

Figure 1 — Number of COAs & SPCOAs Granted and Relinquished in Texas per Year Through December 31, 2003



SOURCE: PUC Filings.

As shown in Table 1, there are 493 CLECs certified to operate in Texas.

Table 1 — Number of Texas CLECs

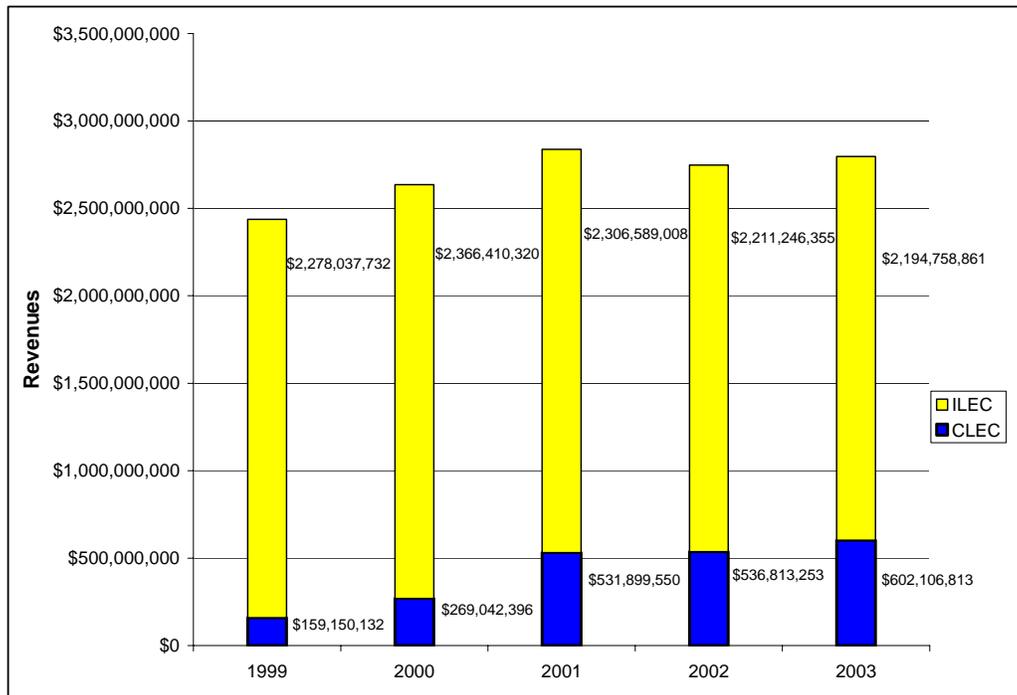
| | 1996 | 1998 | 2000 | June 2002 | Dec. 2002 | June 2003 | June 2004 |
|--|------|------|------|-----------|-----------|-----------|-----------|
| Number of Certificated CLECs | 70 | 200 | 432 | 471 | 473 | 461 | 493 |
| Number of CLECs filing Data Responses | n/a | 50 | 128 | 138 | 224 | 119 | 222 |

SOURCES: Report to the Seventy-Fifth Legislature on the Scope of Competition in Telecommunications Markets at 2 (Jan. 1997); Report to the Seventy-Sixth Legislature on the Scope of Competition in Telecommunications Markets at 55, 92 (Jan. 1999); Report to the Seventy-Seventh Legislature on the Scope of Competition in Telecommunications Markets at 37 (Jan. 2001); Texas PUC 2003 Scope of Competition Data Responses, Scope of Competition Data Responses in Docket No. 27888; Texas PUC 2005 Scope of Competition Data Responses.

2. Overall Industry Revenues and Market Share

CLEC revenues and access lines have shown signs of growth in 2003. As shown in Figure 2, CLEC revenues from basic dial-tone service in Texas were approximately \$602 million in December 2003, compared to \$2.2 billion for the ILECs.

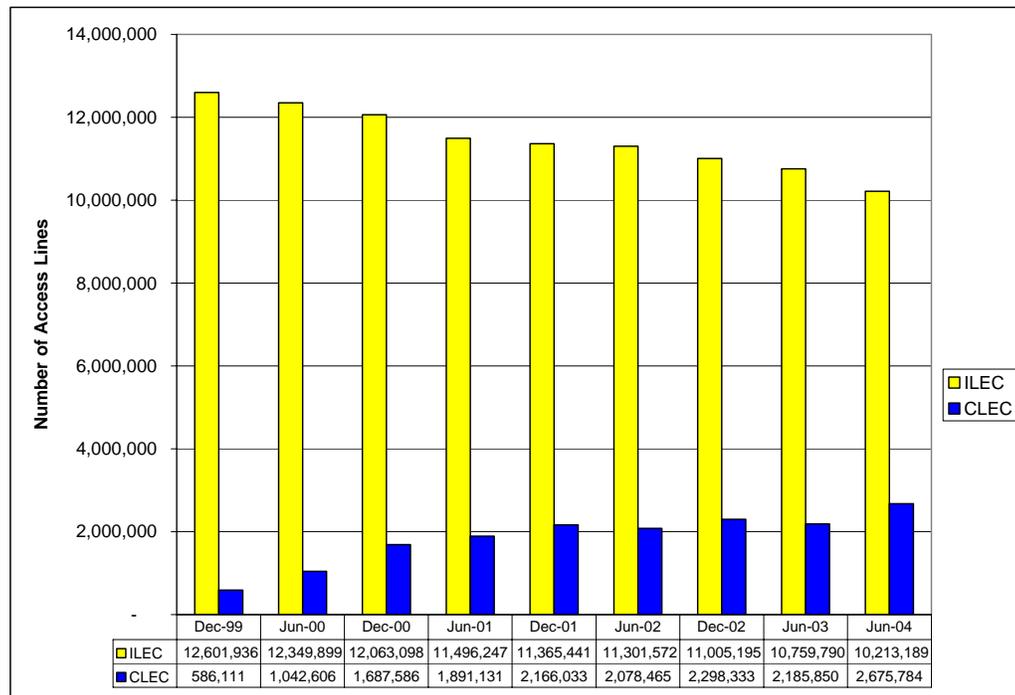
Figure 2 — ILEC vs. CLEC Basic Local Service Revenues in Texas



SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

From June 2003 to June 2004, the number of ILEC lines decreased from 10,759,790 to 10,213,189, and the total number of CLEC lines increased from 2,185,850 to 2,675,784. This represents an increase of CLEC market share, based upon access line counts, from 16.88% to 20.76% during that same period and a corresponding decrease in ILEC market share.

Figure 3 — ILEC vs. CLEC Lines in Texas



SOURCES: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002); Texas PUC 2005 Scope of Competition Data Responses.

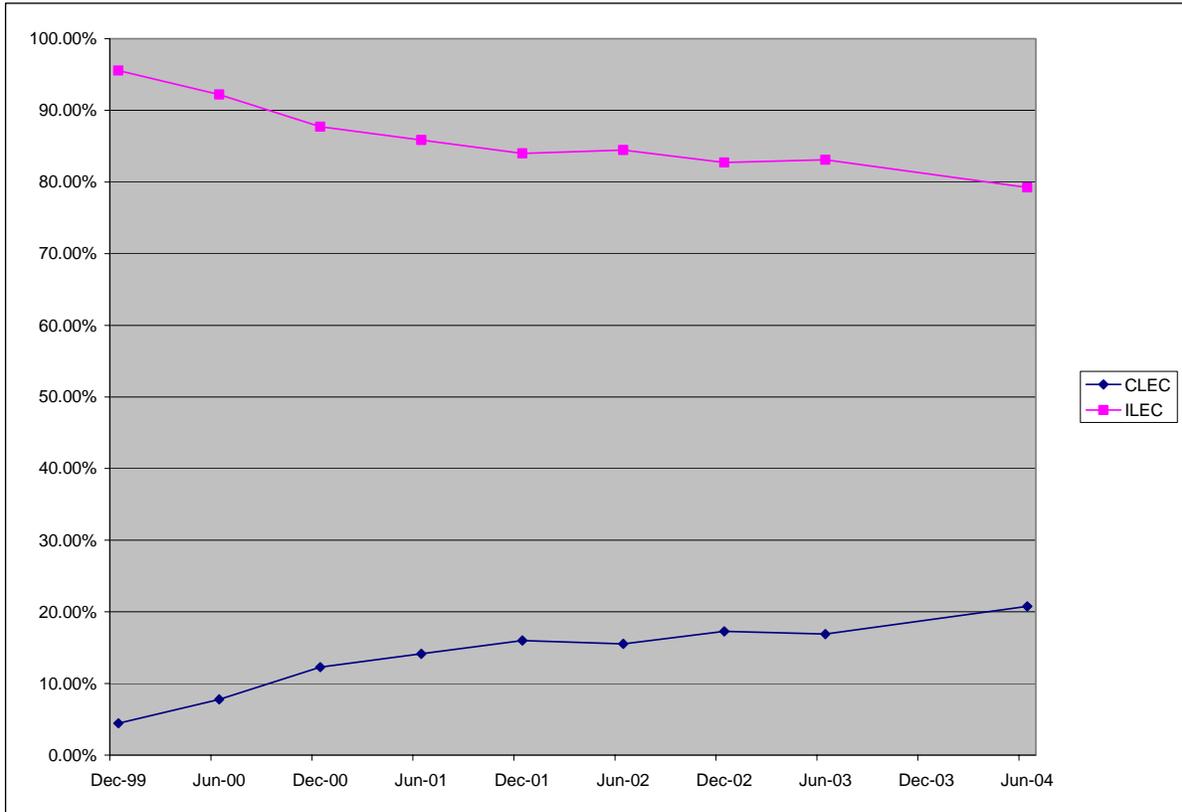
The rate of overall CLEC market-share growth, which measures the momentum of competitors in the local exchange market, is provided in Table 2.

Table 2 — CLEC Market Share and Growth Rates in Texas

| | Dec. 1999 | June 2000 | Dec. 2000 | June 2001 | Dec. 2001 | June 2002 | Dec. 2002 | June 2003 | June 2004 |
|---------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Market Share | 4.44% | 7.78% | 12.27% | 14.13% | 16.01% | 15.53% | 17.28% | 16.88% | 20.76% |
| Growth Rate | — | 75.17% | 57.65% | 15.10% | 13.32% | -2.96% | 11.21% | -2.26% | 22.41% |

SOURCES: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002), Texas PUC 2005 Scope of Competition Data Responses.

Figure 4 — ILEC vs. CLEC Access Line Market Share

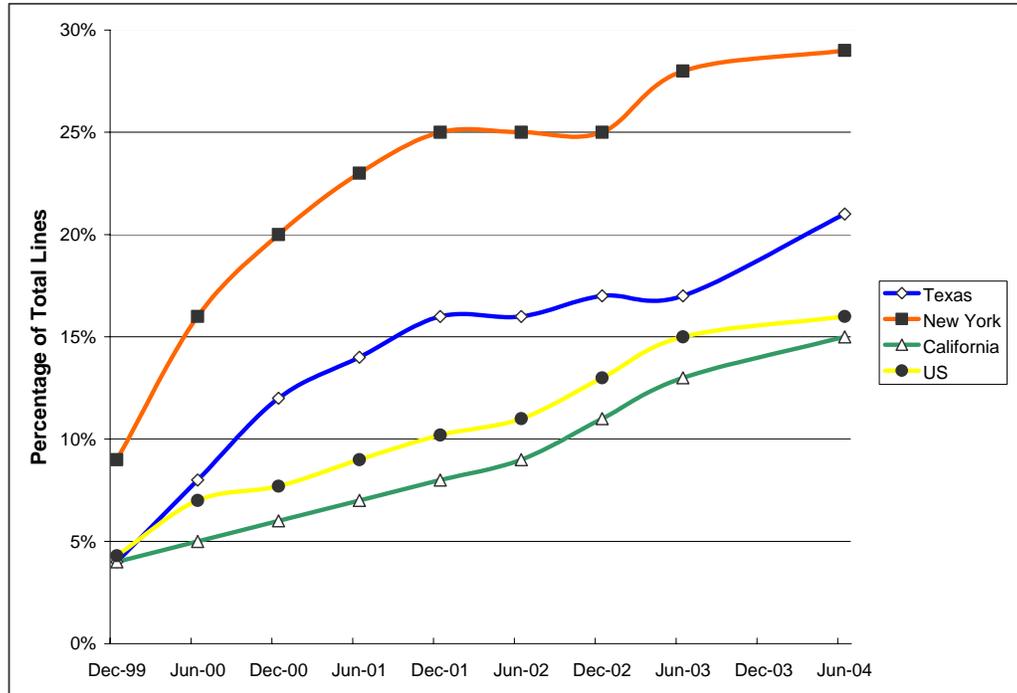


SOURCE: Texas PUC Scope of Competition Data Responses⁴

⁴ As of June 2003, the Scope of Competition Data Request Responses were collected annually. Prior to June 2003, requests were issued every six months, thus no data is available for December 2003 for Figure 4.

To put the data in a national context, CLEC line penetration in Texas (approximately 21% as of June 2004) was higher than both the national average (approximately 16%) and the CLEC share in California (approximately 15%). As shown in Figure 5, CLECs in New York, the first state to gain Section 271 approval in 1999, had 29% of the lines.

Figure 5 — CLEC Line Growth in Texas Compared with Nationwide and Other States



SOURCES: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002, Dec. 2002, Jun 2003, Dec 2003, Jun 2004); Texas PUC 2005 Scope of Competition Data Responses.

a. CLEC Business Strategies

CLEC business strategies consist of four main modes of entry: facilities-based, Unbundled Network Element-Loop (UNE-L), Unbundled Network Element-Platform, and Total Service Resale (TSR). For a detailed description of each entry strategy, please see Appendix C.

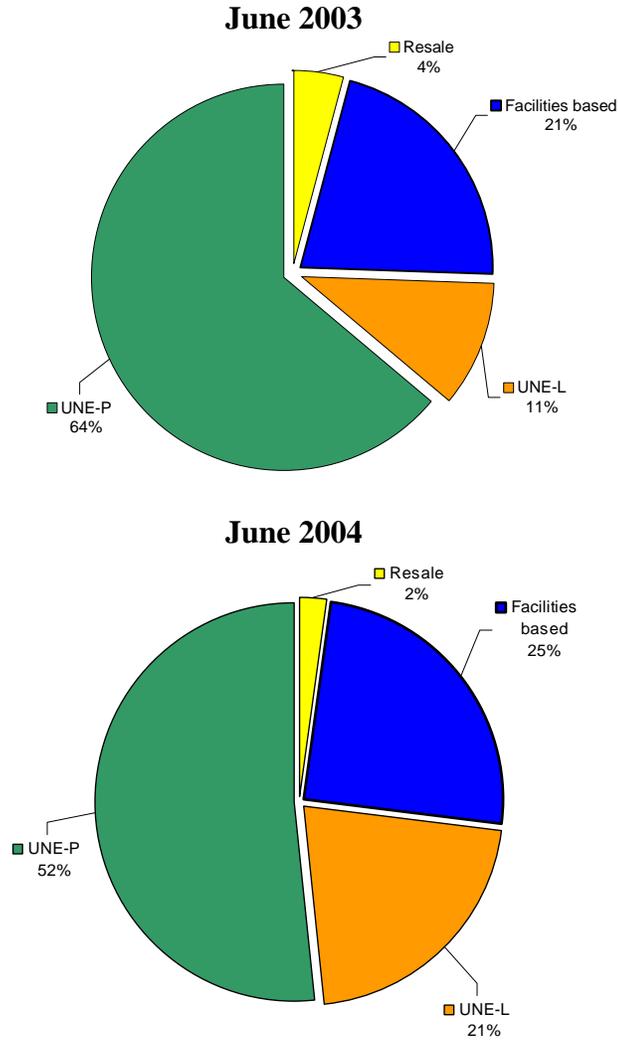
i. CLEC Modes of Entry

As illustrated by Figure 6, Texas CLECs serve customers primarily through UNE-P. However, current trends indicate that CLECs may be gradually migrating from UNE-P to UNE-L and/or their own facilities.⁵ The total number of UNE-P lines decreased from

⁵ The UNE-L category assumes that the CLECs are provisioning loops leased as UNEs to their own switching equipment, whereas the facilities-based category assumes the CLEC owns the switch and the loop facilities.

1,398,945 lines in June, 2003 to 1,386,085 lines in June, 2004, whereas UNE-L and facilities based lines increased from 696,789 in June 2003 to 1,231,378 lines in June 2004.

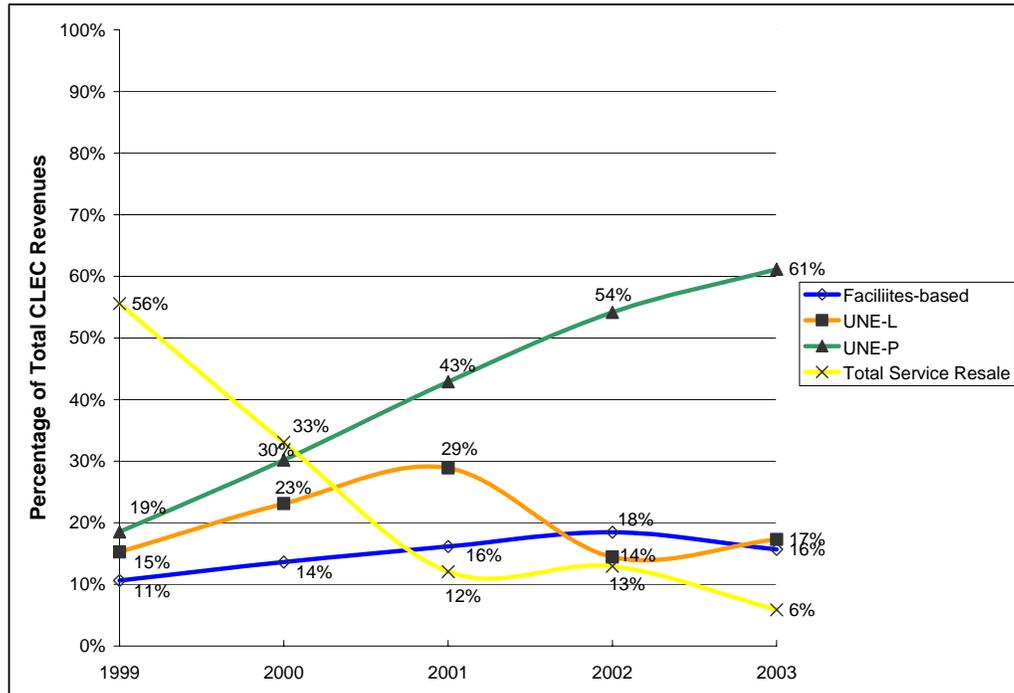
Figure 6 — CLEC Lines by Entry Strategy in Texas



SOURCES: Scope of Competition Data Request Responses in Docket No. 27888, 2005 Scope of Competition Data Request Responses.

Revenues from TSR have dropped sharply since 1999. Revenues reported from the use of UNE-L have begun to increase in 2003, after a sharp decline in 2002. Revenues from providing service entirely through the CLEC's own facilities (facilities-based) have decreased slightly in 2003 while UNE-P revenues continue to climb.

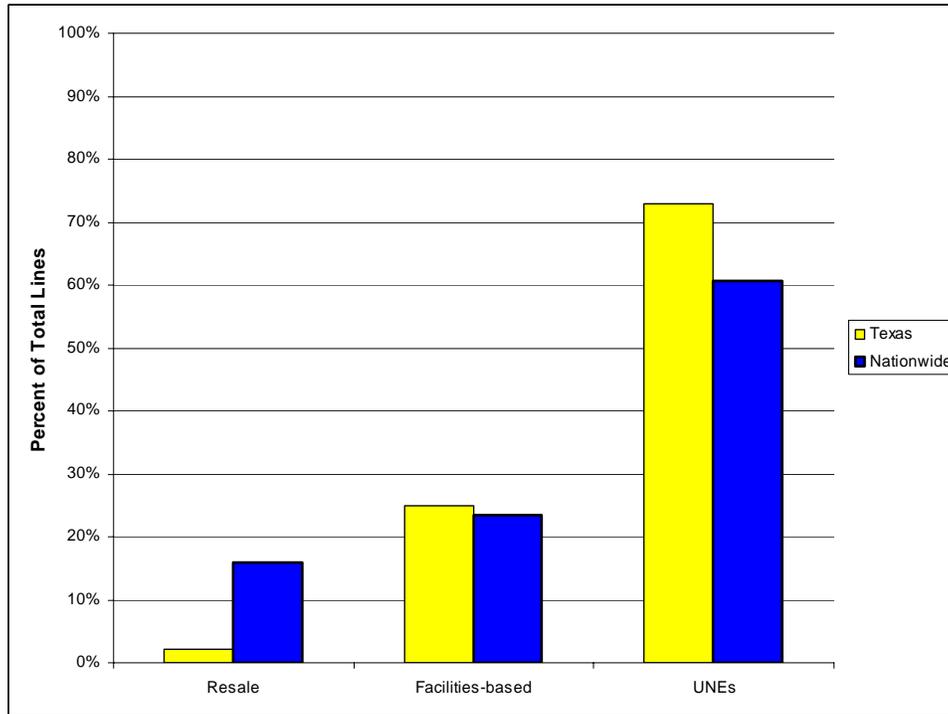
Figure 7 — Revenue by CLEC Entry Strategy in Texas



SOURCE: Texas PUC 2003 Scope of Competition Data Responses, Data Request Responses in Docket No. 27888, 2005 Scope of Competition Data Responses.

As reflected in Figure 8, Texas maintained its lead in percentage of customers served by UNEs and has surpassed the nationwide average for percentage of customers served by CLEC-owned facilities.

Figure 8 — Texas CLEC Entry Strategy vs. Nationwide as of June 2004



SOURCES: December 2003 national data reported in *Local Telephone Competition Reports*, FCC (June 2004), compared with June 2004 Texas data from the Texas PUC 2005 Scope of Competition Data Responses.

ii. CLEC Geographic Markets

Overall, CLECs serve Texas customers in all areas of the State, although CLECs serve more customers in urban than in rural areas in absolute terms.

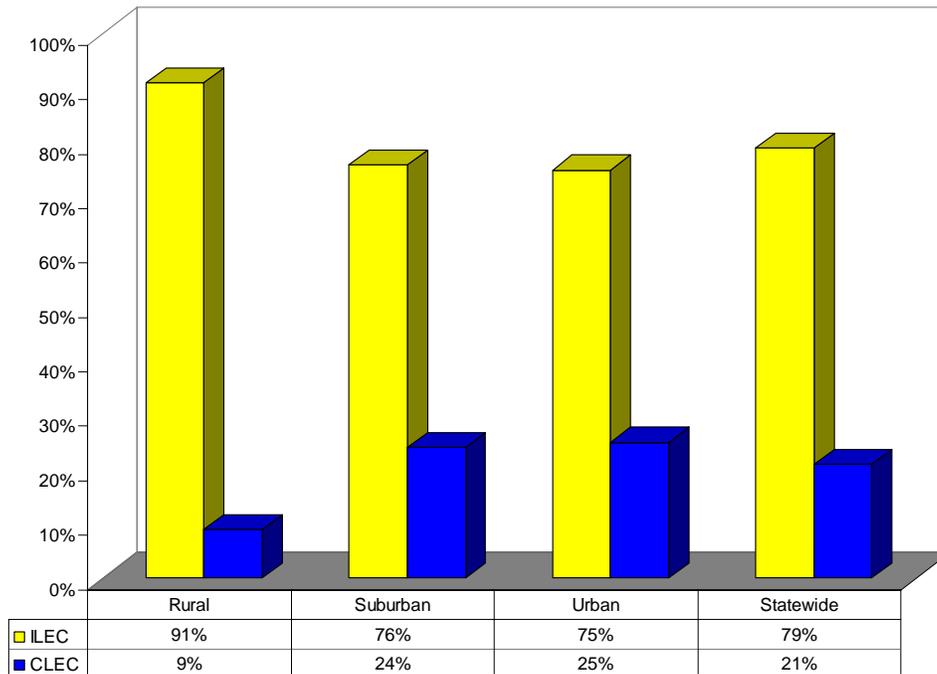
Table 3 — Total Access Lines by Geography as of June, 2004

| | Rural | % of Total | Suburban | % of Total | Urban | % of Total | Total |
|--------------|-----------|------------|-----------|------------|-----------|------------|------------|
| ILEC | 2,769,207 | 27.1% | 1,752,676 | 17.2% | 5,691,306 | 55.7% | 10,213,189 |
| CLEC | 279,366 | 10.4% | 548,374 | 20.5% | 1,848,044 | 69.1% | 2,675,784 |
| Total | 3,048,573 | 23.7% | 2,301,050 | 17.9% | 7,539,350 | 58.5% | 12,888,973 |

SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

As expected, on a percentage basis, CLECs serve more customers in urban areas than in rural areas, as shown in Figure 9. CLEC market penetration in urban and suburban areas exceeds the statewide average of 21%.

Figure 9 — ILEC versus CLEC Lines in Texas by Geography as of June 2004

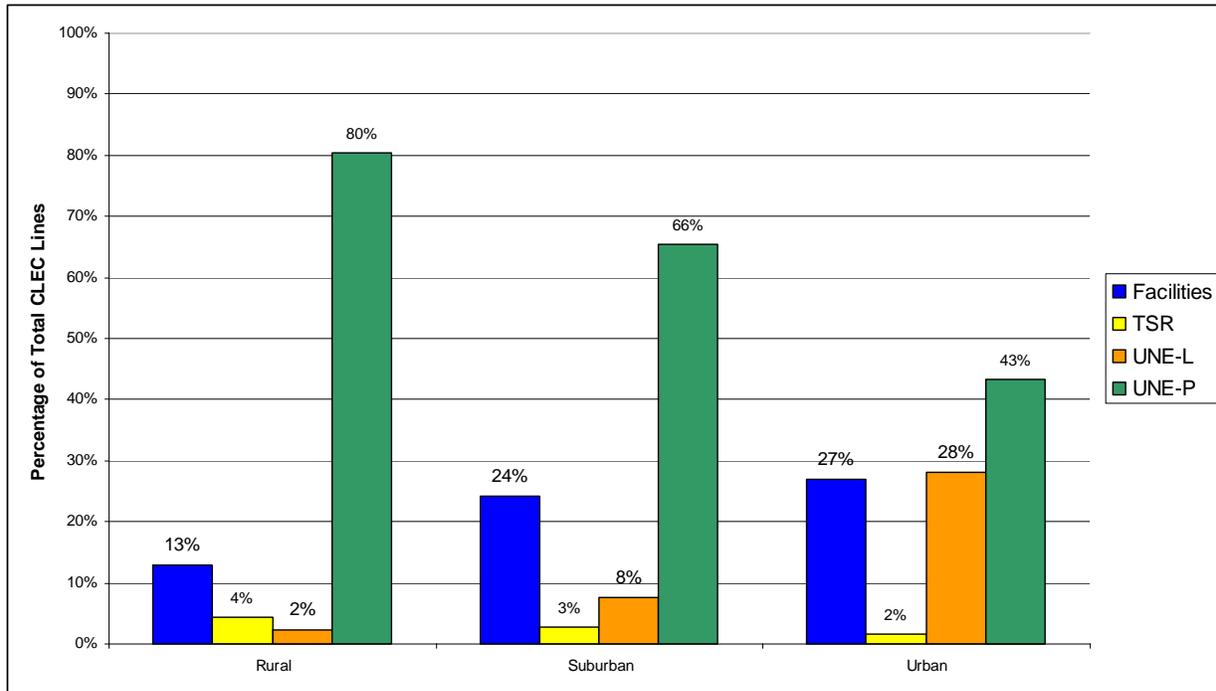


SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

While many CLECs continue to focus their competitive efforts in urban areas, a few players have remained strong by serving suburban or rural customers, although CLEC penetration in rural areas has experienced a gradual decline in the past two years. Using market-entry strategies such as UNE-P, UNE-L, TSR, and facility deployment, CLECs have acquired some level of penetration in virtually all areas of the State.

As shown in Figure 10, as of June 2004, a higher percentage of urban than suburban or rural customers were served by CLECs using the CLECs' own facilities.

Figure 10 — Texas CLEC Lines by Geography and Entry Strategy, as of June 30, 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

As shown in Table 4, CLECs serve more than 13 times as many customers via CLEC facilities in urban areas as in rural areas. In rural areas, the percentage of CLEC customers served via UNE-P or TSR rose from 78% in 2002 to 84% in June 2004.⁶

Table 4 — CLEC Lines by Entry Strategy and Geography in Texas

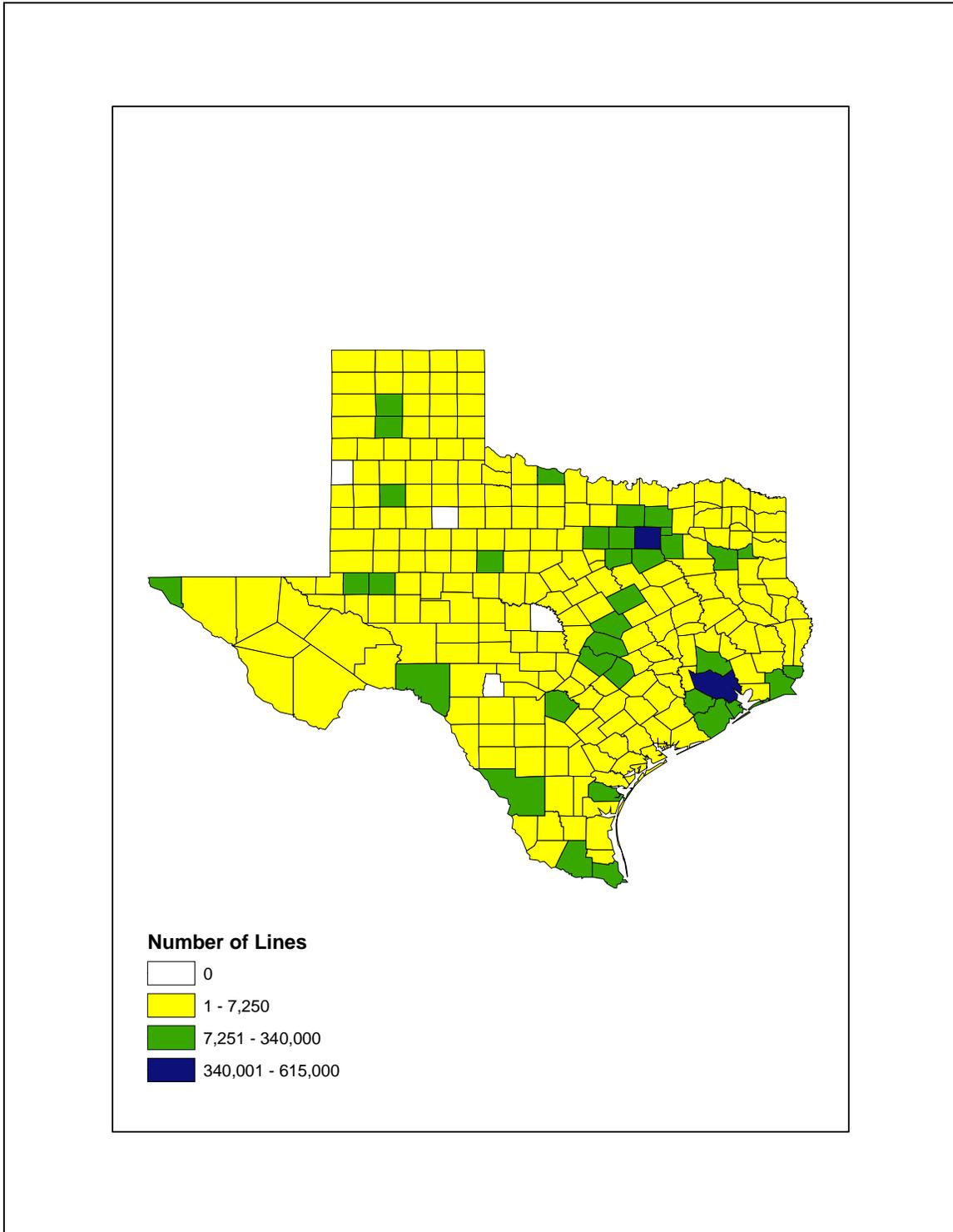
| | Facilities ⁷ | TSR | UNE-L | UNE-P | Total |
|----------|-------------------------|--------|---------|---------|-----------|
| Rural | 35,829 | 12,321 | 6,666 | 224,550 | 279,366 |
| Suburban | 132,281 | 15,341 | 41,438 | 359,314 | 548,374 |
| Urban | 496,743 | 30,659 | 518,421 | 802,221 | 1,848,044 |

SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

⁶ In the 2003 Scope of Competition Report two of the numbers of facilities lines reported for rural and urban areas in Table 6 - CLEC Lines by Entry Strategy and Geography in Texas were inadvertently transposed. The correct number of lines in the rural and urban areas is 102,741 and 269,300, respectively for that reporting period. This transposition also affected all of the percentages reflected in Figure 13 - CLEC Lines by Geography and by Entry Strategy in Texas.

