

**Report to the 80<sup>th</sup>  
Texas Legislature**

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

***Public Utility Commission of Texas  
January 2007***

***ACKNOWLEDGEMENTS:***

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## *Public Utility Commission of Texas*

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January 15, 2007

Honorable Members of the Eightieth Texas Legislature:

We are pleased to submit our 2007 Report on the Scope of Competition in Telecommunications Markets as required by Section 52.006 of the Public Utility Regulatory Act (PURA).

Competition in the telecommunications industry continues to develop and change since the previous report on telecommunications, as seen by the emergence of new technologies and new types of competitive entrants to the arena. Cable television (CATV) and non-facilities based Internet Protocol (IP) providers are two relatively new competitors that provide customers with more choices for the provision of their telecommunications and broadband services. CATV telecommunications providers, at this point, are primarily offering service in the urban and suburban areas, as opposed to rural. Mobile wireless companies have also become a significant competitor in Texas, and there are some wireless companies that are using satellite technologies to provide rural customers with additional choices for the provision of both telecommunications and broadband services.

While the telecommunications industry has seen the emergence of new technologies and new entrants in the market, it has also seen numerous mergers and acquisitions. The purchase of MCI and AT&T, two of the state's major traditional type Competitive Local Exchange Carriers (CLECs), by Verizon and SBC, respectively, has decreased CLEC market share.

The report discusses competitive marketing tools that have become prevalent in the industry, such as the bundling of multiple services by the new set of competitors. The report also highlights major state and federal regulatory activity and more notable Commission activities since the previous Scope of Competition Report. The report concludes with Commission recommendations for the Legislature to consider in the 80th legislative session.

We look forward to continuing to work with you on this and other policy objectives. If you need additional information about any issues addressed in the report, please do not hesitate to call on us.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Hudson".

**Paul Hudson**  
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Commissioner

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## EXECUTIVE SUMMARY

This Report examines the status of competition in the telecommunications markets in Texas. The Report also examines evolving trends affecting competition in the telecommunications industry; effects of competition on rates, service availability and universal service; Commission activities of notable interest, including emerging issues; and customer protection and enforcement. The Report concludes with its legislative recommendations.

The highlights of the Report are:

1. Currently, the largest market share of primary-use lines, other than the ILECs', is held by mobile wireless companies, rather than traditional CLECs as in the past; the second largest competitive growth in terms of number of lines is from cable companies.
2. The number of traditional CLEC access lines has been decreasing since 2004 and the number of ILEC access lines has decreased since 2000;
3. The number of access lines served by primary-use mobile wireless companies has increased since 2000, the number of access lines served by cable television companies has increased since 2004 when these companies first entered the market;
4. As of June 2006, ILECs had 73 percent of the primary-use voice telecommunications market share, primary-use mobile wireless accounted for 14 percent, and CLECs accounted for 9 percent;
5. As of June 2006, there were 2 million primary-use wireless subscribers and 11.5 million wireline access lines in Texas. The total number of wireless subscribers as of June 2006 was 16.8 million;
6. Cable television companies provide 63 percent of their access lines in urban areas, 32 percent of their access lines are in suburban areas, and 5 percent of the access lines are in rural areas;
7. As of December 2005, there were 3.5 million broadband subscribers in Texas; this reflects an 80 percent increase in subscribership since 2003;
8. Because the availability and affordability of basic local telephone service have been mandated by regulation, they do not appear to have been affected by competition; and
9. Price increases have continued for vertical services such as Call Waiting, Caller ID, and Three-Way Calling; however, some companies are offering bundled packages consisting of basic local service, vertical features, long distance and other services discounted from a la carte prices.
10. New state-issued Certificates of Franchise Authority (CFAs) will make it easier for incumbent telephone companies to enter the video market statewide and allow them to offer a "triple play" of bundled voice, data,

and video services. It is unclear, though, who has jurisdiction to handle customer complaints about the providers operating under the new CFAs.

For information on Commission activities and issues not addressed in this Report, please refer to the 2005 Report on Scope of Competition in Telecommunications Markets in Texas.