⁷ Included in this category are coaxial facilities, which account for 141,785 facilities-based lines.

Figure 11 — Total Number of CLEC Lines by County as of June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses

iii. CLEC Business and Residential Customers

As of June 2004, CLECs served slightly more business than residential lines in all markets throughout the State. CLECs served 1,376,920 business customers compared to 837,941 as of June 2003, shifting the CLEC ratio of residential versus non-residential lines from 1.5 to 1 to a nearly 1 to 1 ratio.

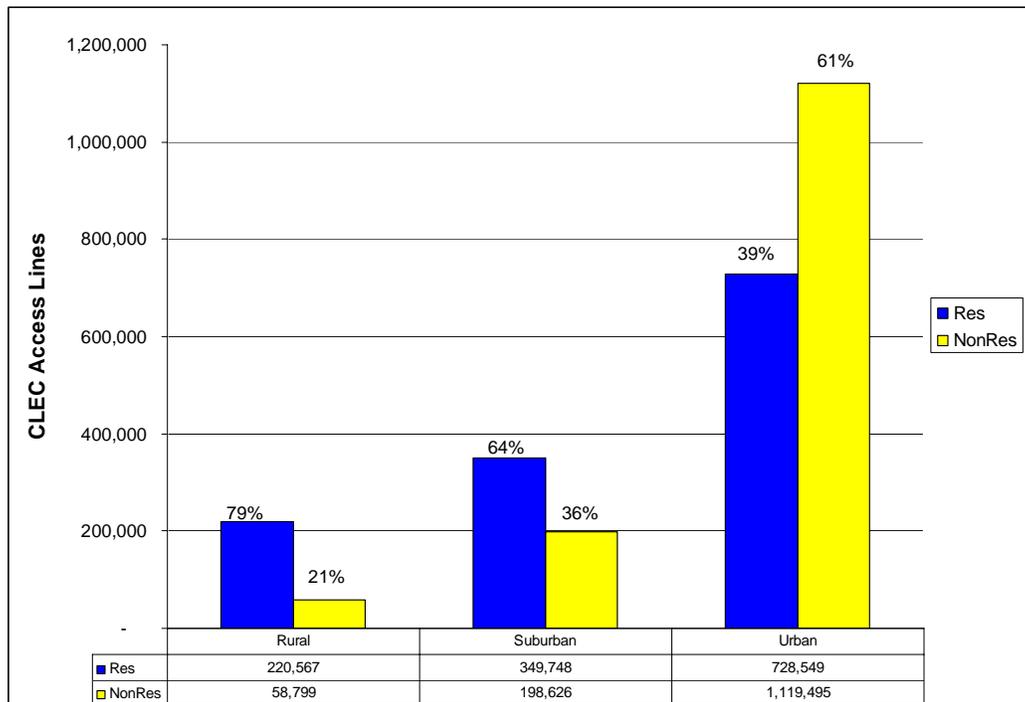
Table 5 — Total ILEC and CLEC Residential and Non-Residential Lines in Texas, as of June 30, 2004

| | ILEC | CLEC | TOTAL |
|------------------------|-----------|-----------|------------------|
| Residential | 6,632,513 | 1,298,864 | 7,931,377 |
| Non-Residential | 3,580,676 | 1,376,920 | 4,957,596 |

SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

A further breakdown of the CLEC residential and non-residential lines in Texas reveals that CLECs have more residential lines than non-residential in rural and suburban zones. However, business lines have nearly doubled in urban areas, increasing from 666,710 lines in June 2003 to 1,119,495 lines in June 2004.

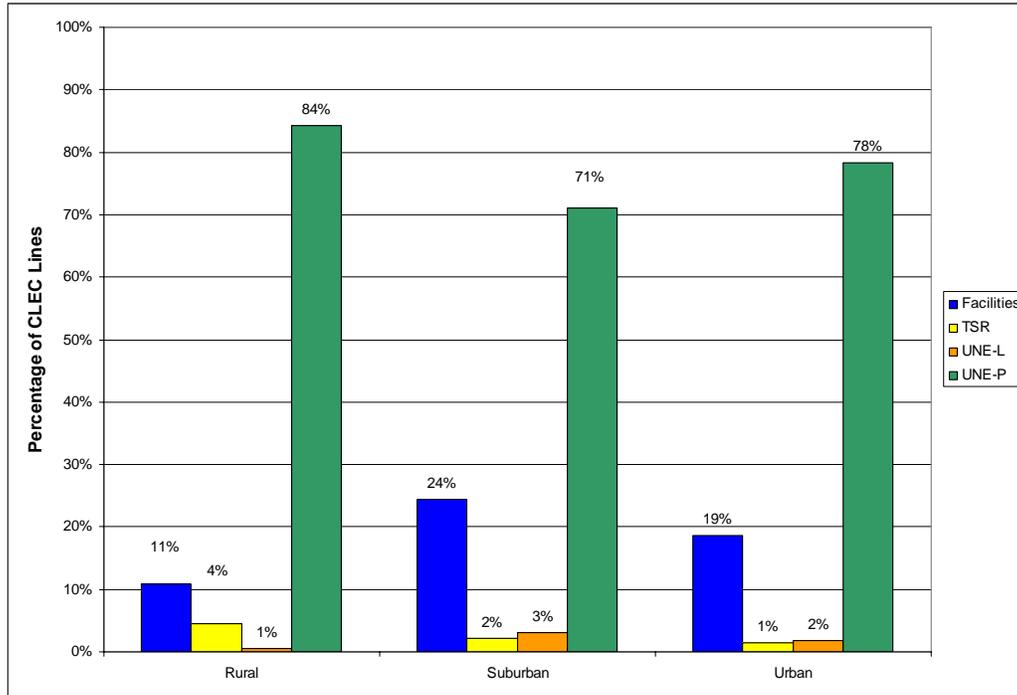
Figure 12 — Texas CLEC Lines by Geography and Type of Customer as of June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

UNE-P remains the entry strategy of choice for CLECs to serve residential customers across all three zones.

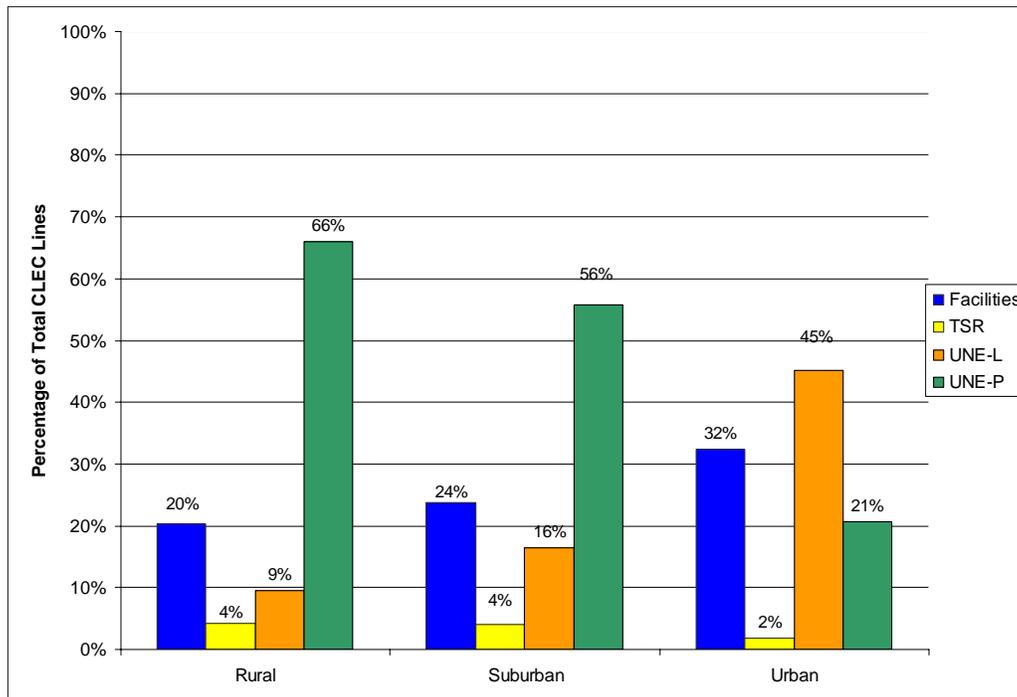
Figure 13 — CLEC Residential Lines by Entry Strategy in Texas as of June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

As shown in Figure 14, UNE-P is the predominant mode for CLECs serving business customers in rural and suburban areas, while UNE-L is used primarily in urban areas. CLECs continue to invest in their own facilities for serving businesses in all three zones.

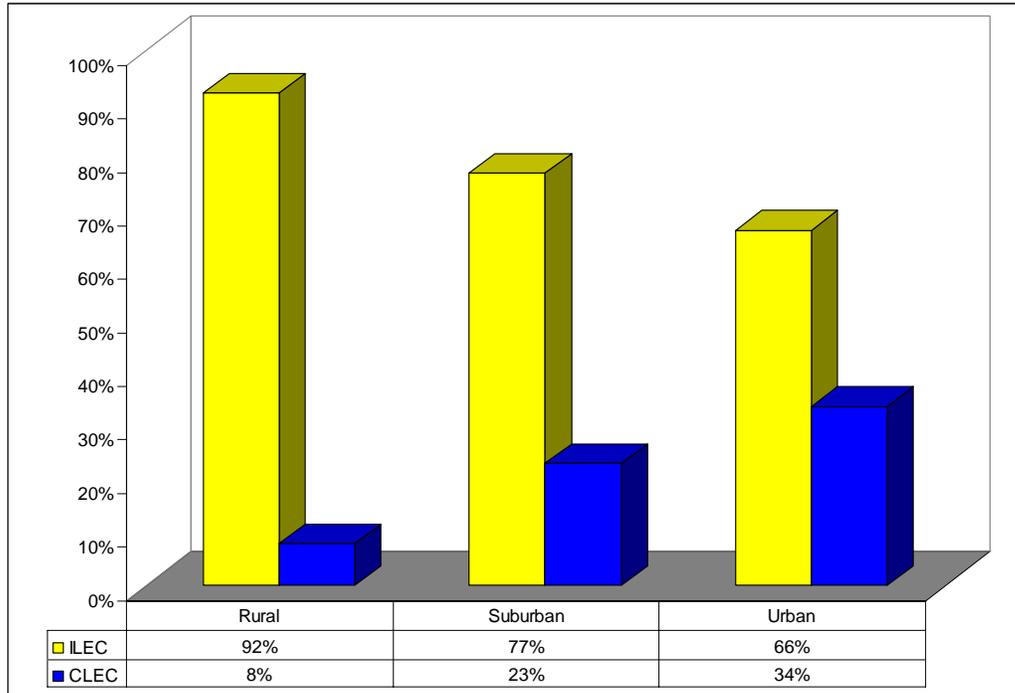
Figure 14 — CLEC Non-Residential Lines by Entry Strategy in Texas as of June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

In addition, CLECs serve 8% of the business customers in rural areas of the State, compared to 34% in urban areas and 23% in suburban areas.

Figure 15 — LEC Non-Residential Lines in Texas by Geography as of June 2004



| | Rural | Suburban | Urban |
|-------------|---------|----------|-----------|
| ILEC | 689,375 | 672,017 | 2,219,284 |
| CLEC | 58,799 | 198,626 | 1,119,495 |

SOURCE: Texas PUC 2005 Scope of Competition Data Responses.

3. Broadband Market in Texas

As shown in Table 6, broadband subscribership in Texas has grown from 152,000 customers in December 1999 to more than 1.9 million customers as of December 2003.

FCC data reveal that of the high-speed lines in Texas, 94% were for residential and small-business use; the remaining 6% were lines in service connecting to medium and large business, institutional, or government end-user customers.⁸ With respect to “last mile” technology, 53% of high-speed services were delivered over coaxial cable; 40% were delivered over asymmetric digital subscriber line (ADSL); and 7% included other wireline technologies, optical fiber to the subscriber’s premises, satellite, and terrestrial fixed-wireless systems.⁹

With respect to other states, Texas was ranked fourth for the number of high-speed lines. For the period 1999 to 2003, Texas’s broadband growth rate exceeded the national average and that of many other large States.¹⁰

Table 6 — Broadband Subscribers in Texas Compared to Other States

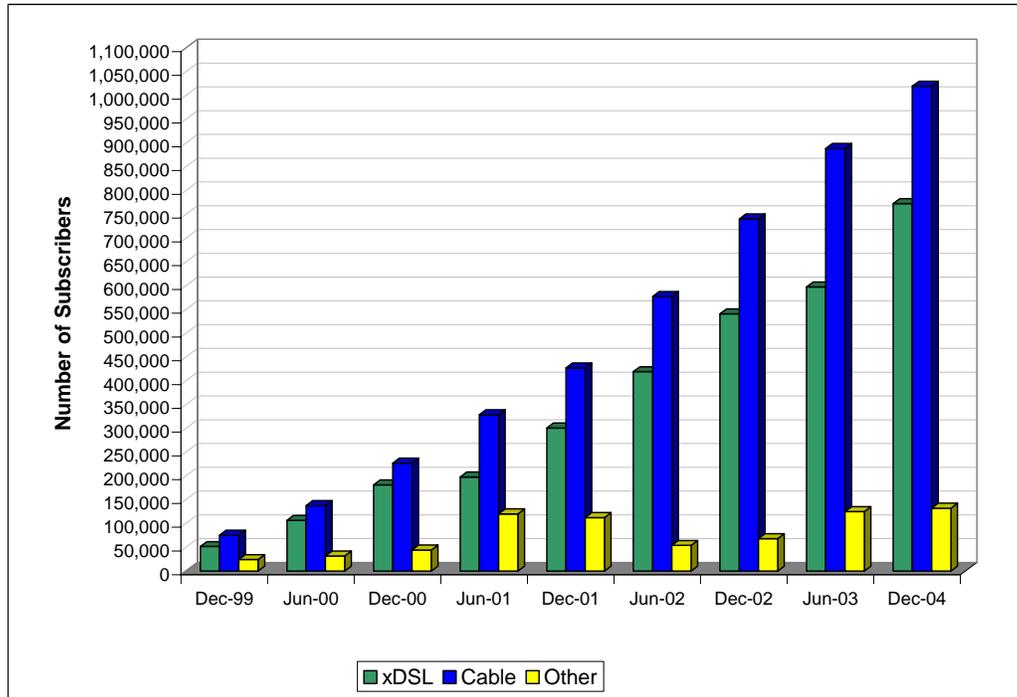
| STATE | <u>DEC. 1999</u> TOTAL | <u>DEC. 2000</u> TOTAL | <u>DEC. 2001</u> TOTAL | <u>DEC. 2002</u> TOTAL | <u>DEC. 2003</u> TOTAL | % CHANGE 1999 TO 2003 |
|-----------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|--------------------------------|
| NC | 57,881 | 136,703 | 357,906 | 594,039 | 842,130 | 1355% |
| PA | 71,926 | 176,670 | 376,439 | 631,717 | 971,170 | 1250% |
| TX | 152,518 | 522,538 | 840,665 | 1,349,628 | 1,924,664 | 1162% |
| NY | 186,504 | 603,487 | 1,199,159 | 1,997,195 | 2,262,804 | 1113% |
| MA | 114,116 | 289,447 | 505,819 | 679,084 | 919,638 | 706% |
| CA | 547,179 | 1,386,625 | 2,041,276 | 3,035,756 | 4,165,658 | 661% |
| National Total | 2,754,286 | 7,069,874 | 12,792,812 | 19,881,549 | 28,230,149 | 925% |

SOURCE: *High Speed Services for Internet Access*, FCC (June 2004).

⁸ Federal Communications Commission, Industry Analysis and Technology Division, *High-Speed Services for Internet Access, Status as of December 31, 2003*. WIRELINE COMPETITION BUREAU, June 2004. Available online at: www.fcc.gov/wcb/iatd/comp.html.

⁹ *Id.*

¹⁰ *Id.*

Figure 16 — Broadband Subscribers in Texas

SOURCE: *High Speed Services for Internet Access*, FCC (Dec. 2000, Aug. 2001, Feb. and July 2002, June 2003, Dec. 2003).

As shown in Figure 16, broadband penetration continues its rapid growth. Although cable-modem technology continues to lead the industry, DSL is gaining ground in the broadband market. In a market where cable has, historically, outsold DSL 2-to-1, DSL surpassed cable in sales, for the first time, in the first quarter of 2004.¹¹ Much of this can be attributed to the low bundle prices. In October of 2004, SBC Corporation announced its new low price of \$19.95 for DSL subscribers signing a one-year agreement and also subscribe to SBC unlimited local and long-distance calling plan, which costs an additional \$48.95.¹²

¹¹ Reuters, Phone Companies Gain Ground in Speedy Web Access (May 4, 2004).

¹² Dow Jones News Wires, SBC Will Offer DSL-Phone Deal With Discounts (Oct. 28, 2004).

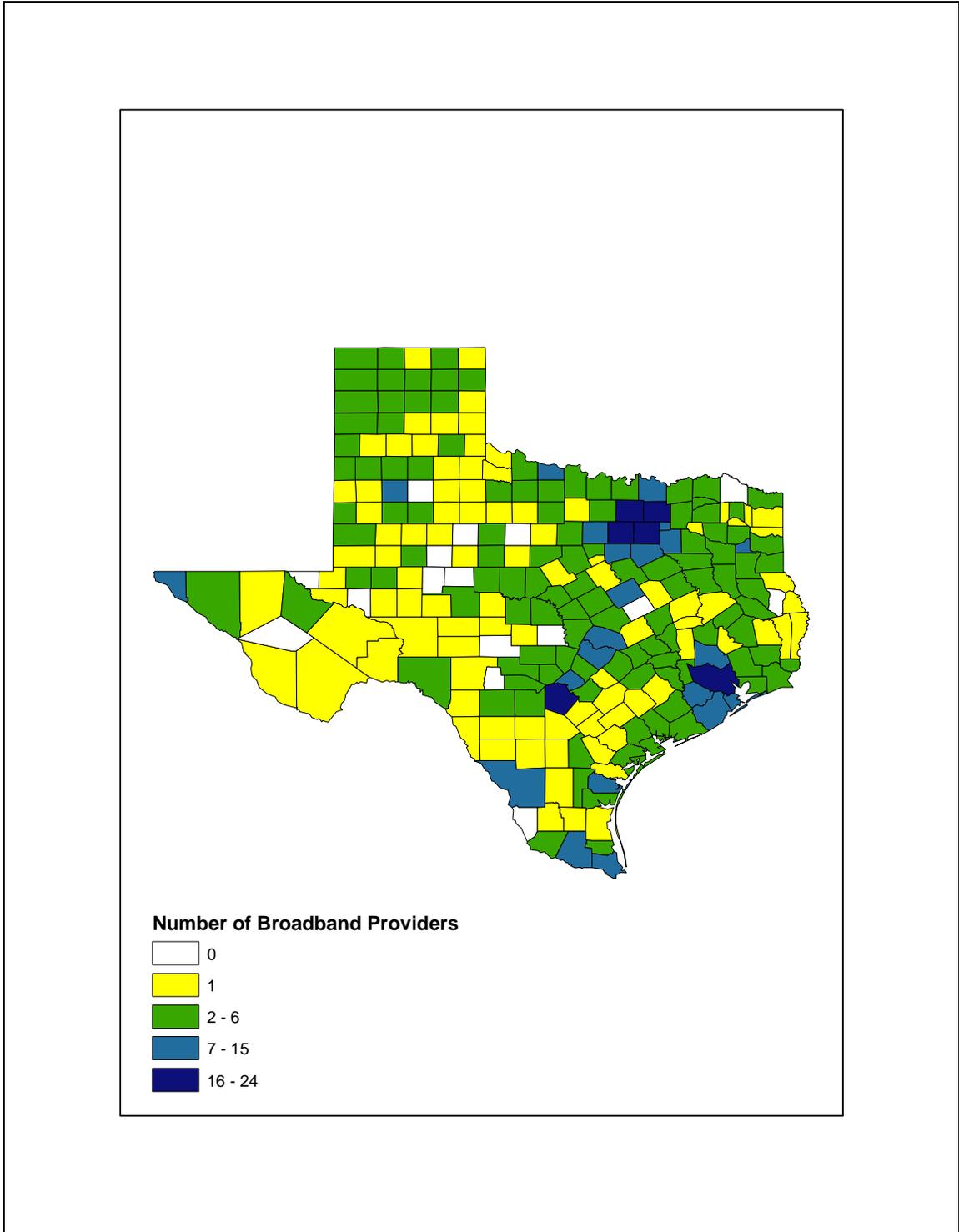
Table 7 — Number of Broadband Providers

| Number of Providers | Number of Counties in 2002 | Number of Counties in 2004 |
|---------------------|----------------------------|----------------------------|
| 0 | 85 | 16 |
| 1 | 93 | 93 |
| 2-6 | 66 | 117 |
| 7-15 | 10 | 22 |
| 16-24 | 0 | 6 |

SOURCE: Texas PUC 2003 and 2005 Scope of Competition Data Responses.

As shown in Table 7, an increasing number of counties have multiple choices of providers when subscribing to broadband service. The number of counties without broadband providers decreased from 85 in 2002 to 16 in 2004. The number of counties with 2 to 6 providers increased from 66 in 2002 to 117 in 2004.

Figure 17 — Number of Broadband Providers per County as of June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses

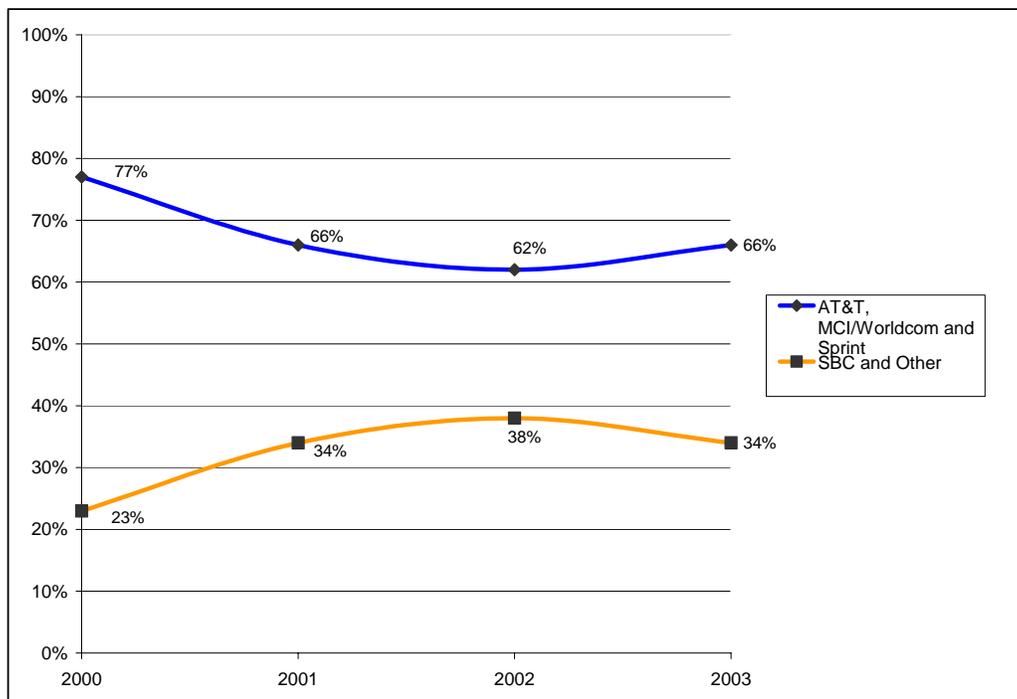
4. Long-Distance Market in Texas

a. Market Share

In June 2000, Southwestern Bell Telephone Company (SWBT), now SBC Texas, was granted approval by the Federal Communications Commission (FCC) to enter the long-distance market in Texas. As determined by the Commission and the FCC during SBC Texas's Section 271 (inter-LATA long-distance) approval process, SBC Texas had met the statutory requirements to open its local markets to competition.¹³ SBC Texas entered the Texas long-distance market in July 2000. Four years later, SBC Communications has made significant progress in the long-distance market – SBC Communications estimates its total number of long distance lines to be 18.4 million.¹⁴

Comparing the long-distance market share (measured in minutes-of-use) jointly held by AT&T, MCI/WorldCom, and Sprint with that of SBC Texas and other carriers, the market share of SBC Texas and others decreased from 38% in 2002 to 34% in 2003.¹⁵

Figure 18 — Long-distance Market Share 2000-2003



SOURCE: Texas PUC 2005 Scope of Competition Data Responses. The "SBC and Other" category includes facilities-based IXCs, such as Williams Communications and Broadwing, Inc., as well as resellers.

¹³ *Application by SBC Communications Inc, Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket 00-65, Memorandum Opinion and Order, at 395 (rel. June 30, 2000).*

¹⁴ SBC, *SBC Investor Briefing* (July 22, 2004).

¹⁵ Texas PUC 2005 Scope of Competition Data Request.

b. Long-Distance, Wireless, and VoIP Comparison

While the wireless market continues to grow and the wireline long-distance market gradually declines, Voice over Internet Protocol (VoIP) introduces a different perspective on local competition.¹⁶ Although initial analysis does not reveal an apparent substitution effect from the introduction of VoIP, future trends will be monitored.

Table 8 demonstrates that, in Texas, there may be some correlation between the growth in the wireless market and the decline in the long-distance market. For example, the number of mobile subscribers in Texas, has steadily increased over the past four years, while the number of switched-access minutes of use in Texas has experienced a decline since 2001. Table 8 also includes the number of basic dial tone lines, which has steadily decreased since 2000.

Table 8 — Comparison of Wireline and Wireless in Texas

| | 2000 | 2001 | 2002 | 2003 | 2004 (June) |
|---|----------------|----------------|----------------|----------------|----------------|
| Mobile Wireless Subscribers | 7,548,537 | 9,062,064 | 9,943,429 | 11,327,700 | NA |
| Long-distance (Switched Access) Minutes of Use | 11,397,493,545 | 11,495,969,512 | 11,364,074,299 | 10,539,257,059 | NA |
| Total Basic Dialtone Lines | 13,750,684 | 13,531,474 | 13,303,528 | 12,888,973 | NA |
| Voice Over IP Lines | NA | NA | NA | NA | 7,381 |

SOURCES: *Local Telephone Competition Reports*, FCC (May 2001, July 2002, June 2003, June 2004), and Texas PUC 2005 Scope of Competition Data Responses. VoIP lines are as of June 30, 2004.

B. Status of National Competitive Markets

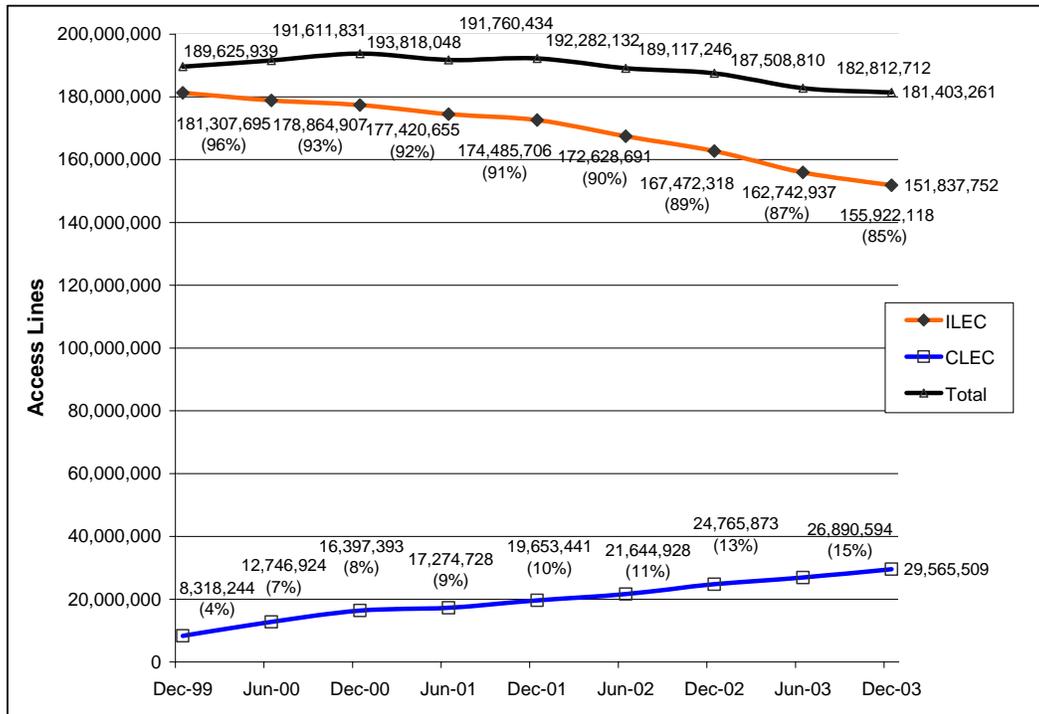
The local telecommunications market continues to develop and evolve in the midst of a recovering economy. Wireless and broadband demand continues to increase while landline and long-distance markets indicate downward trends in demand. Consumers have benefited significantly from diverse technologies and competition in the local and long-distance market. Current trends indicate that the telecommunications industry is undergoing significant competitive transition to Internet-based services that will bring more choices to consumers.