## CHAPTER I. THE EVOLVING TELECOMMUNICATIONS INDUSTRY

### A. Overview

The telecommunications industry in Texas, as well as in the nation, is undergoing rapid change. As the telecommunications industry is changed by technology and regulation, the industry players respond by changing themselves from a corporate perspective. New players enter the marketplace, others leave, and yet others merge or break up to meet the new challenges (and challengers). All parties adjust their product lines to compete. The result of this activity is the introduction of products (and retirement or disuse of others) that change the very face of the industry. In addition to technology-driven regulatory changes, public policy objectives also have been changing, resulting in an evolution in telecommunications regulations.

Competition in local telecommunication markets has changed to a different set of entities and increasingly has become intermodal – competition is between companies owning their own facilities rather than obtaining them from the incumbent local exchange carriers (ILECs). The new telecommunications arena primarily features competition among the ILECs, cable companies, mobile wireless companies, and non-facilities based companies such as Vonage. Traditional competitive local exchange carriers (CLECs) remain, but with a diminishing market share.

The development of Voice over Internet Protocol (VoIP) has enabled cable companies to begin offering telephone service over their own facilities, and cable is becoming an increasingly important competitor for telephone services. One analyst recently projected that cable telephony subscribers will reach 5.9 million nationally, or 3 percent of all wireline access lines, by the end of 2006 and will continue to grow at a rapid pace reaching 20 million, or 11 percent of all wireline access lines, by 2010.<sup>1</sup> In addition, VoIP technology is being used by “non-facilities based” companies such as Vonage to provide telephone service over broadband facilities furnished to the end-user customer by another company.

While the bundled “all distance” voice service offering is still an important service offering, the entry of cable companies into the telecommunications market and the ILECs into the video market has resulted in the emergence of the “triple play” marketing strategy. The “triple play” marketing strategy offers customers a bundled package of voice telecommunications service, broadband internet, and television programming at a fixed monthly rate. Regulatory changes in Texas, brought about by the enactment of Senate Bill 5 passed in 2005 in the 79<sup>th</sup> Texas Legislature, 2nd Called Session, which provided for State-Issued Certificates of Franchise Authority, have served to spur the availability of the triple play. The ILECs have moved rapidly to compete in this new environment by initially offering television services in partnership with direct broadcast satellite operators, while investing in fiber optic network upgrades to permit the offering of video programming on landline facilities.

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<sup>1</sup> “VoIP Gathering Momentum – Expecting 20 million Cable VoIP Subs by 2010.” Bernstein Research, January 20, 2006.

Wireless also is becoming increasingly important as a third alternative in the telecommunications market. The FCC recently reported that overall wireless penetration in the United States has reached 71 percent and that "...virtually everyone between the ages of 20 and 49 now has a wireless phone."<sup>2</sup> The FCC also reported that "[v]irtually the entire population of United States live in counties where operators offer digital mobile telephone service."<sup>3</sup> Wireless phones also are increasingly serving as a substitute for traditional wireline telephone service. The FCC cited several surveys and studies that estimate that wireless substitution had roughly doubled in the last two years and that the percentage of households that now rely exclusively on wireless service stands at roughly eight percent of U.S. households.<sup>4</sup> With the deployment of faster wireless broadband services by the cellular carriers, wireless service also is entering the market as a competitor to landline broadband service.

Finally, corporate activity also has significantly changed the landscape of telecommunications competition. Numerous significant mergers and acquisitions have taken place, headlined by the acquisition of AT&T and Bell South (though final FCC approval is pending) by SBC and the acquisition of MCI by Verizon.

In sum, the competitive landscape has been transformed in the last two years, in particular through "intermodal" competitors, such as wireless and cable providers. "Intermodal" competitors actively compete in the local telephone market against landline companies, such as ILECs and CLECs, for customers. This competition has resulted in customer churn.<sup>5</sup> Many competitors have exited the market, while new players, new technologies, and new services have arrived on the scene.

## **B. Regulatory Activity**

Noteworthy regulatory activity has occurred over the last two years on both the state and federal levels. Changes in telecommunications law in Texas by Senate Bill 5 have begun to affect the telecommunications environment in Texas. This bill facilitated the continued transition of the Texas telecommunications landscape toward a market-based competitive environment.