¹⁶ The PUC solicited responses to the 2005 Scope of Competition Data Request from Texas Internet Service Providers and VoIP providers, but received no data responsive to its request. The VoIP data provided in this report reflect only those certificated carriers responding to the Data Request.

1. Local Telephone Competition

As shown in Figure 19, the total number of wireline access lines, nationwide, has declined fairly steadily since December of 2000. During the same period, the CLECs' share of those access lines has steadily increased. As of December 2003, CLECs had approximately 29.5 million local lines nationwide, representing 16% of the total market.

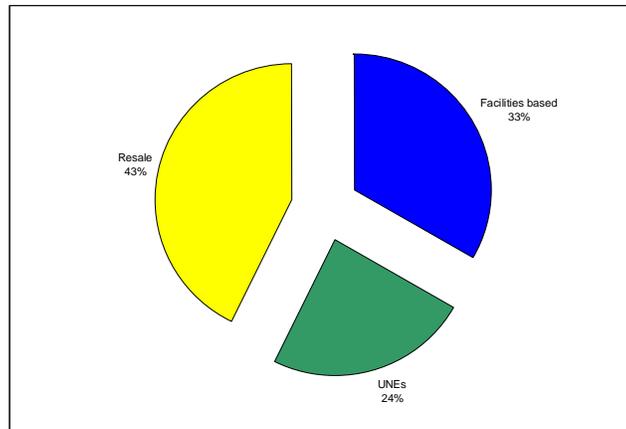
Figure 19 — Nationwide Growth of Access Lines



SOURCE: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002, Dec. 2002, June 2003, Dec. 2003, June 2004).

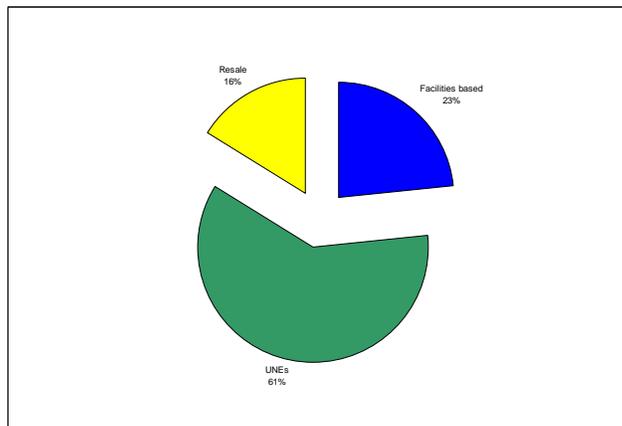
Section 251 of the FTA envisioned three basic modes of entry by CLECs: (1) facilities based; (2) UNEs;¹⁷ and (3) TSR. As shown in Figures 20 and 21, the CLECs' primary entry vehicle has changed from TSR in December 1999 to use of UNEs in June 2004, while facilities-based competition, as a percentage of total CLEC lines, has declined since 1999.¹⁸

Figure 20 — CLEC National Entry Strategy as of December 1999



SOURCE: *Local Telephone Competition Report* at Table 3, FCC (August 2000).

Figure 21 — CLEC National Entry Strategy as of June 2004



SOURCE: *Local Telephone Competition Report* at Table 3, FCC (June 2004).

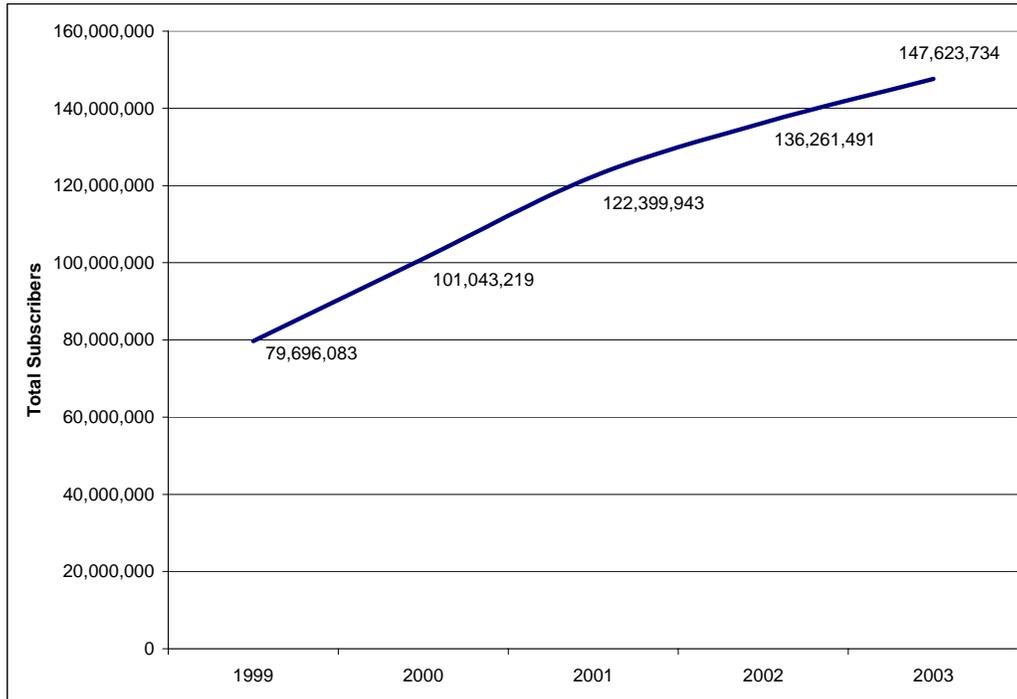
¹⁷ The leasing of UNEs typically occurs in one of two fashions: 1) UNE-Loop (UNE-L), which is the lease of the loop and other network components required for the provision of a telecommunications service, but does not include switching; and 2) UNE-Platform (UNE-P) which is the lease of a complete set of network elements for the provision of a telecommunications service, including switching. Individual UNEs or combinations of UNEs are available pursuant to the parties' relevant interconnection agreement, such as the Texas 271 Agreements (T2A).

¹⁸ It is important to note that although facilities-based competition as a percentage of total CLEC lines has decreased since 1999, the total number of facilities-based lines has increased from 2.7 million lines in 1999 to 6.9 million lines in 2003.

2. Wireless Market

Demand for wireless phones remains relatively high and continues to grow. As shown in Figure 22, the number of mobile wireless subscribers at the national level has increased 85% since 1999.

Figure 22 — Wireless Subscribers by Year



SOURCE: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002, Dec. 2002, June 2003, Dec. 2003, June 2004).

3. Long-Distance Market

The long-distance market has been heavily influenced by a number of factors including the introduction of competition in the local market, wireless subscribership, and new technologies, such as VoIP. Although competition increased as the Bell Operating Companies (BOCs) received authority to enter the market, the traditional long-distance market began to shrink as of 2001.

In July of 2000, SBC Texas entered the Texas long-distance market after its grant of Section 271 authority. In 2001, SBC entered the long-distance markets in Kansas, Oklahoma, Arkansas and Missouri, and by year-end 2002, SBC had launched long-distance service in California. Although SBC has been in the long-distance market for a relatively short period, SBC reported that, as of year-end 2003, it had 18.4 million long-distance lines. SBC further reported that long-distance voice revenues were up 33.2 percent versus the year-earlier second quarter and up 8.8 percent over the preceding

quarter. SBC also stated that nearly 70 percent of its consumer long-distance lines have a monthly plan.¹⁹

4. Broadband Deployment

“Broadband” is a term used to describe high-speed access to the Internet. Modes of broadband include digital subscriber line (DSL) service provided by phone companies over telephone lines; high-speed access via cable typically provided by cable television providers; and satellite and wireless service. As illustrated in Table 9, the number of broadband users nationwide has steadily increased since 1999, and has almost quadrupled in the last three years.

Table 9 — Number of Broadband Users Nationwide (1999-2003)

| Broadband Technology | Dec. 1999 | Dec. 2000 | Dec. 2001 | Dec. 2002 | June 2003 | Dec. 2003 |
|---|------------------|------------------|-------------------|-------------------|-------------------|-------------------|
| Cable Modem | 1,411,977 | 3,582,874 | 7,059,598 | 11,369,087 | 13,684,225 | 16,446,322 |
| Asymmetric Digital Subscriber Line (ADSL) | 369,792 | 1,977,101 | 3,947,808 | 6,471,716 | 7,675,114 | 9,509,442 |
| Other Wireline | 609,909 | 1,021,291 | 1,078,597 | 1,216,208 | 1,215,713 | 1,305,070 |
| Fiber | 312,204 | 376,203 | 494,199 | 548,471 | 575,613 | 602,197 |
| Sat./Fixed Wireless | 50,404 | 112,405 | 212,610 | 276,067 | 309,006 | 367,118 |
| Total | 2,754,286 | 7,069,874 | 12,792,812 | 19,881,549 | 23,459,671 | 28,230,149 |

SOURCE: *High-Speed Services for Internet Access: Subscribership as of December 31, 2003*, FCC (June 2004).

Table 10 — Percent Growth of Broadband Users Nationwide (1999-2003)

| Broadband Technology | 12/99 – 6/00 | 12/00 – 6/01 | 6/01 – 12/01 | 12/01 – 6/02 | 6/02 – 12/02 | 12/02 – 6/03 | 6/03 – 12/03 |
|----------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Cable Modem | 57% | 45% | 36% | 30% | 24% | 20% | 20% |
| ADSL | 108% | 36% | 47% | 29% | 27% | 19% | 24% |
| Other Wireline | 35% | 7% | -1% | 10% | 2% | 0% | 7% |
| Fiber | 23% | 21% | 8% | 5% | 5% | 5% | 5% |
| Sat./Fixed Wireless | 71% | 73% | 9% | 4% | 25% | 12% | 19% |
| Total | 62% | 36% | 33% | 27% | 23% | 18% | 20% |

SOURCE: *High-Speed Services for Internet Access: Subscribership as of December 2003*, FCC (June 2004).

As shown in Tables 9 and 10, the FCC reports that broadband nationwide usage increased by 20% during the last half of 2003, from 23.5 million to 28.2 million lines, compared to an 18% increase, from nearly 19.9 million to 23.5 million lines, during the first half of 2003.

¹⁹ SBC, *Investor Briefing* (July 22, 2004).

There are indications that growth in broadband services may be rising slightly in the DSL, satellite and “other wireline” broadband markets. DSL lines increased by 24% during the second half of 2003, from nearly 7.7 million to more than 9.5 million lines, compared to a 19% increase, from 6.5 million to 7.7 million lines, during the preceding six months.²⁰ In the last half of 2003, satellite and fixed-wireless broadband services grew 19% percent, compared to a 12% increase in the first half of 2003. Cable-modem service growth remained steady at 20% during 2003.²¹

²⁰ *High-Speed Services for Internet Access, Status as of December 31, 2003*, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, June 2004. Available online at: www.fcc.gov/wcb/iatd/comp.html.

²¹ *Id.*

Chapter II. Effects of Competition on Rates, Service Availability and Universal Service

The introduction of competition to the public switched network does not appear to have affected the affordability and availability of basic local telephone service, or universal service. However, rates for individual “Vertical Services” such as Caller ID and Call Waiting have increased significantly under PURA Chapters 58 and 59 incentive regulation. Overall, competition has brought a new era of packages and bundles of services that provide discounts and other efficiencies to residential and business customers.

A. Effects of Competition on Rates

For most Texas consumers, rates for basic local telephone service have remained unchanged, except for rate-group reclassifications,²² due to Chapters 58 and 59 incentive regulations prohibiting an electing Incumbent Local Exchange Company (ILEC) from increasing those rates. Rates for individual vertical services and other services, which are not capped under Chapters 58 and 59, have risen significantly. However, there has been a significant increase in the number of packages, bundles, and term agreements that offer discounts to residential and business customers. These discounts have alleviated some portion of the increases in individual vertical feature rates for those customers willing to purchase multiple services from a single provider.

1. Local Telephone Service Rates

The election of PURA Chapter 58 and 59 regulations by the majority of the large and medium-sized ILECs continues to restrict increases in residential basic local service rates. Chapters 58 and 59 regulations “cap” basic local service rates and only allow increases in the rates as a result of a rate-group reclassification. 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.²³ 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. The mandatory expansion of the calling scope will most often include the assessment of an additional monthly fee. However, the mandatory extended area service monthly fees are also capped under Chapter 58 and 59 regulations, thereby restricting any increases in an electing ILEC’s rates.

²² A rate-group reclassification occurs when the growth in access lines within an exchange moves that exchange to a more expensive rate group. A rate-group reclassification will result in a higher basic local service rate for the customers in the affected exchanges.

²³ More than three hundred exchanges in the State of Texas have fewer than 500 access lines within their boundary while the Houston exchange has more than 1.5 million lines within its boundary.

Because basic local service rates in some areas of the state are priced below the economic cost of providing the service and are further supported through universal-service-fund mechanisms, competition is not likely to drive the price of basic local telephone service lower in those areas.

2. Vertical Services Rates

Unlike basic local service rates and mandatory expanded calling service rates, which have been capped under Chapters 58 and 59, the rates of some of the most popular vertical features, which are not capped, 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 since 1999, the monthly rate for Caller ID Name and Number service has increased by 38% and 19% respectively.²⁴ Similarly, the monthly rate for three-way-calling service increased 138% and 48%, respectively.²⁵

The following tables, updated from the 2003 report, compare a list of common and popular vertical service rates changes for Verizon and SBC Texas since those companies' election of incentive regulation:

²⁴ See Verizon Tariff Control No. 27694 (eff. July 7, 2003); Verizon Tariff Control No. 29407 (eff. Mar. 8, 2004); SBC Tariff Control No. 24399 (eff. July 30, 2001); SBC Tariff Control No. 25249 (eff. Jan. 17, 2002); and SBC Tariff Control No. 29626 (eff. May 15, 2004).

²⁵ See Verizon Tariff Control No. 29407 (eff. Mar. 8, 2004) and SBC Tariff Control No. 25249 (eff. Jan. 17, 2002).

Table 11 — Sample of Changes in Verizon’s Pricing for Vertical Services

| Service | Texas Residential Retail Price | | |
|--|--------------------------------|-------------------------|----------------------------|
| | Before September 1999 | As of September 2004 | % Increase |
| Three-Way Calling – Per Event | \$0.75 | \$0.95 | 26% |
| Automatic Busy Redial – Per Event | | | |
| Automatic Call Return – Per Event | | | |
| Three-Way Calling - Monthly | \$2.70 | \$4.00 | 48% |
| Automatic Call Return - Monthly | \$3.00 | \$4.00 | 33% |
| Remote Call Forwarding - Monthly | \$14.50 | \$17.00 | 17% |
| Caller ID Name and Number | \$6.50 | \$7.75 | 19% |
| Caller ID Name and Number with Automatic Call Block | \$6.75 | \$7.95 | 18% |
| Operator Verification – Per Event | \$1.35 | \$2.50 | 85% |
| Operator Interrupt – Per Event | \$2.20 | \$5.00 | 127% |
| Local Directory Assistance – Per Event | \$0.25 | \$1.25 | 400% |
| National Directory Assistance – Per Event | Not Available | \$1.25 | New Service & Charge |
| Additional Directory Listing – Per Listing | \$.55 | \$1.10 | 100% |
| Return Check Charge – Per Event | \$10.00 | \$25.00 | 150% |
| Rate for Non-published Number | \$1.65/month | \$1.65/month | No change |

SOURCE: Texas PUC filings.

Table 12 — Sample of Changes in SBC Texas’s Pricing for Vertical Services

| Service | Texas Residential Retail Price | | |
|--|--------------------------------|-------------------------|------------|
| | Before September 1999 | As of September 2004 | % Increase |
| Three-Way Calling - Monthly | \$2.10 | \$5.00 | 138% |
| Call Forwarding - Monthly | | | |
| Speed Calling 8 - Monthly | | | |
| Anonymous Call Rejection - Monthly | \$1.00 | \$2.00 | 100% |
| Auto Redial - Monthly | \$2.00 | \$4.50 | 125% |
| Call Waiting - Monthly | \$2.80 | \$2.80 | No change |
| Call Waiting ID - Monthly | \$3.00 | \$4.50 | 50% |
| Caller ID Name - Monthly | \$4.95 | \$7.00 | 41% |
| Caller ID Number - Monthly | \$4.95 | \$7.00 | 41% |
| Caller ID Name and Number - Monthly | \$6.50 | \$8.95 | 38% |
| Call Blocker - Monthly | \$2.00 | \$5.00 | 150% |
| Priority Call - Monthly | \$2.00 | \$3.00 | 50% |
| Personalized Ring - Monthly | \$3.50 | \$2.95 | -16% |
| Call Return | \$0.50 each use | \$1.25 each use | 150% |
| Three-Way Calling | \$0.75 each use | \$1.25 each use | 67% |
| Call Trace | \$8.00 each use | \$6.00 each use | -25% |
| Directory Assistance | \$0.30 each use | \$1.25 each after 3 | 317% |
| Rate for Non-published Numbers - Monthly | \$1.10 | \$4.95 | 350% |
| Call Completion | \$0.30 add'l each use | \$0.25 add'l each use | -17% |

SOURCE: Texas PUC filings

3. Packages, Bundles, Term Commitments and Promotions

Packaging of residential and business basic local service with vertical features and long-distance services or other services, as well as residential and business promotions, has been increasingly prevalent during recent years. Furthermore, waivers of non-recurring fees such as service connection charges and other changes in business-service termination fees and term-commitment schedules have become tools in the competitive arena.

Packaged services provide residential and business customers with discounts over the cost of ordering the total package components individually (discounts may range from 4% to 50% depending upon the package and the carrier). The most popular vertical service packages will usually include Caller ID, Call Waiting, Three-Way Calling and, in the case of businesses, Call Forwarding Service in the package.²⁶ Additionally, the packaging of wireline telephone service and its associated features with Internet access (high speed or standard), wireless telephone service and either satellite television service or cable has become popular and allows customers to combine separately purchased

²⁶ SBCT currently offers at least seven such vertical service packages of various sizes.

services at a single rate with a single bill.²⁷ ILEC promotions for additional residential access lines and for business services for set terms, typically 1-5 years, have also become increasingly common, and allow consumers to avoid installation charges, receive an incentive of a discount for the term (higher discounts for longer term commitments), or both. As a competitive tool, term-agreement pricing is meant to lock a customer in for a one- to five-year period and provide the customer with a larger discount for a commitment to a longer term while giving the telecommunications provider a more predictable revenue stream.²⁸

In addition, ILECs regularly offer special promotions to former customers in order to “winback” their business. These promotions generally provide temporary economic incentives to induce customers to switch their local telephone service back to the ILEC.²⁹

The following Tables illustrate some of the residential and business packages available today:

²⁷ In 2003, 48% of Verizon and 54% of SBCT residential customers purchased local services in combination with long-distance, DSL, wireless, or TV services. Verizon believes bundling will “help counter the effects of competition and technology substitution that have resulted in access line losses in recent years that have contributed to declining Domestic Telecom revenues over the past three years.” SBCT feels that “bundling drives retention.” Both companies claim an increase in average revenue per month as a result of bundling. *SBC Investor Briefing, No. 243*, available online at: http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_04_IB_FINAL.pdf and Verizon 2003 Annual Report, available online at: http://investor.verizon.com/financial/quarterly/pdf/03VZ_AR.pdf

²⁸ Typical discounts range from 3% to 30% or higher.

²⁹ SBCT’s most recently proposed winback promotion for residential subscribers combines the most popular custom calling features with basic residential telephone service at a rate of \$22.95 monthly so long as the subscriber commits to twelve months of service. The most recently proposed winback promotion for business customers gives an additional 8% discount (on top of other term discounts) to customers that have left and are now returning and committing to a 12-60 month term of SBCT’s CompleteLink service.

Table 13 — Comparison of Residential Rate Packages as of October 2004

| Landline Telephone Providers | | | |
|--|---|--|------------------|
| Company | Package Name | Description Provided by Company | Price/Mo. |
| Southwestern Bell d/b/a SBC Texas | All Distance | Unlimited Local Service, Unlimited National Long Distance, Caller ID and choice of two vertical feature (<i>i.e.</i> : Call Waiting, Call Forwarding, Call Blocking etc.), Call Notes (answer & messaging service), Inlin (telephone wire and jack maintenance plan) | \$48.95 |
| Verizon TXC & TXG | Verizon Freedom | Unlimited Local & Toll Service, Unlimited U.S. & Canada Long Distance, Caller ID, Home Voice Mail, Call Waiting, Speed Dialing, and Three-Way Calling | \$54.95 |
| Sprint | Personal Solutions with Unlimited Long Distance | Unlimited Local and Long Distance, Caller ID, Call Waiting, Three-Way Calling, Call Forwarding, Return Call, and Repeat Dial, and a choice of 2 premium services (Voicemail, Line Guard, CPE Warranty or Sprint Privacy ID®) | \$61.95 |
| AT&T | One Rate USA | Unlimited Local & Toll Service, Unlimited U.S Long Distance, 4 calling features (<i>i.e.</i> : Call Waiting, Call Forwarding, etc.) | \$48.95 |
| MCI | The Neighborhood | Unlimited Local and Long Distance, Voicemail, Caller Id, Call Waiting, Speed Dial 8 and Three-Way Calling | \$49.99 |
| Voice Over Internet Protocol (VOIP) or Digital Phone Service³⁰ | | | |
| Company | Package Name | Description Provided by Company | Price/Mo. |
| AT&T | CallVantage | Unlimited Local, Long Distance and Canada, International Toll Reductions, Call Waiting, Voicemail, Caller ID, Call Forwarding (*Requires broadband Internet connection at an additional fee.) | \$29.99 |
| Cox Digital Cable | Unlimited Connection | Unlimited Local, Toll and U.S. calls, Busy Line Redial, Call Forwarding, Call Return, Call Waiting, Caller ID, Priority Ring, Speed Dial 8, Three-Way Calling (*Requires Cox Cable and Internet service at additional fee. Available only in Cox Cable franchise areas.) | \$38.95 |
| Time Warner Cable | Unlimited Calling | 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). | \$48.53 |
| Vonage | Premium Unlimited Plan | 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 |

³⁰ Prices and descriptions identified for VOIP may be found at company websites and/or with a call to a service representative at the telephone number listed at a company website. Examples of web addresses are as follows: <http://www.usa.att.com/callvantage/index.jsp?soac=64528> and <http://www.vonage.com/>.

Table 14 — Comparison of Small-Business Rate Packages as of October 2004

| Landline Telephone Providers | | | |
|--|------------------------------|--|------------------|
| Company | Package Name | Description Provided by Company | Price/Mo. |
| Southwestern Bell d/b/a SBC Texas | “Business Unlimited“ | Unlimited Local Service, Unlimited National Long Distance, Caller ID, Call Forwarding, Three-Way Calling, and Call Return | \$48.95 |
| Verizon | Currently Not Available | N/A | N/A |
| Sprint | Unlimited Priority Solutions | Unlimited Local, Toll and Long Distance, Caller ID with Name, Call Waiting, and Call Forwarding | \$60.90 |
| AT&T | 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 |
| MCI | MCI Business Complete | Unlimited Local, Toll and National Long Distance, Hunting and Rollover features, Call Waiting, Caller ID, Call Forwarding, Three-Way Calling and Speed Dial 8 | \$59.99 |
| Voice Over Internet Protocol (VOIP) or Digital Phone Service³¹ | | | |
| Company | Package Name | Description Provided by Company | Price/Mo. |
| GalaxyVoice | GalaxyVoice Phone Service | Unlimited Local and Long Distance, Voice Mail, Call Forward, Call Transfer, Repeat Dialing, Caller ID Block. | \$44.95 |
| Time Warner Cable | Not Available | | |
| Vonage | Small Business Unlimited | Unlimited calls anywhere in the U.S. and Canada, Voicemail, Call Waiting, 3 Way Calling, Caller ID with Name, Call Forwarding, & Free In Network Calling (*Requires broadband Internet connection at an additional fee.) | \$49.99 |

4. Other Service and Feature Rates

Directory-assistance fees for the majority of customers have increased by approximately 14% to more than 300% under Chapter 58 and 59 regulations.³² Late-fee assessments have also undergone increases during this period, and, generally, as many as

³¹ Prices and descriptions identified for VOIP may be found at company websites and/or with a call to a service representative at the telephone number listed at a company website. Examples of web addresses are as follows: <http://www.galaxyvoice.com/?GTSE=goto>KW=voip> and http://www.vonage.com/products_premium_sb.php.

³² In Informational Filing No. 29996, Valor recently increased its directory-assistance fee from \$.30/call to \$1.25/call, an increase of 316%. In Informational Filing No. 25252, SBCT increased the directory-assistance fee from \$1.10 to \$1.25, an increase of approximately 14 percent. Although residential customers still receive three free calls to directory assistance per month, business customers receive no allowance.

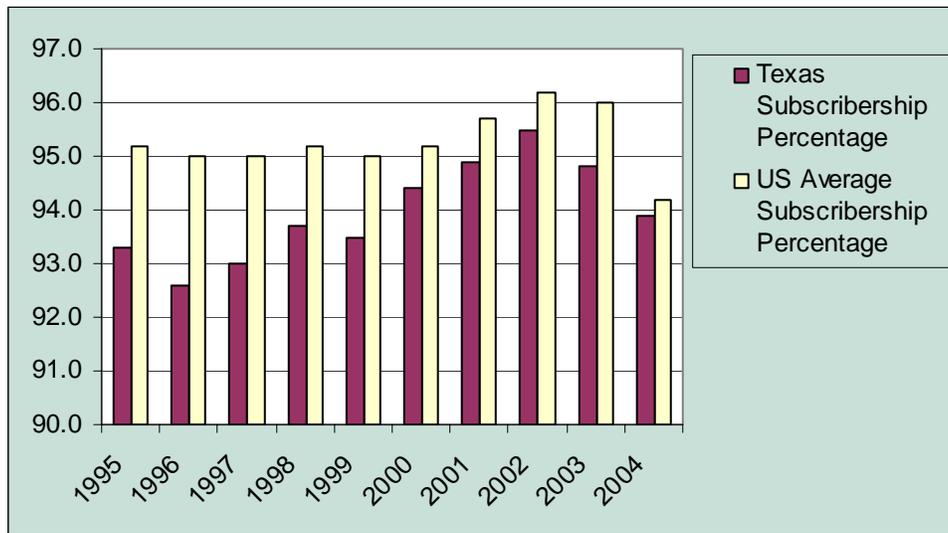
20% of all residential accounts and 5% of all business accounts are subject to these penalties.³³ Rates for services such as directory listings, non-published-number service and non-listed-number service have also increased. In addition, rates for optional one-way extended area service in metropolitan and more rural areas have also been on the rise, increasing by roughly 10% during the last few years.

B. Effects of Competition on 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 have become more prevalent.

1. Subscribership

The following table identifies the percent level of wireline telephone service subscribership in Texas over the past ten years as compared to the national average. While subscribership at the national level declined by approximately 1.75 percent from 2003 to 2004, the subscribership level in Texas declined by less than 1 percent.



SOURCE: *Telephone Subscribership on the United States*, Tables Nos. 1 and 2, FCC (August 2004).

The graph indicates that, although the Texas level of subscribership has been lagging slightly behind the national average, the gap has closed significantly over the past decade. There appears to be no correlation between the level of local competition over the last two years and subscribership levels. Many variables may have come in to play over the period that could have affected the narrowing of the gap. Such variables would

³³ SBCT assesses a \$5 late fee for residential customers and a 6.5% fee for business customers. In December 2003, SBCT changed the assessment timeline to define a payment as late if it is not received within two days following the due date (Informational Filing No. 29015). Verizon charges a 5% late payment fee.

include, but not be limited to, the introduction of Lifeline and Link-Up telephone service programs.

2. Basic Telephone Service in Uncertificated Areas

Competition appears to have had no effect on basic telephone service in uncertificated areas. However, in May of 2002 the Commission adopted a rule which outlined a plan whereby an Eligible Telecommunications Provider (ETP) could receive high-cost support from the Texas Universal Service Fund (TUSF) for volunteering to provide basic local telephone service within any uncertificated area of the state. This new rule, which provides guidelines concerning USF reimbursement to ETPs that voluntarily provide voice-grade telecommunications service to customers in uncertificated areas of the State,³⁴ was first used by a telecommunications carrier on December 5, 2002 by Western Wireless Corporation. Western Wireless Corporation, filed an application for authority to provide telecommunication service to consumers within an uncertificated area of Roberts County, Texas, pursuant to P.U.C. SUBST. R. 26.423.³⁵ The petition was amended on January 16, 2003, to include portions of Roberts and Hutchinson Counties. On April 23, 2003, WWC amended its application by filing a motion to extend its ETC/ETP service area to include uncertificated areas of Roberts and Hutchinson Counties. Under this new rule the company intended to provide service to approximately twelve permanent residential and/or single-line business customers in the relevant uncertificated area of Roberts and Hutchinson Counties now known as Amarillo LATA Uncertificated Area A. On July 16, 2003 the Commission approved WWC's application to extend its ETC/ETP area to include these uncertificated areas. As a result, the Commission established a monthly per-line support amount for this uncertificated area in order that the telecommunications provider could begin to provide basic local telephone service to the area where prospective telecommunications subscribers exist.

3. Aid to Construction for Uncertificated Areas

PURA, in conjunction with P.U.C. SUBST. R. 26.423, established procedures for the Commission to designate an 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 upon a petition of potential subscribers and an agreement by those potential subscribers to pay a portion of the aid to construction.³⁶ Once an ETP

³⁴ The Commission designated Western Wireless an ETP in 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 (Oct. 30, 2000).

³⁵ The Commission adopted P.U.C. SUBST. R. 26.423, High Cost Universal Service Plan for Uncertificated Areas where an ETP volunteers to provide basic local telecommunications service, effective May 23, 2002.

³⁶ Other requirements include entering into an agreement for subscription to basic local service for a period of time and proof of ownership of the residential or business property in question.

volunteers or is designated to serve the area, construction costs and monthly assistance rates are developed, reviewed and finally approved with or without modification. If accepted by all parties, construction of facilities is completed and local service is provided. To date, two such petitions have been filed by potential subscribers living in uncertificated areas of the state.³⁷

C. Effects of Competition on Universal Service

Competition has not had a direct effect on universal service. The Texas High Cost Universal Service Plan and the Small and Rural ILEC Universal Service Plan provide substantial financial support to ETPs to ensure that all customers throughout the State have access to basic local telecommunications service at just, reasonable, and affordable rates. Appendix I sets forth the TUSF disbursements for these high cost support programs. The Lifeline Service and Link-Up programs have had a very direct and significant effect on universal service. More than 600,000 subscribers to basic local telephone service in the state participate in the Lifeline service program. Over the past year enrollment grew by one-third, or more than 150,000 access lines.

1. Lifeline Service

Lifeline provides a low-income local service discount for qualifying customers via a combined federal and state discount of \$7.00 per month (\$3.50 of which is provided by the TUSF) and a waiver of the Federal Subscriber Line Charge (SLC). This benefit is provided by designated ETPs and Eligible Telecommunications Carriers (ETCs) (PUC SUBST. R. 26.417 and 26.418) pursuant to PUC SUBST. R. 26.412. Lifeline enrollment has steadily increased since ETCs and ETPs began complying with Senate Bill 560, 76th Legislative Session, which introduced automatic enrollment for the Texas Department of Human Services (TDHS)-qualified clients during the 2000-2001 period. Since then, further collaboration of the carriers, TDHS and the PUC has resulted in full 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). A brief comparison of enrollment figures for the past five years (2000 – 2004) indicates a sharp rise in enrollment following the SB 560 compliance and another sharp rise in 2004 following the LIDA implementation.

³⁷ See, Docket No. 28766, *Request for ETP for Uncertificated Areas Pursuant to P.U.C. SUBST. R. 26.241*, and Docket No. 30127, *Request for ETP for Uncertificated Areas Pursuant to P.U.C. SUBST. R. 26.241*, seeking aid to construction near Colorado City and in Sabine County, respectively. Both dockets are pending before the Commission.

Table 15 — Lifeline and Link-Up Enrollments - 2001-2004

| 2000 Lifeline | 2001 Lifeline | 2002 Lifeline | % Increase | 2003 Lifeline | % Increase | 2004 Lifeline | % Increase |
|------------------------------|--------------------------|--------------------------|-----------------------|--------------------------|-----------------------|------------------------------|-----------------------|
| 235,856 | 351,627 | 430,638 | 22.5% | 456,365 | 5.9% | 622,860 | 36.5% |
| 2000 Link- Up | 2001 Link-Up | 2002 Link-Up | % Increase | 2003 Link-Up | % Increase | 2004 Link- Up | % Increase |
| ³⁸ | 63,108 | 63,582 | 0.8% | 79,402 | 24.9% | 113,715 | 43.2% |

As the table indicates, the growth in Lifeline service has been significant over the past four years, increasing by nearly 400,000 subscribers over the period. Data are current as of October 15, 2004. It is estimated that the disbursements for the Lifeline service program in fiscal year 2004 will amount to \$20.5 million, or approximately 3.49 percent of the total TUSF.

2. Link-Up Service Program

In conjunction with Lifeline, participating carriers offer an installation discount, Link-Up, for qualified low income customers that provides a discount of up to \$30 for installment of residential telephone service. This discount of the non-recurring installation charge, coupled with automatic enrollment, appears to have had a significant positive effect on basic local telephone subscribership levels in the state of Texas. The Link-Up service program is funded by the Federal Universal Service Fund.

³⁸ Comprehensive Link-Up Counts are not available for 2000 (prior to automatic enrollment records).

Chapter III. Commission Activities: 2002 - 2004

This section provides an overview of some of the Commission's activities since the *2003 Scope Report*. The Chapter begins with an overview and a discussion of the Commission's activities under the Federal Telecommunications Act of 1996 (FTA), and then concludes with a synopsis of certain Commission activities under the Public Utility Regulatory Act (PURA). For information on ongoing activities not mentioned in this report, refer to the *2003 Scope Report*.

A. Commission Activities Under the FTA

The Commission has participated in a number of activities to implement the regulatory mandate regarding fair access to the monopoly's network as required by the FTA. These include key arbitration cases and monitoring of SBC-Texas's performance with respect to allowing access to its network by competitors.

1. Interconnection Agreements

Competitive Local Exchange Carriers (CLECs) have several options under FTA Section 252 for securing an interconnection agreement. An interconnection agreement is a contract between a CLEC and an incumbent local exchange carrier (ILEC) that provides rates, terms and conditions for interconnection for their respective networks, and access to unbundled network elements. ILECs and CLECs are required to negotiate interconnection agreements under the FTA. If negotiations are unsuccessful, either party can petition the Commission to arbitrate open issues. In many instances, parties successfully reach agreement through voluntary negotiations. As reflected in Table 16, carriers in Texas conduct substantial numbers of voluntary negotiations for interconnection, services, and unbundled network elements (UNEs).

Table 16 — Type and Number of Interconnection Agreements in Texas

| TYPES OF INTERCONNECTION AGREEMENTS | FROM SEPTEMBER 1, 2002— AUGUST 2004 |
|-------------------------------------|--|
| Negotiated Agreements | 379 |
| Amendments | 490 |
| Texas 271 Agreements | 54 |
| Adoptions | 42 |

a. Texas 271 Agreement

Although carriers are free to negotiate unique, individualized contracts, many have chosen to adopt the standardized Texas 271 Agreement (T2A). The T2A is a Commission-approved interconnection agreement that, with the collocation tariff, contains SBC Texas's commitments made during SBC Texas's Section 271 application. The four-year term of the T2A, which was originally scheduled to expire on October 13,

2003, has been extended to February 17, 2005. A replacement agreement is currently being arbitrated that is discussed below.

b. Compulsory Arbitration

Under its procedural rules, the Commission distinguishes between arbitration proceedings that address terms and conditions in existing interconnection agreements, and those that develop terms and conditions for new interconnection agreements. Generally, new terms and conditions, and entirely new interconnection agreements, result in arbitration proceedings, whereas post-interconnection dispute resolutions involve the interpretation or enforcement of existing terms and conditions. As reflected in Tables 16 and Table 17, far fewer interconnection agreements are developed through arbitrations or dispute resolutions than through voluntary negotiations.

Table 17 — Type and Number of Arbitrations in Texas

| TYPES OF DISPUTE RESOLUTION | FROM SEPTEMBER 1, 2002 THROUGH AUGUST, 2004 | |
|---------------------------------|---|-------|
| | OPEN | CLOSE |
| Arbitrations | 12 | 13 |
| Post-Interconnection Dispute | 36 | 33 |
| Mediation | 0 | 2 |

2. FCC's *Triennial Review Order*

On December 20, 2001, the Federal Communications Commission (FCC) released a *Notice of Proposed Rulemaking (NPRM)* seeking comments relating to its first triennial review of its policies on unbundled network elements (UNEs). In the NPRM, the FCC sought comment on the weight that they should assign to factors in the “impair” standard and whether they should first identify network elements or impairments. The FCC was also interested in how to weigh the goals of the FTA, and whether such goals include encouraging broadband deployment, investment in facilities, and technological innovation. Furthermore, the FCC requested comment on whether both the “necessary” and “impair” standards and other statutory language support an unbundling analysis that is more targeted, and if so, whether the unbundling rules should vary by type of service, geography, or other factors. The FCC also requested comment regarding the appropriate role of state commissions in the implementation of the unbundling rules. Finally, the FCC was interested in hearing from parties whether the periodic review cycle for UNE reevaluation should be retained or modified.

On February 20, 2003, the FCC adopted rules concerning Incumbent Local Exchange Carriers' (ILECs') obligations to make elements of their networks available on an unbundled basis to new entrants. The *Triennial Review Order (TRO)* provided for a significant state role in implementing these rules, provided resolution on various local phone competition and broadband competition issues, and addressed a May 2002

decision by the U.S. Court of Appeals for the District of Columbia that overturned the FCC's previous UNE rules.

The Commission opened four *TRO*-related dockets to implement the FCC impairment and other related determinations. The Commission conducted hearings on these matters. As discussed below, these proceedings have been abated as a result of *U.S.T.A. v. F.C.C.*, which vacated significant portions of the FCC's *TRO*.³⁹ In response to the FCC's Interim UNE Order and NPRM, the Commission's record in the *TRO* proceedings, has been provided to the FCC for their consideration.

3. D.C. Circuit's Decision in U.S.T.A. v. F.C.C.

On March 2, 2004, the D.C. Circuit's decision in *U.S.T.A. v. F.C.C.* vacated significant portions of the FCC's *TRO*.⁴⁰ Specifically, the D.C. Circuit vacated portions of the *TRO* that addressed the extent to which competitive carriers would continue to be able to provide retail local telephone service using leased, wholesale access to parts of the networks (UNEs) of incumbent local exchange carriers such as SBC Texas. The circuit court vacated the FCC's delegation to state commissions of decision-making authority over impairment determinations with respect to mass-market switching, certain dedicated transport elements (DS1, DS3, dark fiber), and enterprise-market loop elements. The Supreme Court denied review of the D.C. Circuit's opinion. The FCC plans to release new permanent rules in December 2004 or January 2005.

4. Successor Agreement to the T2A

The T2A, which is currently scheduled to expire on February 17, 2005, will be replaced with one or more new interconnection agreements. This new agreement will incorporate the new UNE rates recently established by the Commission, as well as updated terms and conditions that are currently under consideration in a pending arbitration proceeding. The Commission intends to incorporate the updated terms and conditions into new agreements prior to the expiration of the T2A. However, the Commission will have to conduct additional hearings following the reissuance of FCC rules in order to incorporate changes resulting from the aforementioned vacatur and remand of the *TRO* into these new agreements.

a. UNE Cost Arbitration

In Docket 28600, *Arbitration of Phase I Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, the Commission established UNE rates to be incorporated into the successor interconnection agreements to the T2A. The Commissioners, presiding as Arbitrators, addressed a number of disputed costing

³⁹ *United States Telephone Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 73 U.S.L.W. 3234 (U.S. Oct. 12, 2004).

⁴⁰ *Id.*

issues for certain UNEs, including loop rates, switching rates, cost of capital, depreciation, fill factors, and shared and common costs.

b. Post-T2A Interconnection Arbitration

The Commission established Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, to address the issues necessary to develop a successor interconnection agreement to the T2A. This Docket has been divided into two tracks. The first track addresses arbitration of issues that are not currently being reconsidered by the FCC. The second track involves those issues on which FCC decisions are expected by the end of 2004 or early 2005.

5. SBC TEXAS Performance Measures

The Commission established wholesale performance measurements (PMs) and a remedy plan for SBC Texas as part of the T2A in October 1999, which allowed SBC Texas to enter the interLATA long-distance market. The purpose of the performance-remedy plan is to encourage SBC Texas to provide non-discriminatory wholesale services to its competitors who rely, to varying degrees, on SBC Texas's legacy network to provide service. Initially, the plan consisted of 131 measures, but the number of measures has been reduced to 87 during three collaborative reviews designed to give all parties an opportunity to fine tune and reevaluate the effectiveness of the PMs and the remedy plan. The performance reports are filed at the Commission by SBC Texas on a monthly basis, and the penalty-payment summaries are posted on a password-protected website to assist in monitoring SBC Texas's post-271 performance. Access to this website is available to CLECs and designated Commission staff.

Measures are generally classified as either customer-affecting (Tier-1) or competition-affecting (Tier-2). If SBC Texas does not meet certain customer affecting performance measurements on a monthly basis, then Tier-1 liquidated damage payments are required to be made to compensate CLECs. Likewise, if SBC Texas does not meet certain competition-affecting performance-measurement standards for three consecutive months, then Tier-2 assessments are made to the State to compensate the citizens of Texas. At present, the performance-remedy plan is self-executing.

In Docket No. 28821, SBC Texas has proposed to modify the performance measurements and the remedy plan, but that proposal is disputed by the CLECs. At the conclusion of the docket, the Commission will be issuing an award on this issue.

As shown in the table below, since 2003 the penalty payments have decreased in comparison to the payment levels in 2000, 2001 and 2002, indicating that the performance-remedy plan is successfully providing SBC Texas the incentive to comply with wholesale performance standards.

Table 18 — Summary of Penalty Payments

| Year | Tier-1 Payments | Tier-2 Payments |
|------------------------|-----------------|-----------------|
| 1999 | \$22,444 | \$75,000 |
| 2000 | \$2,984,669 | \$3,104,300 |
| 2001 | \$7,644,282 | \$2,824,000 |
| 2002 | \$7,216,421 | \$3,130,500 |
| 2003 | \$2,287,930 | \$1,008,000 |
| As of July 2004 | \$1,275,637 | \$659,500 |
| Total | \$21,431,383 | \$10,801,300 |

B. Commission Activities under PURA

1. Texas Universal Service Fund (TUSF)

The Commission oversees the ongoing administration of the TUSF. The Commission is the official governing agency of the TUSF; however, it has delegated the ministerial functions of administering the TUSF to the National Exchange Carriers Association (NECA) 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.

In 2004, the Commission was required to change the assessment methodology supporting the TUSF due to a lawsuit brought by AT&T. As of September 1, 2004, the assessment rate changed from 3.6 percent of *total* Texas-taxable telecommunications receipts to 5.65 percent of *intrastate* Texas-taxable telecommunications receipts. The 3.6 percent rate was assessed on the total telecommunications bill, including interstate, intrastate, and international receipts. The USF rate can now be charged on intrastate receipts only. The TUSF rate was increased to 5.65% to accommodate the change in the assessment base.

Appendix H describes each of the TUSF programs. Appendix I sets forth the TUSF disbursements by program and Appendix J shows the disbursements to each company.

2. Earnings Review

By May 15 each year, incumbent local exchange carriers (ILECs) file with the Commission earnings reports on Commission-prescribed forms that contain the company's pertinent financial information. The rates, overall revenues, return or net income of ILECs electing Chapters 58 and 59 regulation are not subject to traditional rate-of-return regulation. Consequently, these ILECs are not subject to having their rates reduced when earnings exceed a regulated rate of return. Tables 19 and 20 show the reported earnings of the electing Chapters 58 and 59 companies.

Table 19 — Chapter 58 Earnings Monitoring

| Earnings Reports for Chapter 58 Electing Companies | | | | | | | | |
|--|---------------------|----------|-------------------------|-----------|---------------------------|--------|-----------------------------|-----------------------|
| Company | Intrastate Revenues | | Intrastate Access Lines | | Intrastate Rate Of Return | | Intrastate Return On Equity | |
| | 2002 | 2003 | 2002 | 2003 | 2002 | 2003 | 2002 | 2003 |
| SBC Texas | 5.23B | \$4.85B | 9,699,485 | 9,304,790 | 11.82% | 11.53% | 18.60% | 20.71% |
| Verizon TXG – GTE Southwest, Inc. | \$837.9 M | \$832.8M | 2,766,039 | 2,677,943 | 9.25% | 4.03% | 12.28% | 2.29% |
| Sprint - United Telephone Company | \$93.2 M | \$94.9M | 171,163 | 167,602 | 15.57% | 14.82% | 26.00% | 23.43% |
| Sprint – Central Telephone Company of Texas | \$118.7 M | \$120.6M | 233,504 | 223,329 | 15.37% | 11.14% | 23.66% | 27.55% |
| Valor Telecom | \$201.9 M | \$208.6M | 306,823 | 302,602 | 12.97% | 25.33% | 55.25% | 399.49% ⁴¹ |
| TXU Communications (nka Consolidated Communications) | \$66.3 M | \$71.5M | 122,695 | 121,785 | 9.64% | 15.44% | 11.13% | 19.53% |
| Fort Bend Telephone (nka Consolidated Communications) | \$23.5 M | \$25.4M | 46,078 | 45,061 | -3.64% | 3.66% | -9.18% | 1.61% |

SOURCE: Texas PUC filings.

⁴¹ The abnormally high ROE for Valor results from the fact that they have a common equity of 3.75%; therefore, positive earnings will result in an inordinately high ROE figure.

Table 20 — Chapter 59 Earnings Monitoring

| Earnings Reports for Chapter 59 Electing Companies | | | | | | | | |
|---|---------------------|---------|-------------------------|--------|---------------------------|--------|-----------------------------|--------|
| Company | Intrastate Revenues | | Intrastate Access Lines | | Intrastate Rate Of Return | | Intrastate Return On Equity | |
| | 2002 | 2003 | 2002 | 2003 | 2002 | 2003 | 2002 | 2003 |
| Sugar Land Telephone Company | \$43.5M | \$42.3M | 81,566 | 79,575 | 31.22% | 29.71% | 39.86% | 29.71% |
| CenturyTel of San Marcos | \$17.6M | \$15.9M | 30,616 | 28,187 | 21.10% | 18.20% | 21.13% | 18.21% |
| CentruyTel of Port Aransas | \$2.1M | \$1.9M | 5,092 | 5,038 | 10.50% | 10.71% | 10.79% | 10.94% |
| CenturyTel Lake Dallas | \$6.6M | \$6.8M | 13,223 | 13,195 | 20.47% | 18.88% | 28.41% | 25.56% |
| Kerrville Telephone Company (dba KTC) | \$14.3M | \$15.8M | 27,089 | 26,729 | 14.80% | 22.98% | 15.57% | 24.54% |
| Texas Alltel, Inc. | \$15.9M | \$15.9M | 32,755 | 32,229 | 14.67% | 15.55% | 17.76% | 18.96% |
| Big Bend Telephone Company | \$7.7M | \$7.7M | 5,835 | 5,654 | 22.21% | 11.29% | 44.92% | 19.60% |

SOURCE: Texas PUC filings.

3. Summary of Selected Proceedings

a. Valor

On March 5, 2003, the Public Utility Commission of Texas conveyed a growing concern regarding the service quality, customer service, and financial integrity of Valor Telecommunications of Texas. In response to an increased number of complaints received from Valor customers and legislators by the Commission, Commission staff initiated Project No. 27474, *Investigation of Telephone Service Quality Related Performance of Valor Telecom*, on March 7, 2003.

Because Valor had not been in compliance with many of the Commission's quality-of-service objectives and benchmarks since July 2000, an administrative penalty was assessed against Valor under PURA § 15.023. The Commission negotiated and settled on an administrative penalty of \$350,000 in order to deter Valor from future violations and resolve any and all issues, complaints, or alleged violations against the company that were identified in the investigation.

Valor has met or exceeded most of the benchmarks set by the PUC from first quarter 2003 through fourth quarter 2003. In areas where Valor is deficient, Commission

staff continues to monitor its quarterly reports and provides periodic updates to the Commission.

b. ASAP Paging

In Docket No. 25673, Complaint, Request for Expedited Ruling, Request for Interim Ruling, and Request for Emergency Action of ASAP Paging, Inc. Against CenturyTel of San Marcos, Inc., ASAP Paging alleged that CenturyTel improperly assessed toll charges on CenturyTel customers who called ASAP's paging service and Internet-service-provider (ISP) customers with certain NPA-NXX assignments. For the reasons discussed in the final order in this case, the Commission found that (1) calls from Century Tel's San Marcos customers to the ASAP Fentress, Kyle and Lockhart numbers in question, as currently assigned, should be rated as toll; and (2) ASAP must register with the Commission pursuant to PURA § 52.103 for its service to ISPs.

c. Building Access

The first case in which the Commission was petitioned to resolve a dispute under PURA §§ 54.259-54.261 and P.U.C. SUBST. R. 26.129, *Standards for Access to Provide Telecommunications Services at Tenant Request*, (informally known as the Building Access provisions) was brought before the Commission in 2001. In Docket No. 24604, *Complaint of Time Warner Telecom of Texas, L.P. and Request for Interim Relief*, the Commission addressed the complaint of Time Warner Telecom of Texas, L.P. that Tanglewood Property Management 5599, Emissary Group, and San Felipe, Ltd., denied Time Warner non-discriminatory access on reasonable terms and conditions pursuant to PURA and the Commission's rules to provide telecommunications services to a requesting tenant, Schlumberger, Ltd.

While the case was pending at SOAH, the Texas Association of Building Owners and Managers (BOMA) challenged the constitutionality of PURA §§ 54.259-54.261. BOMA, in conjunction with Emissary and Tanglewood argued that the statutory provisions on their face were an unconstitutional taking. The Third Court of Appeals held that the legislature constitutionally delegated to the Commission the power to establish a procedure for determining compensation and thus the statute was not, on its face, an unconstitutional taking.⁴² The court concluded:

Our holding today recognizes the important role that the Building Access Statutes play in achieving the state's policy objective to transition from traditional telecommunications regulation to a competitive marketplace. The Statutes promote competition by ensuring that tenants in multi-tenant buildings have the ability to choose their provider of telecommunications services. Without them, a property owner can prevent access to the building or decide which telecommunications provider will be allowed to

⁴² Texas Building Owners and Managers Ass'n v. Public Util. Comm'n. 110 S.W.3d 524 (Tex. App.—Austin 2003, writ denied).

serve tenants and on what terms and conditions. This Court has little doubt that the legislature intended that the policy of competition would impact the Building Owners' property rights in specific situations; however, the legislature designed the Statutes to balance the forces of competition and consumer choice with the rights of property owners to be compensated in the event of a taking. The Statutes expressly delegate to the Commission the power to establish a procedure whereby the Building Owners can obtain adequate compensation.⁴³

On February 19, 2004, the Commission issued its final order in Docket No. 24604. Ultimately, the Commission determined that Tanglewood had not discriminated against Time Warner in favor of SBC Texas. The Commission found that Tanglewood took reasonable steps to uniformly apply its policies to both Time Warner and SBC Texas in the provisioning of telecom services to the requesting tenant, Schlumberger, Ltd. Further, the Commission determined that it was not necessary to determine whether a taking had occurred, but instead must simply determine whether compensation is reasonable under the statute. As a result, the Commission determined that Time Warner should pay Tanglewood \$1,945.00 a year for access to the Schlumberger Solutions Center.⁴⁴ Time Warner appealed this decision, alleging that the Commission's order unlawfully discriminates against Time Warner in favor of SBC Texas.⁴⁵ This appeal is currently pending in Travis County District Court.

4. Municipal Right-of-Way Compensation

As part of the ongoing effort to bolster competition in the telecommunications industry by removing barriers to entry, the 76th Legislature enacted House Bill 1777, which became Texas Local Government Code, Chapter 283, *Management of Public Right-Of-Way Used by Telecommunications Provider in a Municipality*. This law established a uniform method for certificated telecommunications providers (CTPs) to compensate municipalities for the use of public right-of-ways (ROWs), and charged the Commission with implementation of the bill.⁴⁶

By establishing this uniform method, this legislation intended to reduce barriers to competition by allowing easier entry into municipal markets for CTPs. Historically, telecommunications companies paid franchise fees to cities for the use of the public ROWs based on varying scales. With this legislation, all CTPs use the same methodology to calculate their municipal fees.

⁴³ *Id.* at 538.

⁴⁴ Complaint of Time Warner Telecom of Texas, L.P. Against Tanglewood Property Management and Emissary Group, Docket No. 24604, Order (Feb. 19, 2004).

⁴⁵ *Time Warner Telecom v. PUC*, Travis County District Court, Cause No. GN4-01192 (pending).

⁴⁶ 154 TEX. LOC. GOV'T. CODE ANN. §§283.001-283.058 (Vernon 1998 & Supp. 2003); Tex. H.B. 1777 76th Leg., R.S., 840 TEX. GEN. LAWS, 3499.

The stated goal of this legislation is to establish a uniform method for compensating municipalities that: (1) is administratively simple for municipalities and CTPs; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of CTPs into a public ROW; and (6) provides fair and reasonable compensation for the use of a public ROW.

a. Implementation Projects

The Commission began the ongoing process of implementing Chapter 283 of the Local Government Code in the summer of 1999. In the initial round, the Commission adopted rules, which established categories of access lines (P.U.C. SUBST. R. 26.461), established a uniform method for calculating and reporting of a municipality's base amount (P.U.C. SUBST. R. 26.463), established a uniform method for counting and reporting access lines by CTPs (P.U.C. SUBST. R. 26.465), and established rate determination, default allocation, base amount and allocation adjustments, municipal compensation, and associated reporting requirements (P.U.C. SUBST. R. 26.467).⁴⁷

Chapter 283.056(c)(3) permits municipalities to inspect a CTPs business records to the extent necessary to conduct an authorized review of the CTP to ensure compliance with access line reporting requirements. Currently, the Commission is considering a new rule for publication to address the issue of municipal authorized review of CTP line-count information. The rule outlines the process that is required for municipalities to conduct an authorized review.⁴⁸

Chapter 283 requires that by September 1, 2002 and thereafter, at least once every three years, the Commission "determine whether changes in technology, facilities, or competitive or market conditions justify a modification in the Commission-established categories of access lines, or if necessary, the adoption of modification of the definition of 'access line'".⁴⁹ The Commission by rule may modify the definition of "access line" and the categories of access lines as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines and consumer price index, as applicable, to the municipalities.⁵⁰ In early 2002, Commission solicited written comments and conducted a workshop for stakeholders and determined that considering the issues, law,

⁴⁷ See Municipal Rights of Way, Implementation of HB 1777, Project No. 20935, Order Adopting New §26.461 (October 28, 1999); Order Adopting New §26.463 (October 28, 1999); Order Adopting New §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for CTPs (December 20, 1999); Order Adopting New §26.467 relating to Rates, Allocation, Compensation, Adjustments, and Reporting (February 10, 2000).

⁴⁸ See Rulemaking to Address Municipal Authorized Review of Access Line Reporting, Project No. 29719 (pending).

⁴⁹ See Project to Address the Modification of the Definition of "Access Line" Pursuant to Local Government Code §283.003, Project No. 25450.

⁵⁰ See Local Government Code Chapter 283.003(b).

Commission rules, current state of technology and market conditions, stakeholders' positions and comments that an amendment to the definition of an access line was not justified. However, the comments indicated that the Commission should undertake a modification in the definition of "transmission path" for which the Commission adopted an amendment to P.U.C. SUBST. R. 26.465 amending the definition of "transmission path".⁵¹ The Commission's amendment to the definition of transmission path removed the limitation that the switch used must be a circuit-switch. By eliminating the requirement that a switched access line must be circuit-based, the commission lifts the restraint on technologies used in switching, thus allowing for the recognition of existing and future switching technologies, such as packet switches.

Under a current project to address the Chapter 283 requirement that the Commission "determine whether changes in technology, facilities, or competitive or market conditions justify a modification in the Commission-established categories of access lines, or if necessary, the adoption of a modification of the definition of 'access lines'", the Commission has solicited written comments, held a workshop for stakeholders, as well as considering the issues, law, Commission rules, current state of technology, market conditions, and stakeholders' positions to determine whether a modification of definition of "access line" is warranted.⁵²

As part of an on-going effort to ease the reporting requirements of P.U.C. SUBST. R. 26.467 by CTPs, Commission established the Municipal Access Line Reporting System (MARS) which is an automated password protected database which enables the access line reports to be filed electronically and allows a municipality to have on-line access to view access lines reported by CTPs for that particular municipality.⁵³

In early 2002, the Commission adopted a new rule that ensures that quarterly access line reporting will be performed in a uniform and timely manner, and applies the Commission's already-existing enforcement procedures for failure to comply with quarterly reporting requirements.⁵⁴ Details the enforcement process enlisted by the Commission to ensure compliance of HB 1777 by CTPs are outlined in Chapter V.

On an on-going basis, the Commission establishes access line rates for newly incorporated and newly participating municipalities.⁵⁵ Other participating municipalities

⁵¹ See Order Adopting Amendments to §26.465 as Approved at the February 13, 2003 Open Meeting (March 5, 2003)

⁵²See Project to Address the Modification of the Definition of "Access Line" Pursuant to Local Government Code §283.003, Project No. 29347 (pending).

⁵³See Municipal Rights of Way, Implementation of HB 1777, Project No. 20935, Order Adopting New §26.467 relating to Rates, Allocation, Compensation, Adjustments, and Reporting (February 10, 2000).

⁵⁴See Rulemaking to Implement Enforcement Procedures Relating to Quarterly Access Line Reports, Project No. 24639, Order Adopting New §26.468 (July 17, 2002).

⁵⁵ See Issues Related to Annual Revisions to Access Line Rates for Texas Municipalities, Project No. 24640 (pending).

may modify their existing rates within their maximum rates or revise their allocation in September of each year.

b. Outstanding Issues

In implementing Chapter 283 of the Local Government Code, there are two areas in which the Commission has had some difficulty in finding administratively efficient solutions: 1) how to deal with carrier's carriers; and 2) how to distinguish between long haul and local exchange facilities.

The carrier's carriers are companies that install facilities in the ROWs, but that have minimal or no plans to start offering local exchange service over these lines. Because the current certification rules give newly certificated providers up to four years to launch their service, the carrier's carriers appear to be CLECs. However, the carrier's carriers often have different business plans from CLECs and could flood the ROWs with lines for which municipalities receive no compensation. A new category of certification could allow the Commission to distinguish these carriers from retail-service-based companies, thus providing a more accurate assessment of municipal compensation for use of the ROW.

Chapter 283 includes only facilities designed to deliver local exchange service. Long-haul facilities are specifically excluded. However, many companies today provide local exchange and interexchange service over the same facilities, leading to municipalities having to rely on carriers themselves to accurately report how a facility is to be used before it is even in the ground. Because carriers cannot accurately assess how their business plan will change over time, some facilities intended for long-distance use and some facilities intended for local exchange have been misclassified. The Commission has no way to change the status of a facility such as this, as providers indirectly compensate municipalities for these facilities. The cost of facilities was included in the municipal base amounts, and is distributed over the rates for all end-use access lines in the municipality. Without a legislative reassessment of the calculation of the initial base amount to now include all of the supporting facilities that use a ROW within a municipality in Texas, there would be a question as how to classify particular lines.