Though the federal statute has not changed, several federal court decisions and changes in Federal Communications Commission (FCC) rules have greatly changed the telecommunications competitive environment. In general, the FCC has been moving towards market-based policies rather than heavy regulation. In addition to its general trend towards deregulation, the FCC is attempting to encourage facilities-based local competition rather than the use of ILEC-provided network elements.

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<sup>2</sup> *Implementation of Section 6002 (b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report at para. 204, FCC No. 06-142, WT Docket No. 06-17, (Rel. Sept. 29, 2006).

<sup>3</sup> *Id.* at para. 115.

<sup>4</sup> *Id.* at para. 205.

<sup>5</sup> *Id.* at para. 145, citing Mark Shuper *et al.*, *The North American 3G Wireless Report*, Morgan Stanley, Equity Research, Feb. 28, 2006, at 6, which reported that "[a] carrier with typical monthly churn of 2.5% will lose 30% of its customers each year."

## 1. State Legislation in Texas

Senate Bill 5 had three components affecting the communications market: (1) provisions regarding the deregulation of residential telephone service in certain ILEC market areas; (2) the institution of state-issued Certificates of Franchise Authority (CFAs) for the provision of video service; and (3) provisions authorizing certain entities to own, construct, maintain, and operate Broadband Over Power Line (BPL) systems.

### a. Deregulation of ILEC Markets in Texas

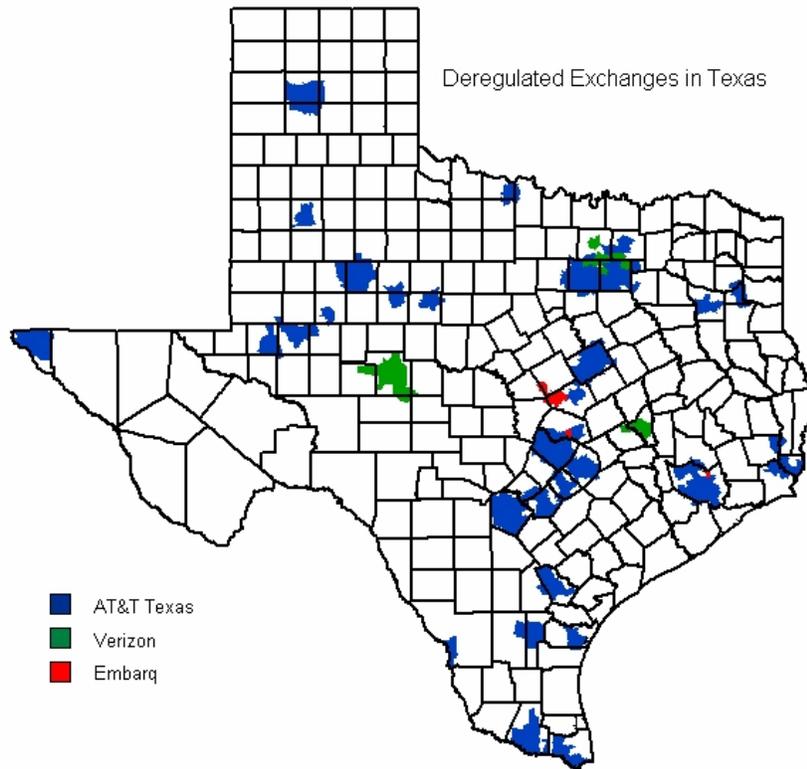
PURA Chapter 65, enacted as part of Senate Bill 5, provided for deregulation of certain ILEC markets. All ILECs except AT&T Texas, Verizon, Embarq (formerly known as Sprint-Centel), Windstream, and Windstream Kerrville (formerly known as Valor and Kerrville Telephone Company) – a total of 57 companies<sup>6</sup> – have elected to remain regulated. The Commission determined that Windstream and Windstream Kerrville should remain regulated, as no evidence was presented by these companies regarding competition in the markets they serve.