5. ETC Certifications

In the past year, Dobson, Nextel, Sprint and Western Wireless have submitted applications seeking Eligible Telecommunications Carrier (ETC) designation for their mobile wireless services in areas served by both rural and non-rural ILECs.⁵⁶ ETC

⁵⁶ See Application of NCP, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation, Docket No. 27709 (Apr. 28, 2003) (Nextel); Application of Dobson Cellular Services, Inc. for Eligible Telecommunications Carrier (ETC) Designation Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418, Docket No. 28462 (Aug. 29, 2003) (Dobson Non-Rural); Application of Sprint Corporation for Designation as an Eligible Telecommunications Carrier in the State of Texas, Docket No. 28495 (Sept. 5, 2003) (Sprint); Application of WWC Texas RSA Limited Partnership, d/b/a CellularOne (Western Wireless) to Amend its Designation as an Eligible Telecommunications Carrier (ETC) in Certain Areas

certification is a prerequisite for obtaining support from the Federal Universal Service Fund (FUSF). The Federal Communications Commission (FCC) requires state commissions to process these certification applications even though such certifications only allow carriers to receive support from the FUSF. All of these applications have been contested; three applications are currently being processed at State Office of Administrative Hearings, and the Commission recently denied one application and granted another.

On June 30, 2004, the Commission denied Nextel's ETC application without prejudice for, in part, failing to meet the requirements of the Commission's rules. The Commission determined that Nextel's maps were insufficient, as they did not allow any party to ascertain whether a customer is located within the proposed ETC designation area,⁵⁷ and concluded that Nextel failed to show that it would offer to provide the supported services to any consumer in the proposed area, either through use of its own facilities or through resale of another carrier's services.⁵⁸ In addition, the Commission determined that, in evaluating whether an application for designation in *rural* ILEC study areas is in the public interest, several factors should be taken into consideration, including additional service offerings, consumer protection and service-quality commitments, back-up power capability, and any additional information regarding how consumers would be better served if the company were granted ETC designation.⁵⁹ However, consistent with its first decision granting ETC designation to a Commercial Mobile Radio Service (CMRS) provider, *Western Wireless I*,⁶⁰ the Commission determined that designating additional ETCs in *non-rural* ILEC areas is *per se* in the public interest, and that no separate public interest evaluation is required.

In *Western Wireless I*, the Commission granted Western Wireless ETC designation for its fixed wireless services provided with a wireless access unit (WAU) in the study areas of fourteen rural ILECs, and determined that the advancement of competition and new technologies in these rural areas was in the public interest. Furthermore, Western Wireless, which also filed for and received designation as an ETP for Texas USF support specifically for its fixed wireless service, agreed to address certain Texas PUC requirements related to the filing of its customer agreements, filing of reports, and to quality-of-service standards that normally apply to competitive ILECs.

Served by Non-Rural Telephone Companies, Docket No. 28688 (Oct. 7, 2003) (Western Wireless II); Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier ("ETC") Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule 26.418, Docket No. 29144 (Jan. 9, 2004) (Dobson Rural).

⁵⁷ Nextel Order at 3.

⁵⁸ *Id.* at 4-5.

⁵⁹ *Id.* at 9.

⁶⁰ Applications of WWC RSA 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 and Designation as an Eligible Telecommunications Provider Pursuant to 47 U.S.C. §214(e) and P.U.C. SUBST. R. §26.417, Docket Nos. 22289 and 22295, Order (Oct. 30, 2000) (Western Wireless I).

On September 30, 2004, the Commission voted to grant Western Wireless's application to expand its existing ETC designation to all customers, regardless of handset used (*Western Wireless II*). On November 10, 2004, the Commission voted to grant Dobson Rural's application for ETC designation in the study areas of four rural ILECs.

6. Legislation

Two major pieces of telecommunications legislation passed during the 2003 Legislative Session.

a. Senate Bill 732

Senate Bill 732 amended Section 51.004 of the Utilities Code to clarify that the PUC does not have the authority, at any time, to restrict winback and retention offers to consumers by incumbent local exchange companies. The bill was effective on September 1, 2003.

There has not been any activity related to this bill at the Commission.

b. Senate Bill 1829

Senate Bill 1829 authorized the PUC to name a provider of last resort to provide telecommunications service to customers whose telecommunications provider has left the market. The bill also allowed an incumbent carrier to be relieved of its Provider of Last Resort (POLR) responsibilities if certain criteria are met. The bill was effective on September 1, 2003.

In Docket No. 29472, Petition of Southwestern Bell Telephone, L.P. d/b/a SBC Texas for an Order Relieving it of its Designation as the Provider of Last Resort in Areas served Exclusively by Advantex Communications, SBC Texas filed a motion under the new law to be relieved of its POLR responsibilities for a portion of the Dallas/Fort Worth metropolitan area. On November 10, 2004, the Commission voted to grant SBC Texas's petition for relief of its POLR designation in 84 geographic areas served by Advantex Communications in the Dallas/Fort Worth area.

Chapter IV. Emerging Technologies & Emerging Issues

Recently two new technologies that likely will affect the competitive landscape in telecommunications have gained attention – Voice over Internet Protocol (VoIP) and Broadband over power lines (BPL). Also subject to recent attention are two issues in the Texas telecommunications industry: (1) the Commission’s authority to continue or modify the Performance Measures and Performance Remedy Plan for SBC Texas; and (2) the interaction of several sets of rates and/or subsidies as they relate to the increasing level of competition in the local market.

A. VoIP

VoIP is one of the several methods that can be used to transmit voice traffic over networks. Traditionally, voice has been transmitted over circuit-switched lines, with most or all of the transmission being analog. VoIP, on the other hand, involves routing digitized voice calls over packet-switched networks such as the Internet utilizing the Internet protocol (IP). There are many advantages of using the IP technology to transmit voice. First, the voice transmission is “packetized” and therefore uses the network more efficiently. Second, voice and data can use the same network. Third, VoIP enables the deployment of enhanced call-management applications such as managing and listening to voice mails on a computer, and selecting a geographically independent telephone number. These features give end users a new experience when using VoIP. However, VoIP-enabled services do not provide the same level of 911 emergency access as that provided by traditional local exchange telephone service. The next few sections will highlight some of the types of VoIP configurations and the regulatory issues that have arisen in recent years concerning VoIP.

Table 21 — VoIP Configurations

| Type of VoIP Service | Type of Connection | Connection to the PSTN ⁶¹ | FCC Access Charges |
|-----------------------------|---|--------------------------------------|--------------------|
| Computer-to-computer | Communicate over broadband connection | No | No |
| Computer-to-phone | Initiated or terminated over a broadband connection through computer software or specialized equipment. | Yes | To be determined |
| Phone-to-phone | VoIP transport to connect two users on the traditional circuit-based networks | Yes | Yes |

⁶¹ Public Switched Telephone Network (PSTN).

1. FCC Actions on VoIP

The Federal Communications Commission (FCC) is considering a number of VoIP-specific proceedings that focus on widely debated issues, such as defining whether VoIP services are considered a telecommunications service or information service; whether these services are interstate or intrastate and what role the states may play, if any; and issues related to compensation and other regulatory requirements of VoIP providers. Additionally, the FCC is also considering broader public policy issues regarding universal service, E911, disability access, and requirements associated with the Communications Assistance for Law Enforcement Act (CALEA), e.g., wiretapping.

With respect to the jurisdictional nature of VoIP services and state regulation, the FCC recently ruled on a petition from Vonage Holdings Corp, which sought federal preemption on its VoIP services.⁶² Vonage filed that petition after the Minnesota PUC found Vonage's VoIP services subject to traditional state telephone regulation.⁶³ In its decision, the FCC stated that the Internet telephone service offered by Vonage, called DigitalVoice, is not subject to traditional state public utility regulation. Additionally, the FCC also stated that other similar IP-enabled services, like those offered by cable companies, would also not likely be subject to state regulation. The FCC found that Vonage's DigitalVoice service cannot be practically separated into intrastate and interstate components, making it difficult to determine whether a call is local, interstate or international in nature. The FCC noted that it had the power to preempt state regulation that impedes federal authority over interstate communications, and only it had the obligations and responsibility to decide whether certain regulations apply to IP-enabled services. The FCC concluded that preemption was consistent with federal law, as divergent state rules, regulations and licensing requirements would thwart the continued development of Internet, broadband, and interactive services.

2. FCC VoIP NPRM

On March 10, 2004, the FCC released a *Notice of Proposed Rulemaking (NPRM)*, which sought comment on issues relating to services and applications making use of IP, including, but not limited to, voice over IP services. This NPRM sought information on the following topics:

- Ways in which the FCC might properly categorize IP-enabled services. The NPRM acknowledged that VoIP services are not necessarily mere substitutes for traditional telephony services, and sought ways to differentiate among various IP-enabled services.

⁶² See *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004).

⁶³ The Minnesota PUC found that Vonage is subject to state requirements to provide E-911 similar to that offered by ILECs. Vonage appealed the petition and a lower court overrode the PUC's decision. The Eighth Circuit is considering the Minnesota PUC's appeal of that ruling.

- Whether the FCC has jurisdiction (exclusive or otherwise) over IP-enabled services.
- Whether the findings made in the *Pulver Declaratory Ruling* should and could be extended to other IP-enabled services.
- The proper legal classification and appropriate regulatory treatment of the services falling into each category of IP-enabled service and whether any classes of IP-enabled services fall under the definition of “telecommunications services” or “information services.”

The FCC noted as a policy matter that “any service provider that sends traffic to the public switched telephone network (PSTN) should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.” However, the FCC sought comment on the extent to which access charges should apply to VoIP, or other IP enabled services.

Finally, the FCC was interested in hearing about the impact of IP-related policies on rural carriers, and whether additional regulatory requirements of the FTA should be imposed upon IP-enabled services, including consumer protection and other traditional economic requirements.

3. Pulver.com Petition

Pulver.com asked the FCC for a declaratory ruling that its Free World Dialup (FWD) service, a computer-to-computer VoIP offering, is neither telecommunications nor a telecommunications service.⁶⁴ In the *Pulver Declaratory Ruling*,⁶⁵ the FCC found that Pulver’s Free World Dialup is an unregulated information service that does not use the PSTN and is subject to exclusive federal jurisdiction. With respect to jurisdictional authority, the FCC found that state-by-state regulation of FWD, an Internet application, is inconsistent with the controlling federal role over interstate commerce required by the Constitution, and that FWD is an interstate service based on the FCC’s “mixed-use” doctrine.

4. AT&T Declaratory Petition

In October 2002, AT&T filed a request for declaratory ruling that AT&T’s phone-to-phone IP telephony services are exempt from access charges. AT&T’s services use VoIP transport to connect two users on the traditional circuit-based networks. In this

⁶⁴ FWD is a peer-to-peer service that facilitates VoIP calls between subscribers by informing them when other subscribers are online or “present.” FWD provides subscribers with its own numbers, not North American Numbering Plan numbers, emphasizing the distinction that FWD member-to-member calls are routed over the Internet, not the PSTN.

⁶⁵ *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27 (rel. Feb. 19, 2004) (Pulver Declaratory Ruling).

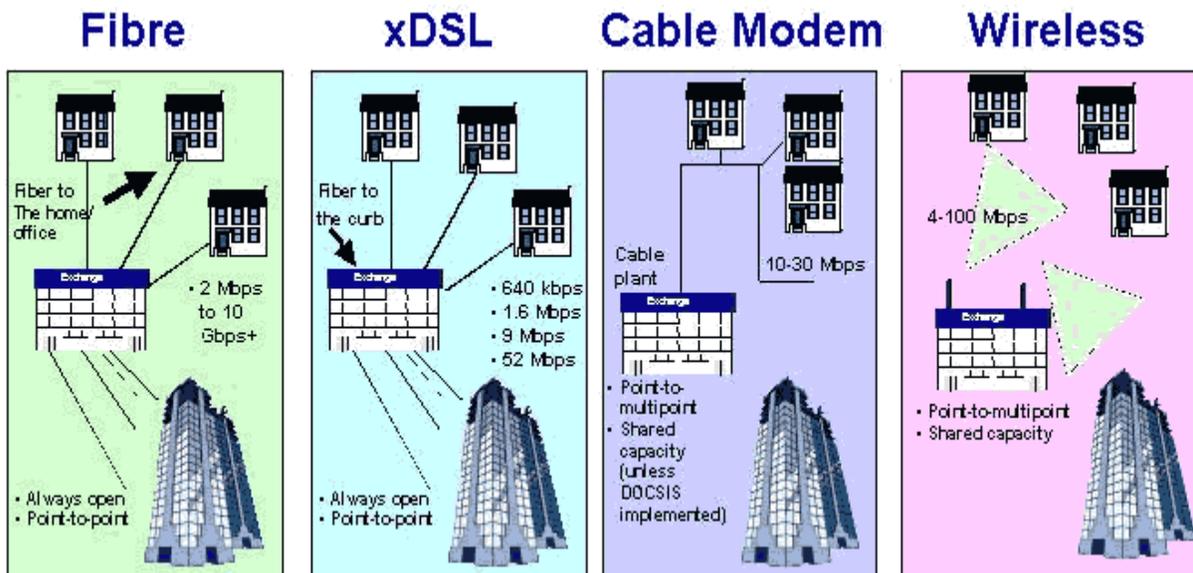
instance, however, the FCC ruled that AT&T's service is a telecommunications service upon which interstate access charges may be assessed.

The FCC emphasized that its decision was limited to the type of service described by AT&T in this proceeding, *i.e.*, an interexchange service that (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the PSTN; and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology. The FCC further noted that its analysis in this order applies to services that meet these three criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.⁶⁶

5. Options for Accessing the Last Mile

In spite of advances like VoIP to the transmission portion of a telecommunications network, the last mile still remains a bottleneck. Traditionally, both material and labor costs have dampened any realistic options for upgrading the last mile to the customer's premises. Now, however, with material costs decreasing significantly and new technologies becoming available, new attempts are being made to upgrade the last mile or provide alternatives. Labor cost still remains a significant challenge. Generally, the technologies used to upgrade or substitute for the last mile include fiber, coax, wireless and xDSL. The following pictures depict these technologies:⁶⁷

Figure 23 — Last Mile Access



⁶⁶ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004).

⁶⁷ Source: http://www.telsyte.com.au/feature/last_mile.htm.

Table 22 — Last Mile Access Comparison

| Technology | Substitutes last mile | Enhances Last mile | Broadband Capable | Speed |
|---|-----------------------|--------------------|-------------------|--------------------------------|
| Ethernet over high-capacity fiber connections | No | Yes | Yes | 1 Gbps |
| Broadband over power lines | Yes | --- | Yes | Up to 3 Mbps |
| Cable based broadband | Yes | --- | Yes | 6 Mbps |
| Digital Subscriber Line (DSL) | No | Yes | Yes | 128-2 Mbps |
| VoIP | No | Yes | Yes | |
| ISDN | Yes | --- | Yes | 128 Kbps |
| Motorola Canopy | No | Yes | Yes | 10 Mbps |
| Wi-MAX | No | Yes | Yes | 10 Mbps |
| Fiber to the home | Yes | Yes | Yes | 10 Gbps (and beyond with DWDM) |
| Fixed Wireless | Yes | --- | Yes | 200 Kbps – 1.7 Mbps |

B. Broadband Over Power Lines

1. What is BPL?

Currently, broadband Internet access is commonly offered through DSL, cable modem, wireless, fiber-to-the-home, and satellite. Another high-speed broadband alternative being considered worldwide is broadband over power lines (BPL), also known as power line communication (PLC). In a common form of BPL, this technology allows customers to plug BPL modems into residential electric outlets to obtain Internet access. In another form, Internet access is provided using wireless technology between the distribution transformer location and the customer's computer. BPL technology has roots going as far back as the 1940s for simple telemetering and electrical-equipment control. BPL utilizes electric power distribution wires for the high-speed transmission of data services by transmitting high-frequency data signals through the same power distribution network used for carrying electric power to household users.

Two kinds of BPL exist, access BPL and in-house BPL. Access BPL requires outdoor devices that inject data signals into the medium- and low-voltage power distribution network to provide Internet access to a neighborhood. Since most BPL signals cannot pass through a transformer, additional equipment is usually required to bypass the data signal around distribution transformers in order to get the data signal into customers' homes. In-house BPL utilizes indoor adapters to transmit data signals over the existing interior electric wires, and to feed the data signals to various applications. In-house BPL systems use the electrical outlets available within a building to transfer information between computers and other home electronic devices and appliances, eliminating the need to install new wires between devices.

In Texas, one BPL provider, Broadband Horizons, announced the establishment of three BPL pilot projects in June 2004. Those BPL installations are in Blanco, Burnet and Weimar, Texas.

2. What equipment does BPL use?

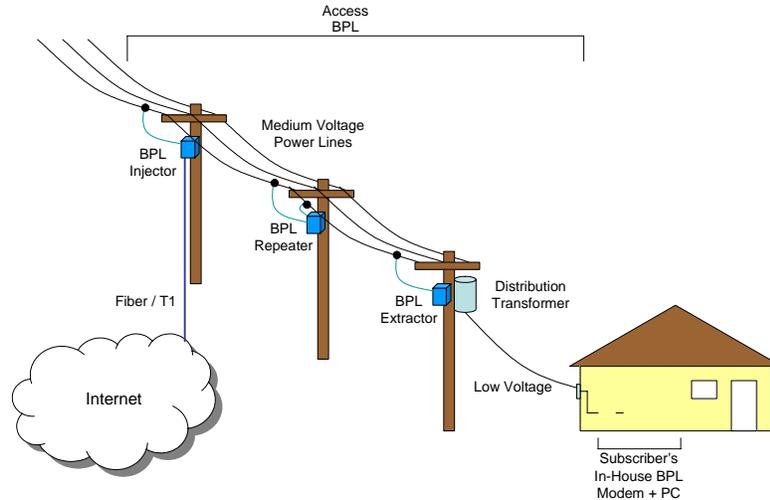
In general, access BPL equipment consists of 1) injectors, 2) repeaters, and 3) extractors. BPL injectors are tied to the Internet backbone via fiber or T1 lines and interface to the medium voltage (MV) power lines feeding the BPL service area. These MV lines typically carry in the range of 1,000 to 40,000 volts, bringing power from an electrical substation to a residential neighborhood. MV power lines may be overhead on utility poles or underground in buried conduit.

To span large distances between injectors and extractors, repeaters may be employed. As BPL is intended for “last mile” provisioning (typical distance without a repeater is from 1,000 to 3,000 feet), whenever the service provider chooses to utilize long runs of MV power lines, signal attenuation or distortion through the power line may require it to employ repeaters to maintain the required BPL signal strength and fidelity. It should be noted that some BPL providers choose not to employ repeaters, as they decrease overall bandwidth and require the use of additional frequency spectrum for transmission of the data signal, not to mention the introduction of latency and delay in the data signal.

BPL extractors provide the interface between the MV power lines carrying BPL signals and the households within the service area and are usually located at each low voltage (LV) distribution transformer feeding a group of homes. Some extractors boost BPL signal strength sufficiently to allow transmission through LV transformers, and others relay the BPL signal around the transformers via couplers on the adjoining MV and LV power lines. Other kinds of extractors interface with non-BPL devices (*e.g.*, Wi-Fi transceivers) that extend the BPL network to the customers’ premises.

Figure 24 illustrates a basic BPL system, which can be deployed in cell-like fashion over a large area served by existing MV power lines.

Figure 24 — Basic BPL System



3. What can BPL provide?

In addition to providing high-speed broadband Internet access, BPL is expected to deliver telephone services (including private telephone networks, local services, long distance and VoIP), video services (both on-demand & conferencing), home networking, home automation, high speed campus and building networking, and other information services. Advantages attributed to BPL include relatively easy installation, low cost of entry, equipment collocation, and quick deployment. BPL allows power lines to carry signals for moderate distances without requiring regeneration, requires no changes to be made in business or household wiring for broadband access, provides broadband access from every electric outlet in every room, grants a relatively low entry barrier for utilities, and utilizes a pre-existing infrastructure, the electric power grid. Some value-added items that BPL may offer to the electric power utility include surveillance, alarming, remote meter reading, power management, home automation, remote maintenance, and e-services such as web hosting and e-mail.

Furthermore, BPL systems may be used by electric utilities to manage their electric power networks more efficiently. Possible utility company applications include automatic meter reading (AMR), voltage control, supervisory control and data acquisition (SCADA), equipment monitoring, energy management, remote connect and disconnect, power outage notification, and the ability to collect detailed power usage information (such as time-of-day demand) to be used to bill customers.

4. What potential problems does BPL pose?

The main obstacles to BPL deployment, which are continuing to be addressed, include radio interference, signal-to-noise ratio, data capacity, security, transformer bypass, and safety issues.

Regarding interference, BPL systems use frequencies that radiate into the air from the open wire power conductors causing possible interference to licensed services, including emergency services and amateur radio operators. BPL's frequency range generally lies in the high frequency band, a part of the radio spectrum that allows one to communicate around the world with very minute power levels. The American Radio Relay League (ARRL) has demonstrated the interference effects of BPL on amateur radio communications using BPL test sites running in the U.S.

Security concerns can arise when multiple homes share the same electrical power transformer and the same physical wire. In some cases, depending on how close the homes are physically located, data communication directed to one home can travel across the power grid to a neighbor's home as well. BPL systems may also be subject to eavesdropping and intentional interference.

However, BPL providers addressing interference issues claim that the technology now exists to notch out frequency bands that are used by ham radio operators, and improved modulation schemes may help address issues regarding signal-to-noise ratio. Data encoding methods may be employed to provide confidential and secure communications.

5. Where is BPL currently being deployed?

BPL is currently being deployed across the United States. The FCC has issued eight experimental licenses for BPL to Ambient (New York and Illinois), Ameren (Illinois and Missouri), Amperion (Dublin, Ohio), City of Manassas (Manassas, Virginia), Current Technologies (Indiana, Ohio, and Maryland), PPL Utilities (Allentown, Pennsylvania), Progress Energy (Raleigh, North Carolina), and Southern Telecom (Alabama, Florida, Georgia, and Mississippi).

Some of the companies (power companies and BPL companies) with ongoing pilot programs include Progress Energy, Ameren, Cinergy, Southern Company, PEPCO, Idaho Power, Consolidated Edison, Ambient, Amperion, Current Technologies, Main.Net PLC, and IBEC.

Other countries where BPL has been tested include Spain, Finland, Iceland, and Russia. The European Union is currently working on a regulatory framework for BPL.

6. How is BPL being regulated?

BPL is a “carrier-current” system that operates on an unlicensed basis under Part 15 of the FCC’s rules, which allows certain low-power unlicensed equipment to operate on a non-interference basis. Carrier-current is a term used to describe systems that intentionally conduct signals over electrical wiring or power lines. In accordance with Part 15, BPL must operate on a non-interference basis relative to licensed services. It must accept interference from them and not cause interference to them.

In April 2003, the FCC issued a Notice of Inquiry (NOI) to obtain information on a variety of issues related to access to BPL systems. Over 5,000 comments and replies were received in response to the NOI addressing such areas as potential benefits, potential interference, and measurement procedures for evaluating emissions from BPL systems.

In February 2004, the FCC issued its NPRM regarding new requirements and measurement guidelines for access BPL. The FCC took comments on the NPRM through June 22, 2004.

In October 2004, the FCC issued its Report and Order (Order) adopting changes to its Part 15 rules to encourage the development of access BPL systems while safeguarding existing licensed services against harmful interference. The rule changes in the Order establish specific technical and administrative requirements for access BPL equipment and operators to ensure that interference does not occur and, should it occur, to provide for a timely resolution of that harmful interference without disruption of service to access BPL subscribers. The Order also sets forth procedures to measure the radio frequency (RF) energy emitted by the access BPL equipment.

C. SBC Performance Remedy Plan

As discussed in Chapter III of this Report, a Performance Remedy Plan (Plan) and Performance Measures (PMs) were implemented in 1999 through the Texas 271 Agreement (T2A) to measure the performance of SBC Texas’s wholesale operations and to compare that performance to SBC Texas’s performance internally to its own retail operation. The goal was to ensure that SBC Texas provides wholesale services to CLECs at parity with the service SBC Texas provides to itself, or, where no retail analogy exists, at a benchmark level designed to afford the CLECs a meaningful opportunity to compete. The Plan also provided for payment of liquidated damages to the CLECs or, in certain situations, penalties to the State for failure to meet a measure. SBC Texas has missed more than 10% of its performance measures occasionally during the past 26 reporting months, but overall, its performance has become much more consistent since the *2003 Scope Report*. See Table 18 for a summary SBC Texas’s penalty payments from 1999 through July 2004.

1. Performance Remedy Plan Order

In 2002, the Commission issued the Commission issued Order No. 45 in Project No. 20400,⁶⁸ which approved modifications to the Plan and PMs in Attachment 17 of the T2A⁶⁹. Order No. 45 directed certain modifications to the K-Table as a result of the Commission's third six-month review of the PMs and the Plan.⁷⁰ The Commission stated that the modifications were within the purview of FTA §271 as the kind of action contemplated by the FCC in its SBC Texas 271 order that approved SBC Texas's entry into the inter-LATA, long-distance market in Texas. SBC Texas argued, however, that the clear and unambiguous language of §6.4 of the T2A requires the Commission to obtain SBC Texas's consent before making changes to the Plan.

SBC Texas appealed Order No. 45 to federal district court, claiming that the T2A required mutual consent before modifications could be made and that SBC Texas had not consented to the K-Table modifications. On cross-motions for summary judgment regarding the appeal of Order No. 45, the federal district court granted the motions filed by the Commission and intervener AT&T, denied SBC Texas's motion, and dismissed the proceeding. The court held that that the Commission's actions were neither arbitrary nor capricious, were supported by substantial evidence, and were not contrary to the FTA.⁷¹

2. Current Performance Measure Issues

This ruling above was limited, however, to the Commission's ability to modify the performance measure remedy plan set forth in the T2A. A broader issue related to the Commission's ability to establish a performance-measure remedy plan is currently being considered Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*. The existing agreement is currently scheduled to expire on February 17, 2005. In this arbitration, parties have raised issues relating to the appropriate number of PMs that should be established in the

⁶⁸ Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas, Project No. 20400, Order No. 45 (Oct. 17, 2002).

⁶⁹ The T2A is the model interconnection agreement approved by the Commission as a key component of the Commission FTA § 271 compliance proceeding. It is available for statewide use and functions to ensure that SWBT meets its continuing obligation to provide nondiscriminatory access to its network under the FTA.

⁷⁰ The remedy plan's K-table was designed to address issues related to random variation and statistical errors in collecting and reporting performance data. The Commission determined it appropriate to retain the K-table because random variations and statistical errors continue to exist. Specifically, Order 45 modified the T2A Remedy Plan to (1) make the K-table not applicable for Tier 1 PMs that are missed by SBCT for two consecutive months; (2) change the ranking system for K-exclusion purposes to dollar amounts from the existing K-table ranking system of high, medium, and low; and (3) remove from K value determinations PMs that have fewer than 10 transactions per month.

⁷¹ *Southwestern Bell Telephone, L.P. d/b/a as SBC Texas v. Public Utility Commission of Texas, et al*; SA-03-CA-249-FB, Order Concerning Pending Motions for Summary Judgment (W.D. Tex. – Sept. 30, 2004). On October 13, 2004 SBCT filed a motion to modify the court's judgment. This case is likely to be appealed to the fifth circuit.

successor interconnection agreement to the T2A. SBC Texas has challenged the Commission's authority to impose a performance-measure remedy plan on a going-forward basis in Docket No. 28821. In April 2004, the Commission issued an order on threshold issues that ruled that pursuant to FTA §§ 251 and 252, the Commission has the authority to arbitrate performance measures and to adopt a performance-measure remedy plan.⁷² SBC Texas continues to challenge this ruling. The Commission anticipates making its final determinations regarding performance measures and a performance-measure remedy plan in early 2005.

D. Rates

In the *2003 Scope Report* there were three types of rates said to be at issue in the telecommunications market: basic local retail, local wholesale UNEs, and wholesale switched access charges. Universal service funding, which is an explicit support for basic local service rates, constitutes a fourth rate-affecting issue. UNE rates for SBC Texas in Texas have recently been set by the Commission in Docket No. 28600, *Arbitration of Phase I Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*. However, basic local rates, switched access charges, universal service funding, and rates for local "discretionary" or "vertical" services (such as Caller ID and Call Waiting) are at issue currently. Additionally, the interrelationship between these rates and structures is of critical importance. Any significant change to any one of these components will likely have a direct impact on other rates; thus, evaluations and any changes should take into account the entire structure simultaneously.

For information on the effects of incentive regulation on rates, see the Commission's 2005 Report to the 79th Texas Legislature on the Effects of PURA Chapters 58 and 59 Telecommunications Incentive Regulation.

1. Local Rates

Texas has some of the lowest local telephone service rates in the nation. A recent poll conducted by the Federal Communications Commission (FCC) indicates that the average single-line residential rate for Texas is \$25.16 as compared to the national average of \$34.16.⁷³ The average single-line business rate for Texas is \$45.57, compared to the national average of \$72.62 as reported by the FCC.⁷⁴ Electing under PURA Chapters 58 and 59 prohibits an ILEC from increasing basic local service rates; therefore, rates for basic local telephone service have remained unchanged for these ILECs for several years. A universal service fund charge has been imposed in Texas to offset some of the costs to ILECs in areas where mandated local rates are below the actual costs of

⁷² Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821, Order Addressing Threshold Issues (Apr. 19, 2004).

⁷³ *FCC Local Telephone Competition: Status as of December 31, 2003*. Rate comparisons include monthly access line rates, including charges for touch tone service, federal subscriber line charge, other surcharges, 911 fees and taxes.

⁷⁴ *Id.*

provisioning and maintaining the network. Under certain conditions, these high cost subsidies are available to CLECs that compete in these areas using UNEs and/or their own facilities.

2. Switched Access Rates

Switched-access charges are the wholesale rates paid to local exchange telephone companies by long-distance companies and other telecommunications providers to originate and terminate long-distance calls over the common trunking facilities of the public switched network. Between 1999 and 2000, rates for switched access charges in Texas were significantly reduced, as part of the Texas Universal Service Fund (TUSF) full implementation process. These rates have not changed since that time. As such, with interstate rates still declining, by comparison, Texas still has some of the highest intrastate switched-access rates in the nation.

The *2001 Switched Access Report*, which was prepared in response to PURA § 58.303, discussed various restructuring and/or rate reduction options, the objective of which was to establish cost-based rates, or, at a minimum, move rates closer to cost. Generally, moving access rates closer to cost will have a positive effect on competition and provide less of an incentive for rate arbitrage.

3. Discretionary or Vertical Local Services (Calling Features)

As discussed in Chapter II, the prices for calling features such as Caller ID and Call Forwarding have increased significantly over the last several years. Informational notice filings from the two largest electing ILECs in the state, SBCT and Verizon, indicate that since 1999, the monthly rate for Caller ID Name and Number services has increased by 38% and 19% respectively.⁷⁵ Similarly, the monthly rate for Three-Way Calling increased 138% and 48% respectively.⁷⁶

4. Texas Universal Service Fund

Universal service funding, embodied in Texas by the TUSF, is an explicit support for basic local service rates. Generally, the TUSF is designed to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost areas. The Texas High Cost Universal Service Plan and the Small and Rural ILEC Universal Service Plan provide substantial financial support to Eligible Telecommunications Providers to ensure that all customers throughout the state have access to basic local telecommunications service at just, reasonable, and affordable

⁷⁵ See Verizon Tariff Control No. 27694 (Apr. 23, 2003); Verizon Tariff Control No. 29407 (Feb. 27, 2004); SBCT Tariff Control No. 24399 (July 20, 2001); SBCT Tariff Control No. 25249 (Feb. 4, 2002); and SBCT Tariff Control No. 29626 (April 26, 2004).

⁷⁶ See Verizon Tariff Control No. 29407 (Feb. 27, 2004) and SBCT Tariff Control No. 25249 (Feb. 4, 2002).

rates.⁷⁷ For fiscal year 2004, it is estimated that approximately \$542 million, or approximately 92 percent of the total TUSF, will be used to maintain reasonable basic local service rates in high cost areas of the state. Appendix I sets forth the TUSF disbursements for these high cost support programs.

5. Conclusion

The key issue for the Legislature's decision-making process is an evaluation of all of the inter-related components of pricing, subsidies and programs in the telecommunications market. These components are comprised of residential and business basic local rates, non-basic local features (such as Caller ID and Call Forwarding), the state's universal service fund (USF) mechanism, and switched access charges. Any significant change to any one of these components would have a direct impact on other rates; thus, consideration of these issues, and any proposed changes, should take into account the entire rate and subsidy structure simultaneously.

⁷⁷ PURA § 56.021.

Chapter V. Customer Protection and Enforcement

A. Customer Protection

The Public Utility Regulatory Act (PURA) § 64.001 required the Commission to adopt rules to establish customer-protection standards and to protect customers from fraudulent, unfair, misleading, deceptive, or anti-competitive practices. The Commission adopted customer-protection rules pursuant to mandates established by Senate Bill 86,⁷⁸ which was passed during the 76th Texas Legislature.

PURA §15.051 provides that persons may complain to the PUC about their utility service, and requires the PUC to keep records of the following information:

- the date the complaint was received;
- the name of the complainant;
- the subject matter of the complaint;
- a record of each person contacted in relation to the complaint; and
- a summary of the results of the review or investigation of the complaint and, if the Commission took no action on the complaint, an explanation of the reason the complaint was closed without action.

In 1997, the Customer Protection Division (CPD) of the Commission was created to manage and respond to complaints and inquiries against telecommunications and electric-service providers. Additionally, CPD helps insure the availability of safe, reliable and high-quality electric and telecom utility services by the following measures:

- assisting Texas customers with inquiries and complaints regarding their local telephone and electric service;
- educating and informing the public of their rights and protections relating to local telephone and electric service;
- managing the Texas Electric Choice public education campaign;
- administering the Relay Texas program—a statewide telephone interpreting service between people who can hear and those who are deaf, hard-of-hearing or speech-impaired; and
- overseeing the Texas No Call List.

⁷⁸ Tex. S.B. 86, 76th Leg. R.S. (1999), sponsored by Senator Jane Nelson and Representative Debra Danburg, 1579 Tex. Gen. Laws 5421.

1. Customer Care and Service

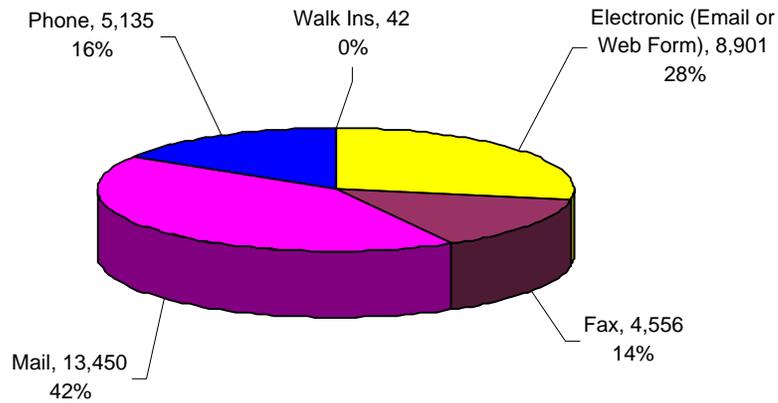
The CPD Intake Center serves on the front line to receive, consolidate, and collect customer information and to handle inquiries, opinions, or complaints covering telecommunication and electric services and service providers. This work includes entering customer information in the PUC complaint database. The database is also linked to a high speed scanner that enables all customer-supplied correspondence to be scanned and tracked. Since January 2004 more than 19,152 customer entries have been made and more than 15,462 documents have been scanned into the database. (Note: PDF files are counted as one document, but may consist of additional items that are scanned but are not included in the total number.)

CPD also staffs a Call Center that serves as the first line of customer assistance to respond to questions, inquiries, or complaints covering telephone or electric services or service providers. Both English- and Spanish-speaking agents ensure that every customer has an opportunity to have his or her concerns heard or addressed. The agents are available from 9 a.m. to 4 p.m. Monday through Friday to respond to inquiries and enter customer complaints into the complaint database. If a customer's concerns cannot be addressed by CPD, customers are referred to organizations that are better suited to lend support or give assistance.

Customers contact the CPD by calling a toll-free hotline number (1-888-782-8477). The hotline number is also listed in local telephone directories, on the Commission's website, and on service providers' billing invoices. Customers can also contact CPD via fax, electronic mail (via online form and email), and on-site (walk-ins).

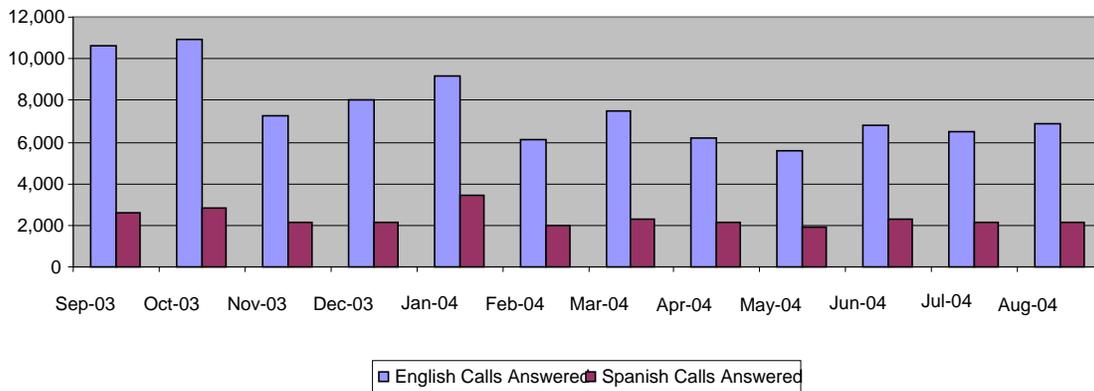
The pie chart below represents a total of 32,084 customer contacts relating to complaints, inquiries and opinions that were handled by CPD. Of this total, approximately 20,274 contacts or 63% dealt with telecommunications issues.

**Figure 25 — Contact Methods
9/1/03 - 8/31/04**



The hotline number is linked to an Interactive Voice Response (IVR) system that assists customers by providing agency information and referral information in either Spanish or English. It is also designed to allow the caller to speak to an English- or Spanish-speaking agent about the caller’s inquiry or complaint. On average, for Fiscal Year (FY) 2004 the Call Center staff responded to approximately 405 calls each day.

Figure 26 — English & Spanish Calls, 9/1/03 - 8/31/04



In May 2003, CPD launched a new call center management and reporting tool designed to capture call activity. It enables staff to view and monitor real-time call activity plus generate reports covering the number of calls in queue, call volume, call duration and calls answered or abandoned. From September 1, 2003 through August 31, 2004 CPD handled approximately 118,311 calls. The average time for a customer to reach a live CPD operator in English is 14 seconds, and in Spanish it is 17 seconds.

2. Informal Complaint Handling Process

Any person who purchases electric or telecommunications services in Texas may file a complaint with the PUC concerning the service. Complaints may be filed against any entity under the jurisdiction of the PUC. Records are maintained on every complaint received. All complaints, except non-jurisdictional complaints, Automatic Dial Announcing Device (ADAD) complaints and “No Call” List complaints, are forwarded to the service provider for response. Customers who file complaints concerning entities that are not under the PUC’s jurisdiction receive a letter informing them that the PUC lacks jurisdiction and refers them to an organization that is better suited to lend support or give assistance.

3. Complaint Investigation

Investigating and resolving informal customer complaints relies on the mutual cooperation of the CPD staff and the service providers. To this end, complaint investigation procedures require that critical analysis be applied to each customer’s complaint. It is performed in conjunction with the service provider’s response and evaluated against customer protection telecommunications rules.

The outcome of a complaint investigation is strictly guided by whether the utility’s actions to assist and resolve the customer’s complaint are in accordance with the prescribed substantive rule(s). The Commission is also required to provide information about the complaint investigation and resolution to the complainant and the service provider who is involved in the complaint. CPD staff routinely meets with service providers to share issues and concerns relating to complaint trends, their business operations, and compliance with Commission rules. In most cases, service providers readily act upon non-compliance issues or concerns that are brought to their attention. The CPD draws upon trend information obtained from customers’ calls and the complaints received. Similarly, trend information is also obtained from other jurisdictions covering complaints filed against nationally known service providers. Both sources are used to monitor service provider activities and determine whether a more formal investigation and/or enforcement action is warranted against a particular service provider.

More than 99% of customer complaints are solved through the informal complaint process, obviating the need for a formal contested proceeding. The Commission also provides a formal complaint process that is available to customers who believe the informal complaint process did not yield a satisfactory outcome.

4. Complaint Resolution

At the end of the 1st Quarter in FY 2004, the average time to investigate and resolve a customer complaint was 25.26 days. The end of the 3rd Quarter saw the average time decrease to 18.86 days. By August 31, 2004 the average time was 18.45 days. CPD is continually improving upon the efficiencies of the informal complaint-resolution process. This improvement has been accomplished by adding resolution staff, installing new complaint-database software in July 2002, and using a high-speed scanner to enter all complaints and supporting documents electronically into the database.

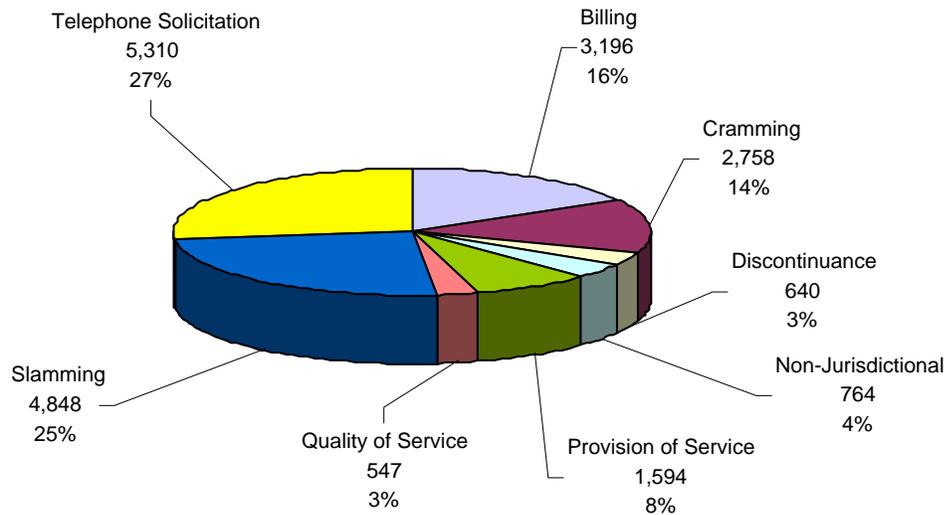
Table 23 — Average Days to Resolve Complaints

| FY | 1 st qtr. | 2 nd qtr. | 3 rd qtr. | 4 th qtr. |
|------|----------------------|----------------------|----------------------|----------------------|
| 2001 | 110.63 | 109.86 | 74.3 | 51.13 |
| 2002 | 151.89 | 258.28 | 227.32 | 91.74 |
| 2003 | 52.73 | 32.5 | 24 | 24.36 |
| 2004 | 25.29 | 21.17 | 18.86 | 18.45 |

B. Types of Telephone Service Complaints

Telephone solicitation (No Call violations) has become the largest category of complaints with 27% in FY 2004. The majority of other telecommunications complaints received include slamming at 25%, billing allegations at 16%, and cramming at 14%. Decreases occurred in all three complaint categories from the previous fiscal year (FY 2003) when telephone-solicitation complaints represented 29% of the complaints, slamming was 27%, billing allegations were 17%, and cramming was 17%.

**Figure 27 — Telecom Complaints Received
9/1/03-8/31/04**

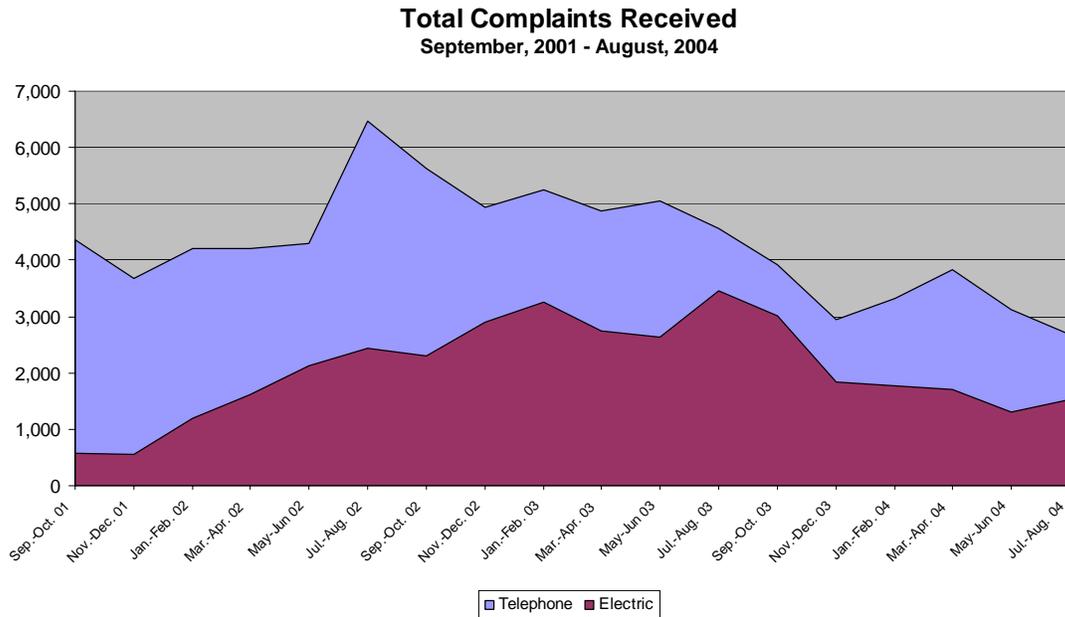


Slamming is the switching of a customer’s long-distance service without proper authorization and verification. It violates PURA §§ 55.303-306 and PUC SUBST. R. 26.130. The Commission adopted PUC SUBST. R. 26.130 to ensure that all customers in this state are protected from an unauthorized change in a customer’s local or long-distance telecommunications utility.” The Commission, like the FCC, maintains a zero-tolerance policy regarding the prevention and elimination of slamming.

Cramming is an unauthorized charge on a customer’s telecommunications utility bill without proper consent and verification of authorization from the customer. This constitutes a violation of PURA §§17.151-158 and PUC SUBST. R. 26.32. The Commission’s rule includes requirements for billing authorized charges, verification requirements, responsibilities of billing telecommunications utilities and service providers for unauthorized charges, customer-notice requirements, and compliance and enforcement provisions.

1. Complaints Received

**Figure 28 — Total Complaints Received
9/1/01-8/31/04**



Telephone complaints received and handled by CPD steadily climbed and peaked during July-August 2002. This increase was due to the effective date of the “No-Call list.” For Fiscal Year 2003, more than 31,000 complaints were resolved. This is an average of 7,783 complaints per quarter. Complaints declined during Fiscal Year 2004 to approximately 20,631. This represents an average of 5,157 complaints per quarter.

2. Telemarketing

a. Texas “Do Not Call” List

On January 1, 2002, Texas joined 24 other states with statutory “No Call” lists intended to shield telephone customers from unwanted telemarketing sales calls. Texans placed their name, address, and telephone number on the list to identify themselves as individuals who do not wish to receive unsolicited telemarketing calls at home.

b. Statewide “Do Not Call” List

The statewide “Do Not Call” list was established by H.B. 472, enacted by the 77th Legislature in 2001, and applies to all telephone marketers operating in Texas. A registered residential telephone number remains on the list for three years.

Texans may register their telephone numbers for one or both “No Call” lists maintained by the Commission.

c. “Electric No Call” List

The “Electric No Call” list was established by S.B. 7, the electric restructuring utility bill enacted in 1999. The “Electric No Call” list prevents calls only from retail electric providers and telemarketers calling on their behalf regarding customers’ electric service. Both business and residential numbers can be added to the list, and numbers remain on the list for five years.

d. “No Call” Registration

The first registration period for the “No Call” list closed on March 27, 2002. The first “No Call” list was published on April 1, 2002, and included 386,046 telephone numbers. The second registration period closed on June 26, 2002. The second list was published on July 1, 2002, bringing the total registered telephone numbers to 658,749. The total telephone numbers registered to the lists as of December 31, 2002 was 835,971.

As of December 31, 2003, 990,556 telephone numbers were included in the “No Call” registry. The January to August 2004 time frame brought the “No Call” lists to a total of 1,009,775 enrolled telephone numbers.

e. National “Do Not Call” Registry

In June of 2003, the Federal Communications Commission updated its rules implementing the Telephone Consumer Protection Act of 1991 (TCPA) and established a national “do not call” registry for consumers who wished to avoid telemarketing calls. On January 1, 2004, the administrator of the Texas “Do Not Call” list, Gryphon Networks, began downloading and incorporating the Federal Registry with the state’s No Call list.

3. Telemarketing Complaints

The Commission is authorized to investigate complaints and to assess administrative penalties for violations of the Texas “No Call” lists involving all entities except state licensees. From July 1, 2002, through December 31, 2002, the CPD received 5,473 customer contacts related to the Texas “No Call” list. From January 1, 2003, through December 31, 2003, there were 7,425 customer contacts regarding the Texas “No Call” lists. There were 3,145 customer contacts from January 1, 2004, through August 31, 2004.

C. Enforcement

The Commission protects consumers and promotes fair competition by enforcing statutes, rules and orders applicable to Certificated Telecommunications Providers

(CTPs) and other entities under its jurisdiction. The Commission's enforcement efforts focus on violations of PURA, provisions of the Texas Business and Commerce Code relating to the Texas No-Call list, and provisions of the Local Government Code relating to municipal right-of-way issues. The Commission has used three approaches to improve compliance of service providers: (1) assessment of administrative penalties, (2) adoption of rules to establish and clarify requirements, and (3) raising industry awareness of service providers' obligations.

1. Administrative Penalties

The Commission's primary enforcement tool is 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 \$5000 per violation per day. For violations of the Texas No-Call statute, the Commission may impose administrative penalties of up to \$1000 per violation per day.⁷⁹

PURA §15.024 outlines the administrative penalty assessment process. The formal process is initiated by issuance of a Notice of Violation (NOV) by the Commission's Executive Director. The NOV sets out the facts on which the recommendation to impose administrative penalties is based as well as a recommended penalty amount. In some cases, issuance of an NOV by the Executive Director is preceded by informal settlement discussions between Staff and the alleged violator. Staff usually initiates settlement discussions before issuance of an NOV in fact-intensive and complex enforcement cases. In most of these cases, the settlement discussions result in a settlement between Staff and the alleged violator that is submitted to the Commission for consideration.

For cases in which settlement discussions conducted before issuance of an NOV are unsuccessful, and for more routine enforcement actions (i.e., municipal rights of way cases), the Executive Director issues an NOV pursuant to PURA §15.024. The NOV is sent to the person against whom the penalty is to be assessed. The NOV must include: (1) a brief summary of the alleged violations; (2) the amount of the recommended penalty; and (3) an explanation that the person has a right to a hearing on the occurrence of the violation and the amount of the recommended penalty.⁸⁰ The NOV also gives the respondent three options: (1) to pay the penalty amount; (2) to request a hearing; or (3) to request a settlement conference.

Over the past two years, the Commission imposed \$930,200 in administrative penalties. These penalty totals relate to the following five categories of violations committed by CTPs and other entities under the Commission's jurisdiction: (1) service

⁷⁹ Tex Bus. & Comm. Code, §44.101

⁸⁰ PURA §15.024(b).

quality⁸¹, (2) telemarketing related activity (3) municipal access line reporting, (4) slamming and (5) violations of Commission orders.

a. Service Quality

In March 2003, the Commission responded to an increased number of customer complaints regarding Valor Telecom's (Valor) by initiating an investigation into Valor's service quality.

Commission Staff traveled to Texarkana, Texas to meet with Valor's customers and obtain information about Valor's service quality issues. A public meeting was held in the city council chamber of the Texarkana City Hall, during which customers registered complaints covering a wide range of issues. As part of its investigation, Staff engaged Valor in settlement discussions focused on correcting Valor's service quality problems and imposing administrative penalties for violations of the Commission's rules. These discussions resulted in a settlement with Valor. In April 2004, the Commission Staff and Valor entered a settlement addressing all issues related to quality of service, cramming, billing, and customer service. As part of the settlement, Valor agreed to pay \$350,000 in administrative penalties. Valor also issued customer refunds of approximately \$408,260. In addition to administrative penalties and customer refunds, the settlement agreement requires Valor to invest approximately \$2.4 million in infrastructure upgrades and to pay for an internal audit of performance measure data collection procedures. An audit of Valor's performance measure data will ensure the integrity of the data used by the Commission to measure Valor's compliance with the performance standards and compliance with the terms of the settlement agreement.

b. Telemarketing Related Activity

The Commission regulates telemarketing related activity including telemarketing calls, facsimile marketing, and telephone solicitations. Chapter 44 of the Texas Business and Commerce Code authorizes the Commission to exercise jurisdiction over telemarketers (Texas No-Call List) and other entities making telemarketing calls by transmission to facsimile machines (Fax Solicitation). Pursuant to PURA § 55.121, *et seq.*, the Commission also exercises jurisdiction over entities and persons using Automatic Dial Announcing Devices (ADADs) to make intrastate telephone solicitations.

The investigation of telemarketing-related violations is inherently resource intensive because it involves entities that can be difficult to locate and contact because they are not otherwise subject to the Commission's oversight authority.⁸² The following is a discussion of the Commission's enforcement activity related to the identification and prosecution of entities in violation of the rules and regulation regarding (1) the Texas No-Call list, (2) fax solicitation, and (3) automatic dial announcing devices.

⁸¹ As discussed in Chapter IV, the Commission also imposed penalties against SWBT for failure to meet Performance Measures related to service quality.

⁸² Telemarketers are not required to maintain contact information with the Commission.

i. No Call Violations

House Bill 472⁸³ (HB 472) passed during the 77th Legislature created the Texas No-Call list, which was codified in Chapter 44 of the Texas Business and Commerce Code. Texas Business and Commerce Code §44.101(a)⁸⁴ requires the Commission to “establish and provide for the operation of a database to compile a list of names, addresses, and telephone numbers of consumers in this state who object to receiving unsolicited telemarketing or telephone calls.”⁸⁵ Under Business and Commerce Code §44.102(b), the Office of the Attorney General (OAG) has concurrent jurisdiction to enforce the Texas No-Call statute, except the Commission has exclusive jurisdiction over telecommunications providers alleged to have violated the statute.

The Commission has taken a two-pronged approach to enforcement of the Texas No-Call list. The first prong consists of entering into a Memorandum of Understanding (MOU) with the OAG. The Commission receives and processes consumer complaints regarding the Texas No-Call list. Pursuant to the MOU, each month the Commission provides the OAG with a summary of all Texas No-Call complaints received by the Commission. This summary includes complaint information related to: (1) the complainant, (2) identification of the alleged violator, if known, (3) whether the consumer subscribed to the No-call List, and (4) complaint notes describing what the complainant told the Commission about the call. The OAG uses these monthly reports provided by the Commission in its enforcement of the Texas No Call statute.

The second prong of the Commission's Texas No-Call enforcement efforts is the development of a database module to assist the Commission Staff in prioritizing No-Call complaints for enforcement action. As part of the Commission's enforcement program, the Legal and Enforcement Division (LED) has developed an add-on module to the Enforcement Investigation Database (EID) that allows it to scan the No-Call violations to identify trends in the complaint databases. This module has been a useful screening tool for Staff in determining which No-Call complaints to prosecute. Since October 2003, LED opened 37 investigations and issued four No-Call NOV's. In addition, the Commission referred 9,303 No-Call complaints to the OAG. Based on those referrals, the OAG filed 10 lawsuits which resulted in final orders, including injunctive relief. The OAG currently has 26 active investigations.

ii. Fax Solicitation

Texas Business and Commerce Code § 44.151 ("Texas Telemarketing Disclosure and Privacy Act") charges the Commission with the responsibility of receiving and

⁸³ Acts 2001, 77th Leg., HB 472, eff. Sept. 1, 2001. HB 472 was codified in *Tex. Bus. & Com. Code* §§ 43.101-43.253 (Vernon Supp. 2003).

⁸⁴ In connection with the implementation of retail electric competition in Texas, the 77th Legislature also mandated the creation of an Electric Do-Not Call list. See *Tex. Util. Code* § 39.1025 (Vernon 19—and Supp. 2003).

⁸⁵ *Tex. Bus. & Com. Code* §43.101(a) (Vernon Supp. 2003).

investigating complaints concerning violations of §44.151 which sets forth certain notice requirements that must be included when making a fax solicitation in Texas.

Under the Tex. Bus. and Com Code, the Commission shares enforcement authority over fax solicitation complaints with the OAG. Because fax transmissions involve the use of telephony or similar technology, the Commission investigates whether the fax transmission was an *interstate* transmission, which is governed by federal law, or an *intrastate* transmission; which is governed by state law. Moreover, since most illegal fax transmissions do not contain the required contact information on the fax, investigations may require use of substantial resources to identify the sending party.

The investigations revealed that a vast majority of the complaints related to interstate fax transmissions. The Commission does not have the authority to prosecute violations of the federal Telephone Consumer Protection Act (47 USC § 227) (“TCPA”) that involve interstate transmission of faxes. Since October 2003, the LED investigated and referred 261 fax complaints to the OAG for further action at the discretion of the OAG. Based on the shared enforcement responsibilities under *Bus. & Com. Code* §44.153) and the Commission's lack of jurisdiction to prosecute interstate violations of the TCPA, 160 of the 261 referrals related to interstate faxes. The remaining 101 referrals to the OAG related to intrastate faxes. In addition to the investigation and referrals of 261 faxes to the OAG, the LED initiated and settled one enforcement proceeding in which the Commission imposed administrative penalties.

iii. Automatic Dialing and Announcing Devices

Pursuant to PURA § 55.121, *et seq.*, the Commission regulates the operation of Automatic Dialing Announcing Devices (ADADs). By adoption of in PUC Substantive Rule §26.125, Relating to Registration of ADADs, the Commission implemented the provisions of PURA § 55.121, *et seq.*

The LED initiated two investigations of entities believed to be in violation of the provisions of PUC SUBST. R. §26.125. The investigations resulted in the assessment of \$1,800 in administrative penalties against one company and voluntary compliance by the second company without assessment of an administrative penalty.

c. Violations of Municipal Access Line Reporting Rule

The 76th Legislature enacted House Bill 1777, which was codified in Texas Local Government Code, Chapter 283, *Management Of Public Right-Of-Way Used By Telecommunications Provider In Municipality* (LGC 283). LGC 283 established a uniform method for CTPs to compensate municipalities for the use of public rights-of-way (ROWs), and charged the Commission with implementation of this legislation.

Implementation of LGC 283 presented several issues for the enforcement program. The primary issues relate to the development of efficient procedures to ensure the timely reporting of access lines to 1138 municipalities by 535 CTPs on a quarterly basis. The Commission promulgated P.U.C. SUBST. R. 26.468, Procedures for

Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting. One of the key aspects of SUBST. R. 26.468 was the creation of the Municipal Access Line Reporting System (MARS). MARS is an Internet application for the electronic reporting of quarterly access line counts. All 535 CTPs are required to file their Quarterly Access Line Reports through MARS electronically.

In conjunction with MARS, the Commission implemented an Enforcement and Investigations Database (EID) that interacts with MARS to identify CTPs that either fail to file or late file access line reports. Commission Staff created a penalty matrix for violations of PUC SUBST. R. 26.468. The matrix was based on the statutory criteria for assessing administrative penalties outlined in PURA § 15.025 and is posted on the Commission's website. In addition to identifying CTPs who fail to file or late file access line reports, MARS calculates recommended penalties based on the penalty matrix, and creates a Notice of Violation (NOV) which is sent to the CTP. MARS automatically enters the NOVs into the EID. The EID allows CTPs to log onto the Commission's website to schedule settlement conferences, request hearings, or agree to pay the recommended administrative penalty.

During the reporting period, EID generated 529 NOVs related to enforcement of LGC 283. To date, the 529 NOVs have resulted in 177 settlements for administrative penalties totaling \$78,900. In addition to the payment of penalties, the settlements require current compliance with the reporting requirements and payment of all outstanding access line fees to the cities.

The status of the remaining 352 NOVs is as follows. Further investigation resulted in the dismissal of 37 NOVs. Eighty-five of the NOVs involve companies that may no longer be in operation. Of those 85 companies that may no longer be in operation, the Commission has revoked the certificates of 10 of those companies. Commission staff plans to pursue revocation of the certificates of the remaining 75 companies that are no longer in business. The remaining 230 NOV proceedings represent violations issued to companies who failed to respond to the violation notices. Some companies may have multiple violations and therefore the 230 NOVs do not translate into 230 non-compliant companies. Under PURA § 15.024(f), NOVs in which the respondent fails to respond are referred to the State Office of Administrative Hearings (SOHA) for resolution. Staff will work with SOAH to resolve these cases by issuance of default orders or contested case proceedings.

d. Slamming

In PUC Docket No. 20934⁸⁶, the Commission entered a final order assessing an administrative penalty of \$360,000 against Axces, Inc, for violation of PURA §55.303 and P.U.C. SUBST. R. 26.130, Selection of Telecommunications Utilities. In that

⁸⁶ Notice of Intent to Assess and Administrative Penalty by the Office of customer Protection Against Axces, Inc. for Continued Violations of PUC SUBST. R. § 26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rule 22.246, Administrative Penalties, Docket No. 20934 (January 23, 2003)

proceeding, the Commission found that Axces switched the long distance service of 72 customers without obtaining the customer's authority to do so.