A total of 71 markets have been deregulated since Senate Bill 5 was enacted: 36 in markets with a population greater than 100,000, 18 in markets with a population between 30,000 and 100,000, and 17 in markets with a population less than 30,000. The following two figures offer a graphic representation of the location of deregulated exchanges and the percentage and number of deregulated residential lines in Texas. Tables 11, 12, and 13 in Chapter IV list all exchanges that have been deregulated.

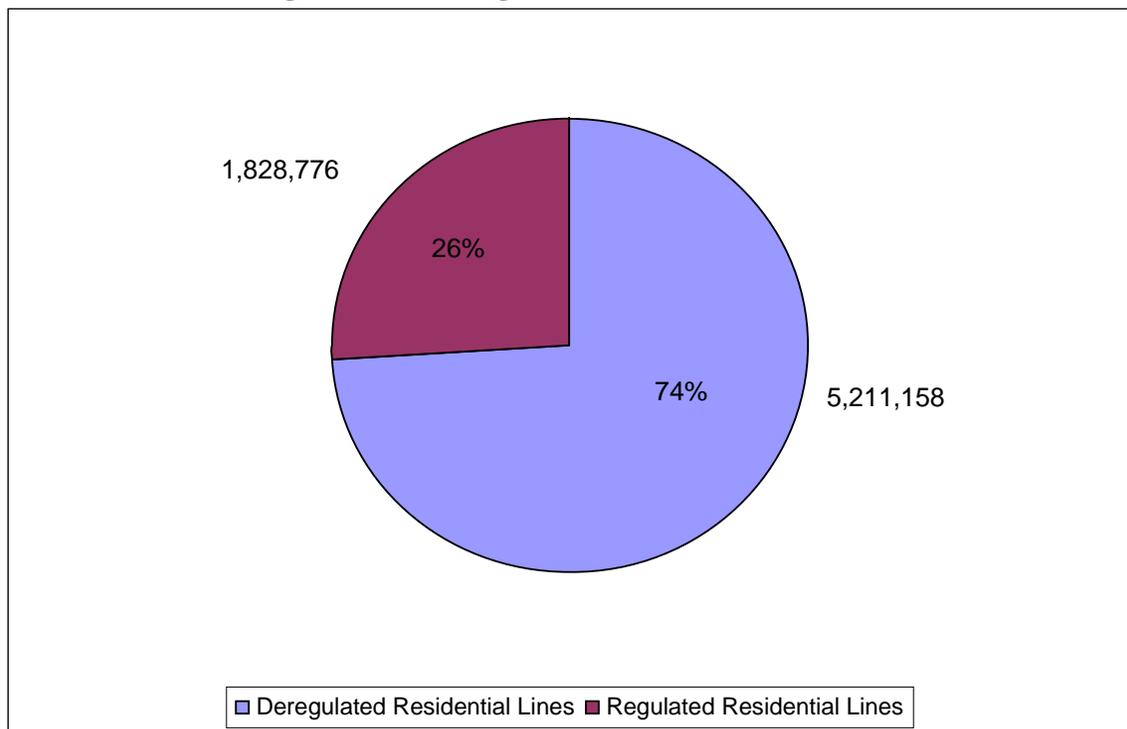
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<sup>6</sup> See Appendix B for list of the 57 companies.

**Figure 1 – Deregulated Exchanges in Texas**



**Figure 2 – Deregulated Residential Lines**



Source: 1999 Access Line Report

### **b. Statewide Video Franchises**

Provisions of Senate Bill 5 specified the certification criteria for a CFA to provide cable and/or video services in the state and required certificate holders to report certain information as well.<sup>7</sup> On May 16, 2006, the Commission adopted a new Substantive Rule detailing these criteria and requirements.<sup>8</sup> This ability to obtain a statewide certificate makes it easier for incumbent telephone companies to enter the video market statewide. After entering the video market, the telephone companies will be able to offer a “triple play” of bundled services (voice, data, and video) more readily and thus be in competition with the cable companies’ “triple play.” Statewide certificates also benefit cable companies since they too can obtain statewide certificates after the expiration of their current franchises. As of October 2006, there were 34 new CFAs issued and two new CFA applications pending.<sup>9</sup>

The Commission’s authority to resolve customer service complaints about cable and video providers operating under CFAs is unclear. PURA § 66.008 specifies that the Commission has no jurisdiction to process complaints in local markets where two or more non-satellite providers offer video service. However, in markets where the incumbent cable company has replaced an expiring municipal franchise with a new CFA, the municipality is no longer the franchise authority and it is unclear who has jurisdiction to process customer complaints. The Commission concluded at its April 13, 2006, Open Meeting that it does not possess clear authority to address these complaints.

### **c. Broadband Over Power Lines (BPL)**

Senate Bill 5 also authorized an affiliate of an electric utility or a person unaffiliated with an electric utility to own, construct, maintain, and operate a BPL system.<sup>10</sup>

BPL is a method in which a broadband telecommunications signal is transmitted over the existing electric distribution system to deliver broadband to individual end users. This technology has been in development for several years. However, because BPL is based on radio frequency transmission, BPL tends to interfere with other “over the air” radio frequency transmissions such as ham radio. Refinements in BPL systems over the past few years have minimized this radio interference, though radio interference tests are still required wherever these systems are deployed.

A number of BPL pilot projects have been undertaken by electric utilities; among them are San Diego Gas & Electric, South Central Indiana REMC, CenterPoint and TXU. Austin Energy has announced plans for a pilot as well. Going beyond pilots, Cinergy has a production BPL network operating in Cincinnati and TXU has announced

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<sup>7</sup> See Senate Bill 5, Section 27 or PURA Chapter 66.

<sup>8</sup> See Project No. 32171.

<sup>9</sup> See Appendix D for a listing of which companies have been granted CFAs.

<sup>10</sup> See PURA § 43.051.

plans to roll out production BPL networks in its metropolitan areas with availability for the first ten thousand homes during the fourth quarter of 2006.

## **2. Federal Regulation**

### **a. Triennial Review Remand Order (TRRO)**

This most significant regulatory development at the federal level was the FCC's Triennial Review Remand Order (TRRO). This order had the effect of forcing CLECs, that depended entirely upon the use of the ILECs' network elements to provision service, to re-evaluate their business plans since numerous network elements, namely local switching and certain access lines (loops), were no longer available at regulatory-prescribed rates. Some of these CLECs continue to operate using ILEC-provided network elements such as unbundled loops and transport, but are primarily serving business customers.<sup>11</sup> Other CLECs in Texas operate solely using their own networks and were unaffected by the TRRO rulings regarding use ILEC facilities.

### **b. VoIP Rulings**

VoIP is a technology that uses a broadband internet connection to transmit voice calls over the internet, bypassing the public switched telephone network (PSTN) for at least a portion of the call. The regulatory status of VoIP is uncertain at this time. Federal law makes a distinction between "information services," which are not regulated, and "telecommunications services," which are subject to common carrier regulation. The FCC has not yet determined whether VoIP is a regulated telephone service or an unregulated information service. Recent developments at the FCC, in particular regarding E-911 and USF contributions, would tend to show that VoIP is being compared to traditional telephony.<sup>12</sup> The FCC has an ongoing proceeding to attempt to determine how VoIP should be treated in the overall telecommunications regulatory framework.

### **c. Net Neutrality**

A debate over "Net neutrality" has emerged at the FCC and in the U.S. Congress in the last two years. The debate concerns whether an internet service provider, who also provides internet content, can favor its own content over a competitor's content or charge content providers for favorable treatment.

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<sup>11</sup> Based on responses to the Commission's data requests for this report, Unbundled Network Element-Loop (UNE-L) providers had approximately twice as many business lines as they had residential lines.

<sup>12</sup> *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking* at para. 35 and 41, FCC No. 06-94, WT Docket No. 06-122 (Rel. June 27, 2006).

*IP-Enabled Services, First Report and Order and Notice of Proposed Rulemaking* at para. 23, FCC No. 05-116, WT Docket No. 04-36 (Rel. June 3, 2005).

In classifying the telephone companies' DSL service as an unregulated information service, the FCC also adopted its "Four Principles," which generally require the internet to be operated in a neutral manner.