In 2004, as part of its cooperative enforcement efforts with OAG, the Commission also referred 1,371 slamming complaints to the OAG. These complaints involved eight companies during business primarily in the South Texas region.

e. Violation of Commission Orders

PURA §15.023 (a) provides that “the Commission may impose an administrative penalty against a person regulated under this title who violates this title or a rule or order adopted under this title.” The Commission determined that WWC Texas RSA Limited Partnership (“Western Wireless”) violated a Commission order issued in P.U.C. Docket 22289 by obtaining Universal Service Payments for access lines determined by the Commission as not eligible under Western's eligible telecommunications carrier designation.

On June 8, 2004, the Commission approved a settlement assessing an administrative penalty of \$105,700 against Western Wireless and requiring the company to refund Universal Service Fund payments for ineligible access lines.

2. Rulemaking Activity

In addition to imposing administrative penalties, the Commission engaged in three rulemakings to enhance enforcement efforts. The rulemakings involved slamming, cramming, and no-call rule violations.

a. Slamming Rule

In order to better address slamming violations, the Commission amended the provisions of P.U.C. SUBST. R. 26.130, Relating to Selection of Telecommunications Utilities. The amendments modified record keeping requirements applicable to telecommunications utilities and make clear that the telecommunications utility has the burden of establishing that a change in service provider was authorized by the customer.

b. Cramming Rule

The Commission's amendments to P.U.C. SUBST. R. 26.32, relating to Protection Against Unauthorized Billing Charges, established and clarified the requirements necessary to obtain (1) customer consent for charges for any product or service, and (2) verification of that consent. The amendments simplify the process for obtaining customer consent to place charges on consumer bills. The amendments also require that service providers provision the product or service within 60-days of obtaining the verified consent or the consent expires and must be re-verified.⁸⁷

⁸⁷ Business customers may waive the 60-day period and negotiate a longer contractual period.

c. Texas No-Call Rule

The Commission adopted amendments to P.U.C. SUBST. R. 26.37 relating to the Texas No-Call list. These amendments: (1) provide incentive for a telemarketer to purchase the Texas No-Call list; (2) require a telemarketer to maintain a record of all telephone numbers it has attempted to contact for telemarketing purposes; (3) require that such records be maintained by the telemarketer for a period of 24 months; (4) establish presumptions relevant to enforcement of the Texas No-Call list; and (5) specify certain types of evidence that are admissible in an action to enforce the Texas no-call list.

These amendments protect consumers by making it easier to detect violations of the Texas No-Call rule and are intended to enhance the Commission enforcement efforts against entities engaged in making telemarketing calls to persons subscribing to the Texas No-Call list.

3. Industry Awareness

The Commission promotes compliance with laws by increasing industry awareness. The Commission makes extensive use of its Web site to make information available, as well as undertaking more targeted efforts. For example, the Commission initiated an awareness campaign aimed at preventing potential violations of the Commission's rules affecting 9-1-1 jurisdictions around the state. This campaign was initiated in response to concern expressed by certain 9-1-1 entities about the failure of carriers to enter into agreements for payment of fees to 9-1-1 entities. To address what appeared to be a lack of understanding by carriers that such agreements are required, the Commission mailed letters to all certificated telecommunications providers reminding them of their obligations under the rules, including the obligation to pay 9-1-1 fees to those entities. The letters requested submission of affidavits verifying compliance with the rules. On request, the Commission provides a copy of the compliance affidavits to the 9-1-1 entities.

Chapter VI. Legislative Recommendations

A. Open-Records Exemption for Confidential Data

Each biennium, in preparing this report, Commission staff requests data from telecommunications providers that can be used to provide a meaningful view of the state of telecommunications service and competition in Texas. Telecommunications service providers consider access-line-count information and other data to be confidential, commercially valuable information.

The Legislature has recognized the sensitive nature of competitive information supplied to the Commission by holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOAs) in Public Utility Regulatory Act (PURA) § 52.207(b), which excepts reports from those providers from the Texas Public Information Act (TPIA), Chapter 552 of the Texas Government Code. However, there is no similar protective provision for information provided to the Commission by other types of telecommunications service providers. With the growth of competition, telecommunications providers are increasingly resistant to providing detailed information for staff review because of the risk that the Commission will not be able to protect the confidentiality of the information if a request is received under TPIA. Without the ability to guarantee that certain information can be maintained as confidential, many carriers are willing to provide requested data only in the aggregate, which is less useful for analysis of telecommunications competition in the State.

Under current law, the Commission has no clear authority to maintain the information as confidential. Therefore, the Commission cannot even join forces with the companies that are seeking a favorable ruling from the Office of the Attorney General (OAG) to protect commercially sensitive information. Under earlier interpretations of § 552.110 of TPIA using the *National Parks* test,⁸⁸ the Commission could assert an argument for the protection of requested third-party confidential data if the release of such information would hamper the Commission's ability to obtain the data in the future. That interpretation, however, is no longer recognized by the Third Court of Appeals as a legitimate reason to withhold third-party data from the public under the TPIA.⁸⁹ Further, in 1999, the Texas Legislature added a requirement to § 552.110 requiring a party asserting confidentiality over commercial and financial information to provide specific factual evidence of substantial competitive harm that would result from disclosure. Generally, the Commission does not have access to such evidence.

⁸⁸ *National Parks & Conservation Comm'n v. Morton*, 498 F.2d 765 (D.C. Cir 1974). The *National Parks* case set forth a test for the federal statutory counter-part to the Tex. Gov't Code § 552.110 exception from disclosure for third-party confidential information. The test excepted financial information from disclosure if the disclosure was likely to either impair the government's ability to obtain the information in the future, or to cause substantial harm to the competitive position of the party from whom the information was obtained.

⁸⁹ *Birnbaum v. Alliance of American Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied).

In 1995, OAG, responding to a request from then-PUC Chairman Robert Gee, opined that, in order to protect data provided by telecommunications providers for development of the Telecommunications Scope of Competition Report, the Commission should publish the information in a manner that avoids explicitly or implicitly identifying any of the responding utilities.⁹⁰ For that reason, this report provides data in the aggregate in order to conceal the identities of the reporting entities.

Regarding the privacy interests of Texans, the Commission is concerned about the availability of the entire no-call database pursuant to a TPIA request. Although Texas Utilities Code § 39.1025 and Texas Business and Commerce Code Chapter 43 express a general legislative intent to restrict access to the “no-call” databases, there is no explicit exemption for the database information from disclosure under TPIA.

If the Legislature amends PURA to protect data provided to the Commission by all telecommunications carriers as it does for data provided by holders of COAs and SPCOAs in PURA § 52.207(b), Commission staff could collect more complete data and provide a better analysis of the state of competition in the Texas telecommunications market.

If the Legislature intends for consumer data collected for the purpose of implementing the no-call provisions of Texas Utilities Code § 39.1025 and Texas Business and Commerce Code Chapter 43 to be exempted from public availability under Chapter 552 of the Government Code, then the Commission recommends that those statutory provisions be amended to explicitly except the data from disclosure under TPIA.

B. Authorization to Declassify Carrier Confidential Documents

Currently, if the Commission receives a request for third-party information that has been marked as confidential by the third party, the Commission utilizes the procedures set forth in TPIA to allow the third party an opportunity to assert its claim of confidentiality to OAG. TEX GOV'T CODE § 552.305; *see also* Tex. Att'y Gen. ORD-575 (1990). However, in connection with its oversight of the competitive utility markets, the Commission routinely receives information from third parties that is marked as confidential. In some cases the Commission believes that the information is not in fact confidential or otherwise protected from disclosure by law, and that it should be made available to the public.

The Commission believes that it has the authority in the absence of a TPIA request to determine whether certain market-related information is confidential and, if not, to release it to the public. However, given the criminal penalty associated with the improper release of confidential information that is set forth in Texas Government Code

⁹⁰ Tex. Attorney Gen. LR-043 (1995).

§ 552.325, the Commission is reluctant to de-classify such information even in such cases. The Commission recommends that TPIA be amended to clarify that the provisions of TPIA § 552.325 only apply to the improper release of information requested under TPIA, and not to the release of other information the Commission may choose to deem non-confidential.

C. Effects of Chapters 58 and 59 Incentive Regulation

PURA § 58.028 requires the Commission to review and evaluate the incumbent local exchange companies (ILECs) that elect into incentive regulation, and to provide the Legislature with a report that reviews the effects of the election, including consumer benefits, impact of competition, infrastructure investments, and quality of service. The Commission's 2005 report on incentive regulation, which was submitted under separate cover, provides recommendations and alternatives for the 79th Legislature to consider. The alternatives range from a return to rate-of-return regulation, to no change, slight modification, or more extensive de-regulation, depending upon the Legislature's assessment of whether the current level of competition can ensure affordable local telephone rates and the highest quality of service for consumers.⁹¹



⁹¹ See *Report to the 79th Texas Legislature, Effects of PURA Chapter 58 And Chapter 59 Telecommunications Incentive Regulation* (rel. Dec. 2004).

Appendix A. — Research Methodology

This appendix discusses the methodology used by the Commission for collecting data for the 2005 Scope of Competition Report. A data collection form was developed to obtain information about a telephone company's service offerings, revenues, lines, and minutes of use.⁹² By Commission Order, all incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) operating in Texas were required to complete the survey form.⁹³ In addition, non-regulated data affiliates of ILECs and CLECs, cable companies, Internet service providers, and voice-over-internet-protocol providers, operating in Texas, were urged to voluntarily submit information about their operations.

Of the 557 certificated telecommunications utilities (CTUs) in Texas, 286 carriers responded to the Commission's data request. Of those responses, 222 were from CLECs (compared to 138 CLECs that reported for the 2003 data request), while the rest of the responses were from ILECs. In addition, about 81 CLECs filed letters stating that they were not providing services at the time of the data request or had yet to commence operations in Texas. The CTU responses were cross checked with filings made to the Federal Communications Commission (FCC) by Texas carriers pursuant to the FCC's Form 477. Based on this analysis, the Commission estimates that carriers representing at least 97% of the access lines served in Texas have responded to the Commission's data request.

Most of the sections on the data collection form requested information as of June 30, 2004. Information on switched access revenues and minutes of use was requested for the calendar year of 2003.

The data-collection form collected both aggregated and disaggregated information on the number of retail "plain old telephone service" (POTS) lines provided over local loops owned, leased, and resold, and the number of wholesale lines. CLECs were required to provide disaggregated information at a county level while both ILECs and CLECs were required to provide information aggregated as urban, suburban, and rural exchanges. The urban group consists of exchanges that have a population of more than 100,000. A total of 14 exchanges were in this category. The suburban group consists of exchanges that have a population of more than 20,000 but less than 100,000. A total of 57 exchanges were in this category. The remaining 1092 exchanges were under 20,000 in population and were classified as rural.

⁹² The Commission's 2005 Data Collection Form can be found on the project's website, REPORT TO THE 78TH LEGISLATURE ON THE SCOPE OF COMPETITION IN TELECOMMUNICATIONS MARKETS, Project #29074: <http://www.puc.state.tx.us/telecomm/projects/29074/29074.cfm>.

⁹³ This group consists of certificated telecommunication utilities (CTUs) in the State of Texas, *i.e.*, holders of SPCOA, COA and CCN certificates. Only those providers who receive these certificates are eligible to offer basic local exchange services in Texas.

In addition to classifying lines based on the type of exchange, 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, and non-profit organizations. Residential lines consist of those lines that serve single-family or multi-family dwelling units.

To obtain a historical context, the 2004 data were supplemented with data from the previous Scope of Competition Reports (2003, 2001, and 1999) and the Local Competition and Broadband Reports published semi-annually by the FCC.⁹⁴ Combining data has enabled the Commission to develop time-series charts and perform historical analysis. However, it should be noted that while the Commission's data request requires all CTUs operating in Texas to report data to the Commission, the FCC only requires those CTUs with 5,000 or more lines to report data to the FCC. As a result, the FCC data may not be as comprehensive as the state-reported data.

Finally, due to issues associated with providing competitively sensitive information to the Commission, CLECs and ILECs were allowed to use aggregators to represent various companies and report the requested information to the Commission in an aggregated form (aggregated across all carriers of an aggregator). Since most major carriers responded to the Commission's data request using an aggregator, it was not possible to determine how many CTUs offered choices or provided a type of service in a given county.

⁹⁴ Federal Communications Commission, Industry Analysis and Technology Division, WIRELINE COMPETITION BUREAU, LOCAL TELEPHONE COMPETITION REPORTS, FCC (Aug. 2000, May 2001, July 2002, Dec. 2002, Jun. 2003, Dec. 2003), and HIGH-SPEED SERVICES FOR INTERNET ACCESS, FCC (Dec. 2003). Available online at: www.fcc.gov/wcb/iatd/comp.html.

Appendix B. — Total ILEC and CLEC Retail Lines in Texas

Table 24 — Total ILEC and CLEC Retail Lines in Texas

| YEAR | ILEC | CLEC | CLEC Market Share | TOTAL |
|---------------|-------------|-------------|------------------------------|--------------|
| Dec-99 | 12,601,936 | 586,111 | 4.44% | 13,188,047 |
| Jun-00 | 12,349,899 | 1,042,606 | 7.78% | 13,392,505 |
| Dec-00 | 12,063,098 | 1,687,586 | 12.27% | 13,750,684 |
| Jun-01 | 11,496,247 | 1,891,131 | 14.13% | 13,387,378 |
| Dec-01 | 11,365,441 | 2,166,033 | 16.01% | 13,531,474 |
| Jun-02 | 11,350,694 | 2,078,465 | 15.53% | 13,429,159 |
| Jun-03 | 10,759,790 | 2,185,850 | 16.88% | 12,945,640 |
| Jun-04 | 10,213,189 | 2,675,784 | 20.76% | 12,888,973 |

SOURCES: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002), Texas PUC 2003 & 2005 Scope of Competition Data Responses.

Appendix C. — CLEC Entry Strategies

Facilities-Based

The question of what factors determine whether a competitive local exchange carrier (CLEC) is providing facilities-based services is currently unanswered. Some proponents argue that facilities-based competition is present when a CLEC owns the switch and thus offers service by means other than resale or unbundled network elements platform (UNE-P). However, on the other end of the spectrum, some argue that CLECs must offer service via wholly-owned facilities-based offerings, including the CLEC's own loop. While the industry has yet to reach consensus regarding the meaning of facilities-based competition, for purposes of gathering data for this Report, the Commission defines facilities-based as providing services entirely through the CLEC's own facilities. However, it is difficult to ascertain which carriers offer wholly versus partially facilities-based services. There is no information collected by the Commission on a regular basis that provides any certainty regarding facilities-based services provided by local exchange carriers (LECs). It is apparent that the capital investment required to establish a strictly facilities-based operation is beyond the reach of most CLECs today.

Total Service Resale

The resale mode of entry is the simplest, least investment-intensive approach. SBC Texas provides services and products at a 21.6% discount to resellers. Some CLECs provide resale service to high-risk customers by offering prepaid services. Other CLECs utilize resale upon entering a market and then combine resale with other options, such as unbundled network elements (UNEs) or facilities-based services.

Compared to the other modes of entry, CLECs choosing to provide service via resale are generally at the mercy of the ILECs. If the ILEC raises its prices, the resellers must respond accordingly or reduce their profit margin. Increases in rates resulting in a loss of customers can be better absorbed by the ILECs, which have a much broader customer basis.

Unbundled Network Elements: UNEs/UNE-P

As discussed in Chapter III, leasing facilities via UNEs or UNE-P appears to be the predominant method of market entry in Texas since the inception of the Federal Telecommunications Act of 1996 (FTA). A great deal of public and private resources have been invested in facilitating this mode of entry. Many CLECs utilize UNEs, either alone or in conjunction with their own facilities, to provide innovative products or specialized customer service to business and residential customers.

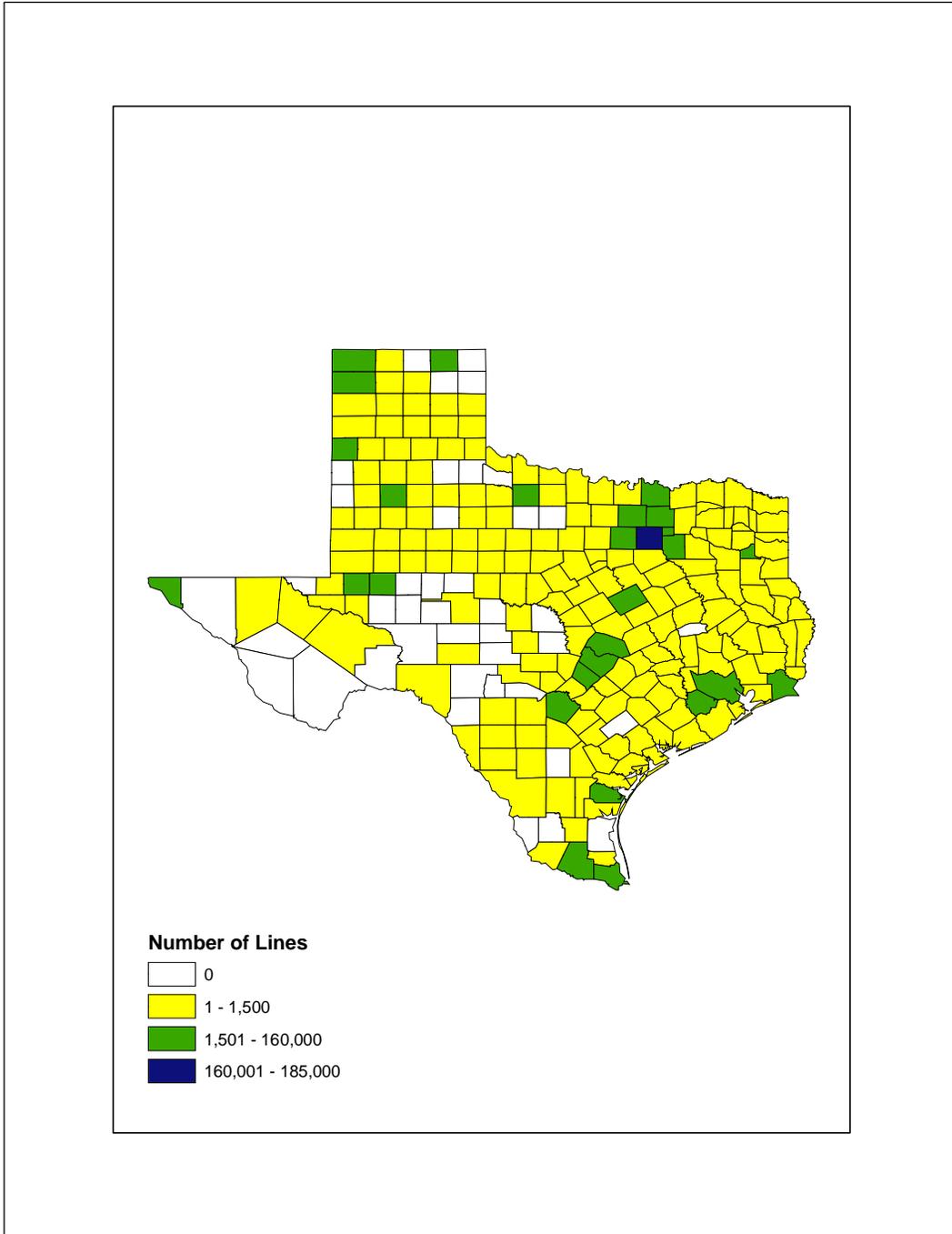
Compared to full facilities-based providers and resellers, CLECs utilizing UNEs are presented with the greatest deal of uncertainty because of the ongoing debate at both the state and federal levels as to what network components should be made available as UNEs at total element long run incremental cost (TELRIC).

At the state level, telecommunications providers present to the Commission requests for arbitration of interconnection agreements in an effort to address changes in technology, the market, and competition.

Although CLECs have access to the current list of UNEs approved at the state and federal levels, future circumstances may warrant a change in that list pursuant to relevant state and federal law. Unfortunately, these circumstances tend to promote a “wait and see” attitude among CLECs and disrupt a CLEC’s ability to plan future investment and market-entry strategies. However, the Commission continues to attempt to address these concerns and provide CLECs with the tools necessary for effective competition.

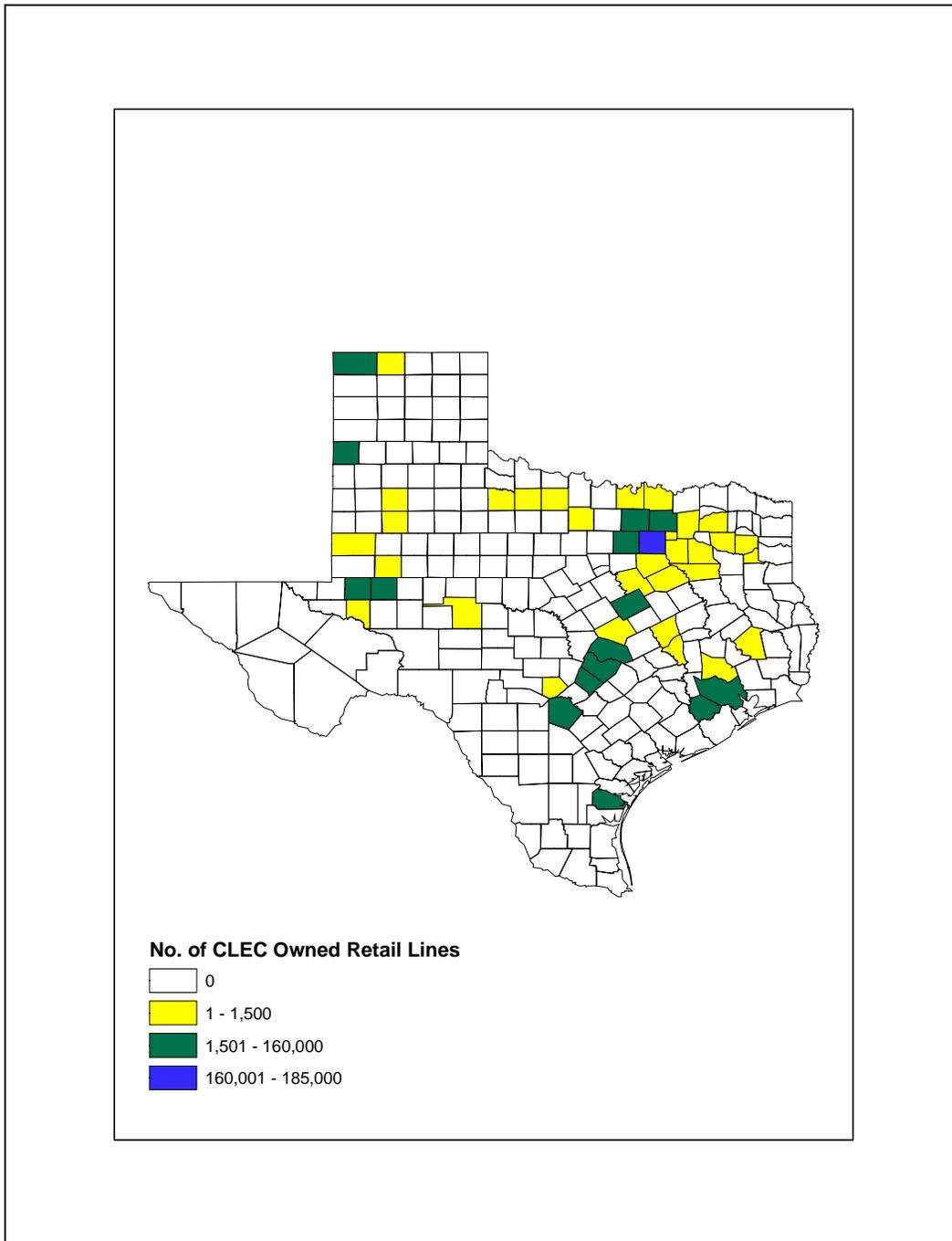
Appendix D. — CLEC Facilities-Based Lines by County

Figure 29 — CLEC Facilities-Based Lines by County, June 2004



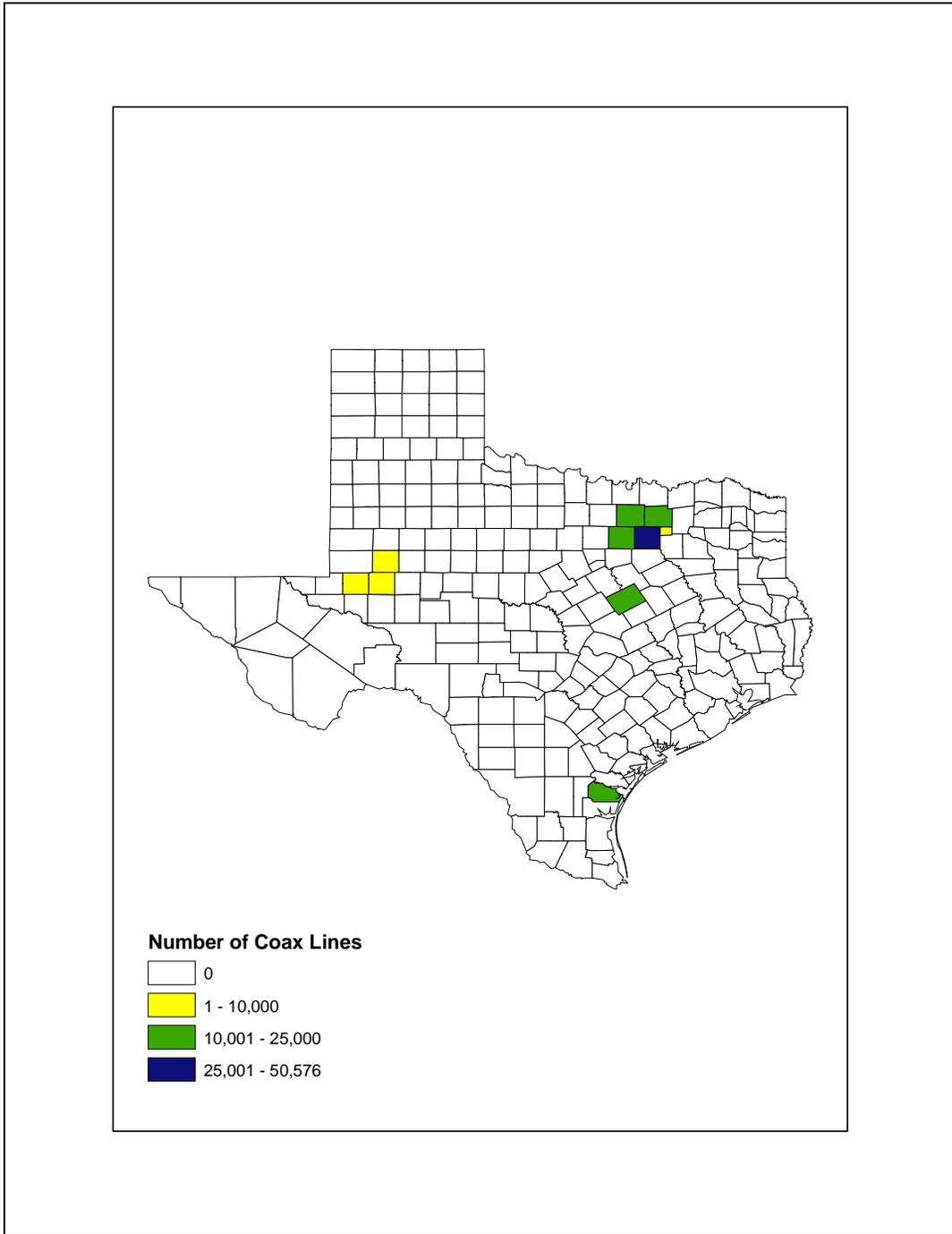
SOURCE: Texas PUC 2005 Scope of Competition Data Responses

Figure 30 — CLEC Facilities-Based Lines by County, June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Figure 31 — CLEC Facilities-Based Lines by County, Coaxial cable facilities 2004

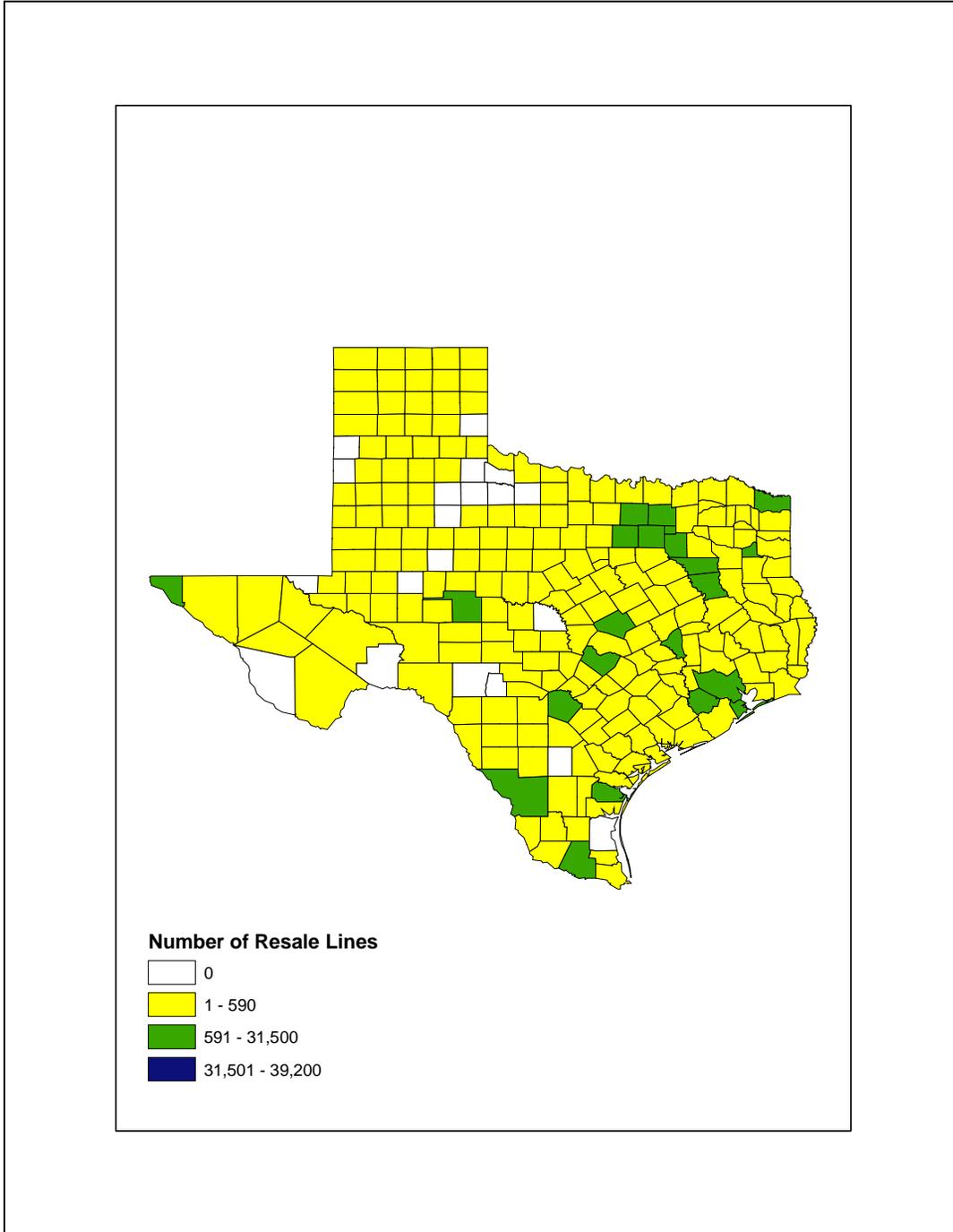


Texas PUC 2005 Scope of Competition Data Responses

SOURCE:

Appendix E. — CLEC Total Service Resale (TSR) Lines by County

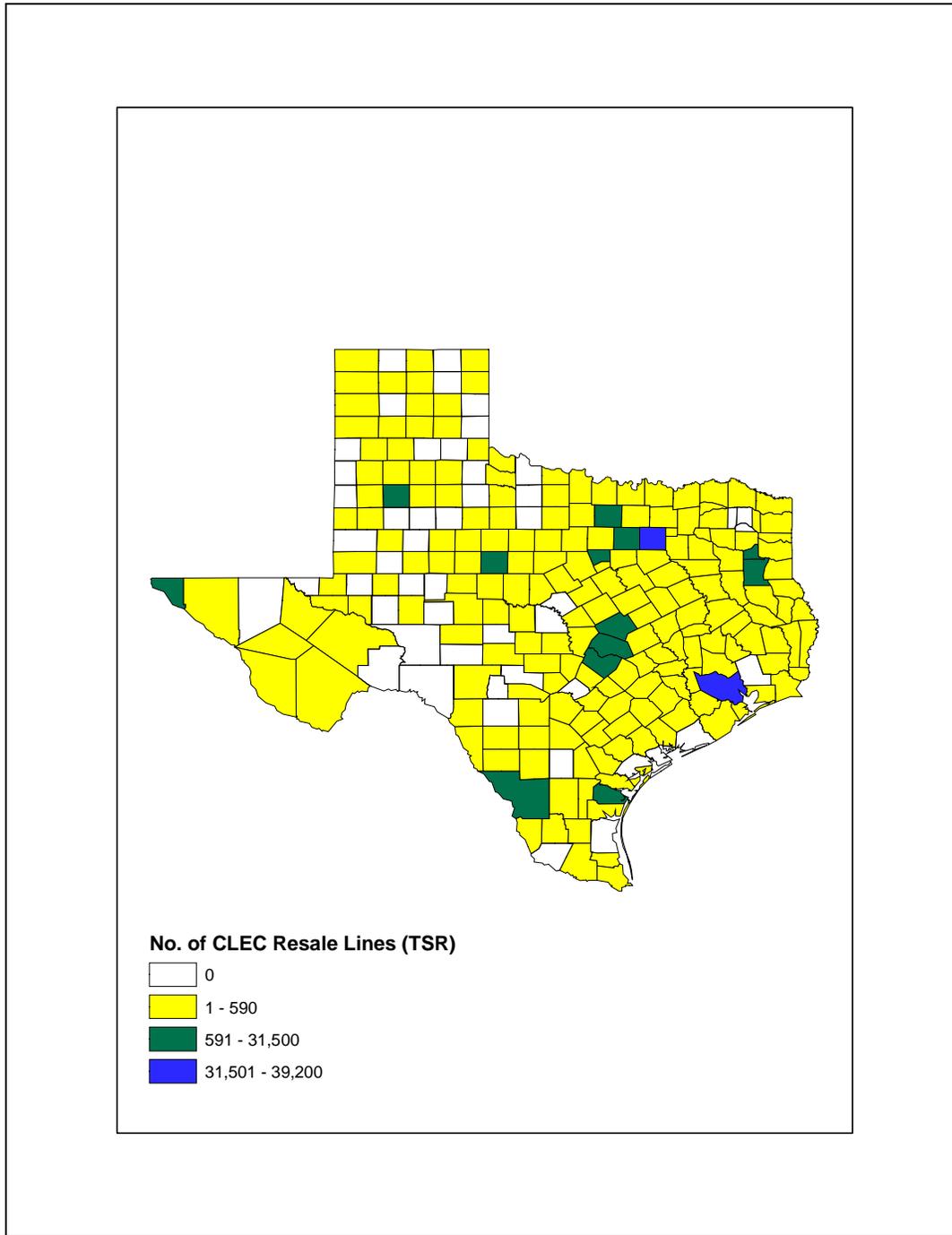
Figure 33 — CLEC Total Service Resale (TSR) Lines by County, June 2004



Texas PUC 2005 Scope of Competition Data Responses

SOURCE:

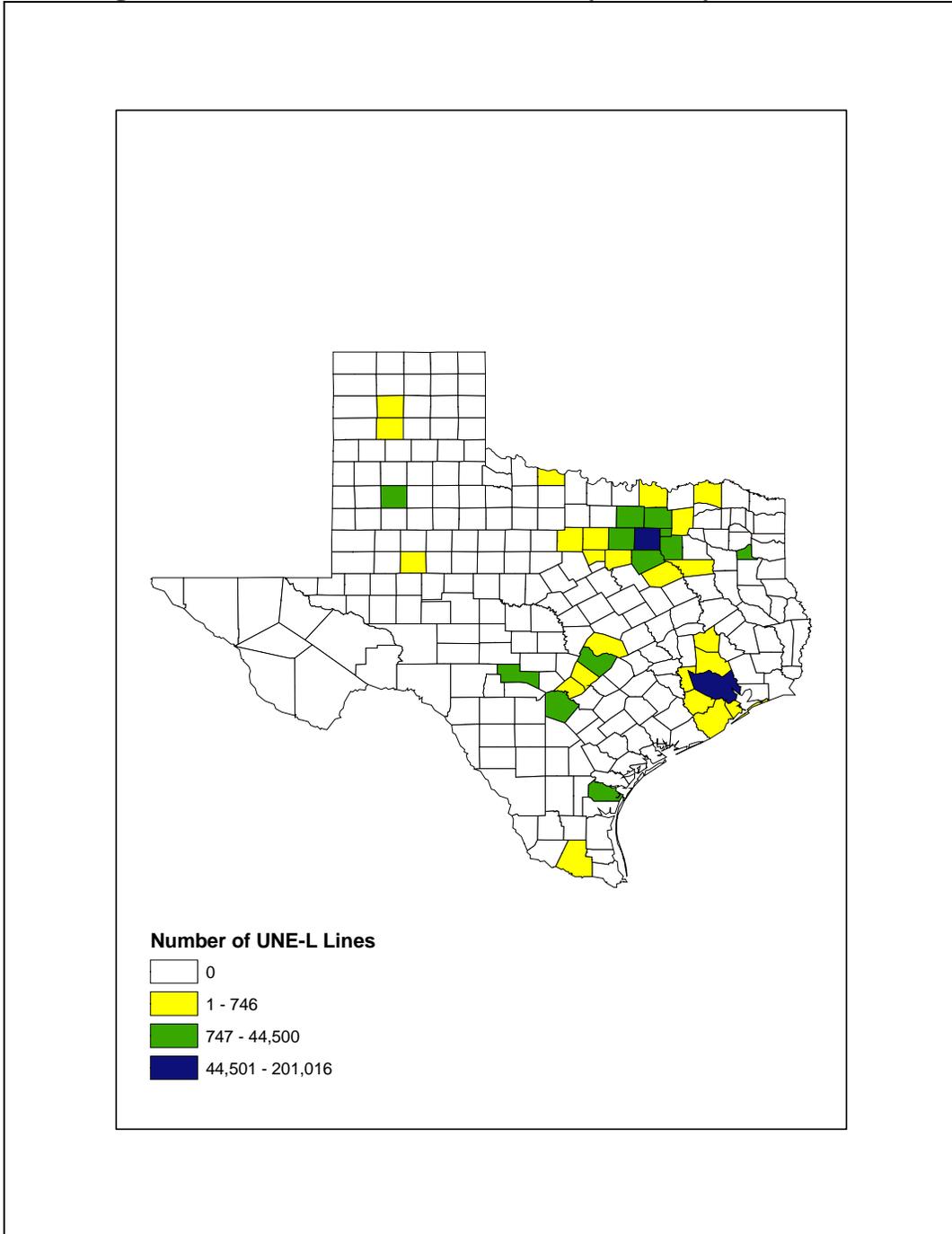
Figure 34 — CLEC Total Service Resale (TSR) Lines by County, June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Appendix F. — CLEC UNE-L Lines by County

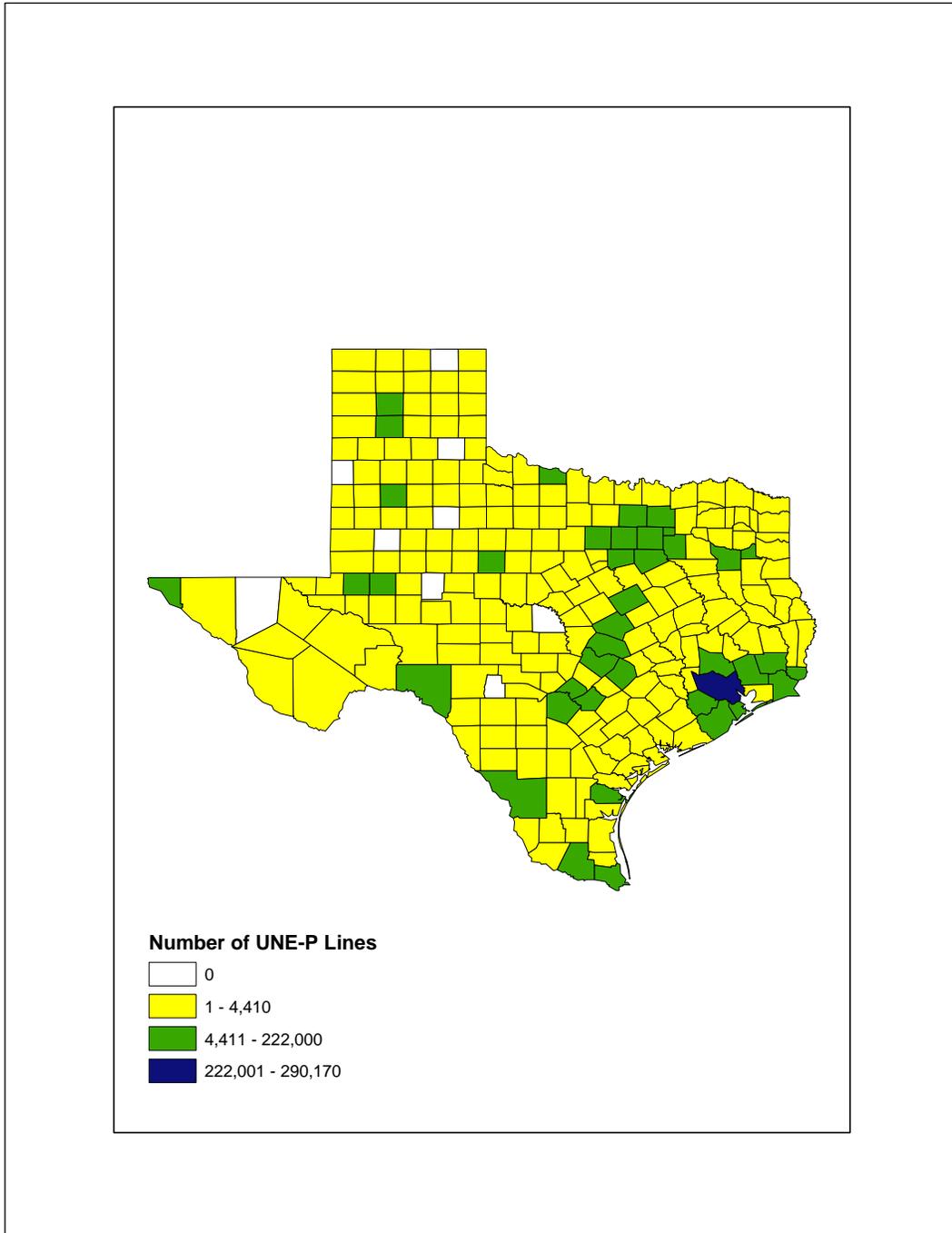
Figure 35 — CLEC UNE-L Lines by County, June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Response

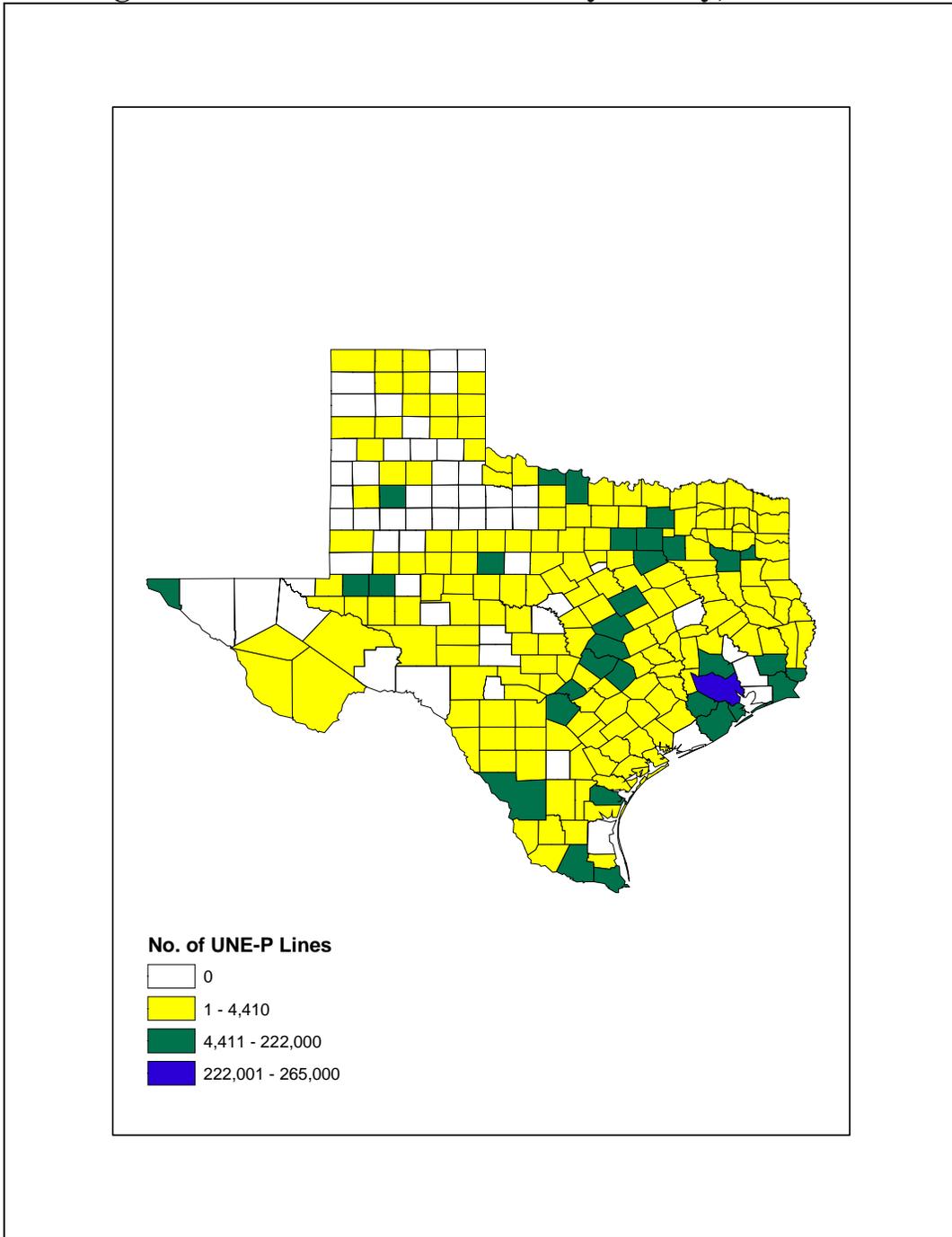
Appendix G. — CLEC UNE-P Lines by County

Figure 37 — CLEC UNE-P Lines by County, June 2004



SOURCE: Texas PUC 2005 Scope of Competition Data Responses

Figure 38 — CLEC UNE-P Lines by County, June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Appendix H. — TUSF Programs

Texas High Cost Universal Service Plan (THCUSP) – provides financial assistance via Texas Universal Service Fund (TUSF) support to eligible telecommunications providers (ETPs)⁹⁵ 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 via TUSF 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 – establishes 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 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.

Specialized Telecommunications Assistance Program – provides reimbursement via TUSF support 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 five million access lines due 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 agency action.

USF Reimbursement for Certain IntraLATA Services – provides reimbursement via TUSF support 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 for entities described under PURA § 58.253(a).

Additional Financial Assistance (AFA) – provides additional financial assistance via TUSF support in addition to the TUSF reimbursement received under the THCUSP, Small and Rural ILEC Universal Service Plan, and implementation of PURA § 56.025 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.

⁹⁵ 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 via TUSF support to ETPs that provide voice-grade services to premises that are not included within its 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, the National Exchange Carrier Association (NECA), the Texas Department of Human Services (TDHS), and the Texas Department of Housing and Community Affairs (TDHCA) to recover their costs incurred in implementing the provisions of Chapter 56 of PURA.

Appendix I. — TUSF Disbursements by Program

| TUSF Program Disbursements | FY 1999 (Actual) | FY 2000 (Actual) | FY 2001 (Actual) | FY 2002 (Actual) | FY 2003 (Actual) | FY 2004 (Estimated) | % of Total USF |
|---|-------------------|--------------------|--------------------|--------------------|--------------------|---------------------|----------------|
| Texas High Cost Universal Service Plan (THCUSP) | 0 | 382,226,566 | 440,486,990 | 445,478,669 | 443,032,847 | 441,657,308 | 75.32% |
| Small and Rural ILEC Universal Service Plan (High Cost) | 38,084,091 | 94,042,393 | 98,810,923 | 100,536,758 | 100,447,215 | 99,940,712 | 17.04% |
| Texas Relay Service | 6,816,004 | 10,034,792 | 13,151,160 | 12,670,839 | 11,514,114 | 10,979,093 | 1.87% |
| Lifeline | 276,624 | 8,716,997 | 9,225,611 | 15,814,642 | 17,664,460 | 20,477,052 | 3.49% |
| Specialized Telecommunications Assistance Program | 322,420 | 578,402 | 761,023 | 1,344,227 | 2,338,080 | 2,879,354 | 0.49% |
| Implementation of PURA § 56.025 | 2,965,448 | 4,448,171 | 4,448,180 | 4,448,772 | 4,683,495 | 4,685,125 | 0.80% |
| USF Reimbursement for Certain IntraLATA Services | 0 | 739,452 | 1,107,596 | 1,472,920 | 1,694,250 | 2,011,134 | 0.34% |
| Additional Financial Assistance (AFA) | 0 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| Service to Uncertificated Areas | 0 | 0 | 0 | | | | 0.00% |
| Tel-Assistance | 2,210,432 | 2,921,220 | 2,210,735 | 0 | 0 | 0 | 0.00% |
| TCDHH | 148,242 | 267,929 | 286,414 | 455,181 | 488,222 | 605,775 | 0.10% |
| PUC | 103,872 | 149,327 | 203,506 | 166,769 | 358,760 | 480,848 | 0.08% |
| TDHS | 286,870 | 397,391 | 277,440 | 9,275 | 0 | 0 | 0.00% |
| Other | 186,350 | 0 | 9,192 | 0 | 398,607 | 1,851,240 | 0.32% |
| NECA | 652,104 | 729,480 | 751,356 | 773,900 | 740,550 | 780,000 | 0.13% |
| TOTALS | 52,052,457 | 505,252,120 | 571,730,126 | 583,171,952 | 583,360,600 | 586,347,641 | 100% |

Source: National Exchange Carriers Association Reports

Appendix J. — TUSF Disbursements to Companies

| Company | 2000 | 2001 | 2002 | 2003 | % of 2003 Total |
|---|-------------|-------------|-------------|-------------|-----------------|
| Southwestern Bell Telephone Company | 50,271,965 | 135,731,792 | 199,433,754 | 195,504,806 | 33.52% |
| GTE Southwest d/b/a Verizon Southwest | 166,090,944 | 108,391,493 | 109,960,661 | 110,988,729 | 19.03% |
| Valor Telecommunications of Texas | 33,641,489 | 101,410,317 | 100,960,796 | 100,010,984 | 17.15% |
| Central Telephone Co. of Texas | 22,660,496 | 24,279,583 | 24,759,109 | 24,917,329 | 4.27% |
| United Telephone Company of Texas | 19,152,399 | 17,933,754 | 17,921,163 | 18,362,286 | 3.15% |
| TXU Communications Lufkin | 0 | 0 | 15,088,618 | 15,048,820 | 2.58% |
| Sugar Land Telephone Company | 0 | 0 | 7,925,902 | 7,845,864 | 1.35% |
| WWC Texas RSA Limited | 0 | 0 | 4,757,168 | 6,801,252 | 1.17% |
| Century Telephone of San Marcos, Inc. | 5,821,972 | 5,846,107 | 6,414,593 | 6,150,896 | 1.05% |
| Guadalupe Valley Telephone Coop. | 4,984,619 | 5,279,799 | 5,509,067 | 5,653,940 | 0.97% |
| Eastex Telephone Cooperative | 5,058,058 | 5,207,352 | 5,584,653 | 5,383,263 | 0.92% |
| Valley Telephone Cooperative, Inc. | 5,197,880 | 5,310,125 | 5,415,199 | 5,353,322 | 0.92% |
| Big Bend Telephone Company of Texas | 3,087,809 | 3,202,592 | 5,289,441 | 5,265,137 | 0.90% |
| Fort Bend Telephone Company | 619,936 | 4,392,906 | 5,083,337 | 5,093,937 | 0.87% |
| Texas ALLTEL | 0 | 0 | 3,478,482 | 4,873,466 | 0.84% |
| Hill Country Telephone Cooperative | 3,213,694 | 3,346,456 | 3,426,981 | 3,514,433 | 0.60% |
| Kerrville Telephone Company, Inc. | 2,719,544 | 2,797,514 | 3,427,674 | 3,393,682 | 0.58% |
| Etex Telephone Cooperative, Inc. | 2,919,248 | 3,082,637 | 3,160,614 | 3,226,826 | 0.55% |
| Brazoria Telephone Company | 2,439,400 | 2,383,873 | 2,396,149 | 2,389,467 | 0.41% |
| Central Texas Telephone Cooperative | 1,992,014 | 2,085,623 | 2,121,757 | 2,185,765 | 0.37% |
| Southwest Texas Telephone Company | 1,967,656 | 2,021,228 | 2,020,367 | 2,112,904 | 0.36% |
| Santa Rosa Telephone Cooperative | 401,051 | 433,923 | 1,514,588 | 2,053,427 | 0.35% |
| ALENCO | 1,835,515 | 1,949,061 | 1,984,701 | 1,993,162 | 0.34% |
| Poka-Lambro Rural Telephone Coop. | 1,928,416 | 1,911,296 | 1,861,337 | 1,801,631 | 0.31% |
| Muenster Telephone Corp. | 0 | 0 | 1,777,947 | 1,786,685 | 0.31% |
| Peoples Telephone Cooperative, Inc. | 1,449,751 | 1,559,926 | 1,760,279 | 1,759,514 | 0.30% |
| Century Telephone of Lake Dallas, Inc. | 1,644,386 | 1,740,099 | 1,363,323 | 1,674,625 | 0.29% |
| Colorado Valley Tel Coop. | 0 | 0 | 1,610,088 | 1,620,032 | 0.28% |
| Cap Rock Telephone Cooperative, Inc. | 1,476,421 | 1,486,945 | 1,506,085 | 1,521,977 | 0.26% |
| Riviera Telephone Company, Inc. | 1,126,845 | 1,157,139 | 1,171,670 | 1,141,640 | 0.20% |
| South Plains Telephone Cooperative | 1,110,272 | 1,122,427 | 1,066,246 | 1,077,273 | 0.18% |
| Taylor Telephone Cooperative, Inc. | 1,020,761 | 1,047,950 | 1,060,555 | 1,073,906 | 0.18% |
| West Texas Rural Telephone Cooperative | 984,938 | 985,733 | 986,269 | 991,325 | 0.17% |
| Industry Telephone Company | 872,802 | 986,214 | 954,811 | 985,645 | 0.17% |
| Ganado Telephone Company, Inc. | 681,654 | 765,778 | 823,341 | 845,368 | 0.14% |
| West Plains Telecommunications, Inc. | 751,913 | 764,739 | 774,697 | 806,305 | 0.14% |
| Century Telephone of Port Aransas, Inc. | 581,111 | 603,110 | 773,653 | 802,275 | 0.14% |
| Five Area Telephone Cooperative | 726,066 | 727,596 | 720,130 | 686,770 | 0.12% |
| Electra Telephone Company | 601,240 | 727,949 | 769,962 | 686,689 | 0.12% |
| Livingston Telephone Company | 485,593 | 508,488 | 653,401 | 668,011 | 0.11% |
| Lipan Telephone Company | 636,063 | 672,239 | 671,943 | 662,055 | 0.11% |
| XIT Rural Telephone Cooperative | 651,431 | 656,367 | 675,541 | 659,391 | 0.11% |

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|-------------------------------------|-----------|------------|---------|-----------|---------|
| Brazos Telecommunications, Inc. | 601,896 | 623,959 | 637,906 | 659,016 | 0.11% |
| Mid-Plains Rural Telephone Coop. | 635,455 | 646,802 | 656,884 | 654,829 | 0.11% |
| Cumby Telephone Cooperative, Inc. | 256,354 | 269,852 | 592,410 | 647,288 | 0.11% |
| Lake Livingston Telephone Company | 604,849 | 602,452 | 617,120 | 594,904 | 0.10% |
| Brazos Telephone Cooperative, Inc. | 575,086 | 585,592 | 591,271 | 588,498 | 0.10% |
| Community Telephone Company, Inc. | 593,432 | 602,632 | 602,552 | 586,465 | 0.10% |
| Comanche County Telephone Company | 519,924 | 525,460 | 526,493 | 549,231 | 0.09% |
| Coleman County Tel Co-op | 557,009 | 518,087 | 515,380 | 517,908 | 0.09% |
| WT Services, Inc. | 0 | 0 | 492,768 | 514,553 | 0.09% |
| Wes-Tex Telephone Cooperative, Inc. | 514,659 | 262,224 | 507,856 | 507,974 | 0.09% |
| La Ward Telephone Exchange | 419,355 | 428,202 | 427,878 | 416,165 | 0.07% |
| Dell Telephone Cooperative, Inc. | 365,281 | 417,768 | 416,889 | 412,899 | 0.07% |
| Cameron Telephone Company | 422,397 | 428,935 | 417,405 | 399,328 | 0.07% |
| XIT Telecommunications | 0 | 0 | 326,620 | 325,992 | 0.06% |
| Border to Border Communications | 231,936 | 230,507 | 231,188 | 269,938 | 0.05% |
| Grande Communications Net | 0 | 0 | 0 | 226,976 | 0.04% |
| E.N.M.R. Telephone Cooperative | 0 | 0 | 205,500 | 201,596 | 0.03% |
| Nii Communications, Ltd. | 0 | 0 | 185,877 | 196,963 | 0.03% |
| North Texas Telephone Co. | 148,753 | 149,677 | 151,519 | 156,632 | 0.03% |
| GCEC Technologies | 0 | 0 | 27,679 | 151,853 | 0.03% |
| Sage Telecom of Texas, LP | 0 | 0 | 0 | 141,057 | 0.02% |
| Wes-Tex Telecommunications | 0 | 0 | 0 | 73,507 | 0.01% |
| Blossom Telephone Company | 50,018 | 52,448 | 69,629 | 69,236 | 0.01% |
| Southwest Arkansas Telephone Coop. | 31,635 | 32,272 | 33,762 | 34,887 | 0.01% |
| MCI Worldcom Network Services | 0 | 0 | 27,956 | 32,174 | 0.01% |
| Logix Communications Corp. | 0 | 0 | 737 | 0 | 0.00% |
| Lufkin-Conroe Telephone Exchange | 0 | 14,444,569 | 0 | 0 | 0.00% |
| Nortex Communications | 1,636,308 | 1,728,606 | 0 | 0 | 0.00% |
| Tatum Telephone Exchange | 555,196 | 642,847 | 654,582 | (780,313) | (0.13%) |

Source: National Exchange Carriers Association Reports

Appendix K. — Federal Rules and Proceedings

| DATE | PROCEEDING OR CASE | DESCRIPTION |
|-----------------------------|--|---|
| February 1996 | Federal Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, 47 U.S.C. §§ 252 <i>et seq.</i> (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 | <i>In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</i> , CC Docket No. 96-98, First Report and Order (FCC August 8, 1996) (Local Competition Order); <i>Affirmed in part and reversed in part sub nom. Iowa Utilities Board v. FCC</i> , 120 F.3d 753 (8 th Cir. 1997) (<i>Iowa Utilities Board I</i>); <i>Affirmed in part and remanded, AT&T v. Iowa Utilities Board</i> , 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. However, <i>Iowa Utilities Board I</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. 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 | <i>In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 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? |
| December 1999- January 2001 | <i>In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , CC Docket No. 96-98, Fourth Report and Order (December 9, 1999) (Line Sharing Order) and Fourth | 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 |

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| | Report and Order on Reconsideration (January 19, 2001) (Line Sharing Reconsideration Order) | customer's computer to an Internet service provider (ISP). |
| May 2002 | <i>United States Telecom Association v. FCC</i> , 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 | <i>In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i> , 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 | <i>United States Telecom Ass'n v. FCC Commission</i> , 359 F.3d 554 (D.C. Cir., March 2, 2004) (USTA II) (The USTA II mandate issued on June 16, 2004); <i>See also United States Telecom Ass'n v. FCC</i> , 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. |
| August 2004 | <i>In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i> , CC Docket No. 01- | 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 |

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| | <p>338, Order and Notice of Proposed Rulemaking (August 20, 2004) (Interim Order)</p> | <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> |
|--|---|--|