The issue continues to be debated both at the FCC – in the context of the proposed merger of AT&T Inc. and Bellsouth – and in the U.S. Congress – as part of a bill that would set up a nationwide video franchising scheme similar to that adopted in Texas in the 79<sup>th</sup> Legislature.

For further detail on this topic, please see the Commission report in Project No. 32527, *Study To Determine Whether Title 2, Utilities Code Adequately Preserves Customer Choice in the Internet-Enabled Applications Associated with Broadband Service*.

### **C. Corporate Activity**

As the regulatory environment experiences significant change and new technologies have made their way into the marketplace, telecommunications competitors have been trying to adapt to the new environment often through strategic steps that fundamentally affect the firms.

The dominant theme in the telecommunications industry in the past two years has been consolidation – a wave of mergers and acquisitions that has affected virtually every segment of the industry. The ultimate result was two high-profile acquisitions: the acquisition of AT&T by SBC (and then the pending purchase of Bell South by the new AT&T Inc.) and the acquisition of MCI by Verizon. In addition, there were a number of mergers and acquisitions among smaller CLECs, such as Qwest's acquisition of OnFiber and Level 3 Communications' acquisition of Looking Glass Networks and Broadwing.

The breakup of Adelphia Communications was a prominent acquisition in the cable television industry. Adelphia's assets were split up between Comcast and Time Warner. The two cable giants also traded some cable operations around the country between each other. As a result of these transactions, Time Warner has become a much larger presence in the Texas cable market.

In the wireless industry, the pending merger of AT&T Inc. and Bellsouth mentioned previously, if approved, will result in AT&T Texas owning 100% of Cingular Wireless (up from the current 60 percent), which has been a joint venture of AT&T Inc. and Bellsouth. Two other wireless carriers have divested themselves of their wireline operations in order to focus exclusively on the wireless market. Sprint/Nextel spun off its local wireline operations to a new company named Embarq, while Alltel sold its wireline operations to Valor Communications, which was then renamed Windstream.

While consolidation was occurring throughout the industry, new players also have emerged on the scene. Cellular companies have begun to roll out high-speed wireless internet access, which in its latest form rivals data transmission speeds achieved by cable modem and DSL service. Satellite communications companies have expanded their offerings of voice and data services to both fixed and mobile locations.

Table 1 below is provided to show some of the corporate transitions in telecommunications in Texas, and the names of the current entities along with their prior corporate identities.

**Table 1 – Changing Industry Players**

Currently Known As	Formerly Known As, Doing Business As, or Also Known As
AT&T Texas	Southwestern Bell Telephone Co. or SBC (and Bell South)
Verizon	General Telephone Co. of the Southwest or GTE
Embarq	Sprint, Central Telephone Co. of Texas and United Telephone Co. of Texas
Windstream Communications Southwest (Windstream)	Valor Telecommunications of Texas
Windstream SugarLand (Sugarland)	Sugarland Telephone Co.
Texas Windstream (Alltel)	Texas Alltel
Windstream Communications Kerrville (Kerrville)	Kerrville Telephone Co.

## D. Technology

New technologies in telecommunications often provide business opportunities for both existing and new competitors. Alternately, new technologies are often substitutes for existing technologies and can cannibalize or threaten existing business offerings. The following is a synopsis of new technologies in the telecommunications marketplace.

- **VoIP** – Voice over Internet Protocol, or VoIP, uses the internet protocol for voice transmission. This permits a very efficient use of the network, as voice and data can share the same connection simultaneously. It can provide for enhanced features not available with standard telephone service. The service is being provided in a variety of ways. Cable companies and telephone companies are providing service using their broadband data services, third-party service providers such as Vonage use their customers' existing broadband connections to provide service, and some companies such as Skype permit customers to call any other Skype customer on a computer-to-computer basis. Because some VoIP providers offer their customers multiple phone numbers and phone numbers in any area code, the service has raised issues concerning number exhaust and the jurisdictional identification of traffic for compensation purposes. There also have been concerns raised about the interoperability of VoIP with

other systems, such as alarm systems, and the ability of VoIP operators to provide E911 emergency calling functions.

- **Satellite Access** – Increased demand for voice and data satellite services has lowered costs for service providers and prices for consumers making satellite access increasingly attractive, particularly in rural markets where the cost of providing wireline service can be very high.
- **Broadband over Power Line (BPL)** – This technology delivers broadband telecommunications signals over existing power lines. Electric companies are considering BPL both for commercial voice and data services and for internal uses, such as remote meter reading. Concerns have been raised, however, about the potential for BPL to interfere with other uses of the radio spectrum because, unlike the coaxial cable used by cable companies, electric wires are not shielded.
- **WiMAX** (Worldwide Interoperability for Microwave Access) – WiMAX is a wireless protocol that provides DSL-like speeds in limited areas. In addition to forming the basis for some wireless companies' next-generation broadband wireless service, it has the potential to extend broadband access in rural areas that currently are not served by DSL or cable modem.
- **Ethernet** – Ethernet, previously used only for local connections within a building, is being extended by telephone companies over their fiber and copper network to form Metropolitan Area Networks, where multiple buildings or corporate campuses can be connected in the same way that users in a single building have been connected.
- **Fiber-to-the-Home** (FTTH) – Some telephone companies, notably Verizon with its fiber optic service product FiOS, have begun to extend fiber optic cable all the way to subscribers' homes. This provides practically unlimited capacity, enabling high-definition video service, voice service, and very high-speed data transmission. The technology is costly to install and had initially been undertaken only in new neighborhoods.
- **Very High-speed Digital Subscriber Line** (VDSL) – An alternative approach involves extending fiber further into the network, but uses a portion of the existing copper lines to provide high-speed data (VDSL) and video to customers. This approach provides much higher capacity than the DSL service it had previously offered at a lower cost than FTTH.

## E. Conclusion

The telecommunications industry in Texas, as well as in the nation, is undergoing rapid change. This is due in part to regulatory developments, technological advances, and intermodal competition. Many competitors who depended upon access to the ILEC

network have revised their business plans or left the market, while new players that do not rely on the ILEC network have entered the telecommunications market.

## CHAPTER II. STATUS OF COMPETITION – NEW PLAYERS / NEW GAME

### A. Introduction

As noted in Chapter 1, Texas, like the rest of the United States, has seen the telecommunications landscape change over the past two years. The *2005 Report on Scope of Competition in Telecommunications Markets in Texas (Scope Report)*<sup>13</sup> focused on intramodal competition between incumbent local exchange carriers (ILECs) and traditional competitive local exchange carriers (CLECs)<sup>14</sup>. However, the consolidation of the telecommunications industry and the development and deployment of new technologies has changed the competitive landscape of the industry. Therefore, this chapter will focus on intermodal competition among various types of providers.

Using data collected from various sources, this chapter details the current state of competition in Texas. It addresses not just the state of competition between ILECs and traditional CLECs, as in previous *Scope Reports*, but this year the data includes the emerging competition from alternative providers.

As in past years, the Commission collected data from ILECs and CLECs operating in Texas and used the information for this report. From this data, the Commission was able to determine the number of telecommunications access lines by geographic area and the number of broadband access providers by county. The Texas Cable & Telecommunications Association provided a list of counties with cable-based, high-speed data service and the total number of such high-speed data lines in Texas. In order to analyze historic trends, the Commission used ILEC and CLEC access line data from the *2005 Scope Report*. Historic cable company access line data, which were not published in the *2005 Scope Report*, were acquired from the responses to the 2004 and 2005 Scope of Competition data requests.

Data for this report also came from two FCC reports that were produced by its Wireline Competition Bureau. *High-Speed Services for Internet Access: Status as of December 31, 2005* (released July 2006) provided the Commission with the number of broadband subscribers nationwide and in various states, including Texas, and the number of broadband lines provided by various technologies (for example, Asymmetrical Digital Subscriber Line, or ADSL, versus cable modem). The Commission used *Local Telephone Competition: Status as of December 31, 2005* (also released July 2006) to determine the number of mobile wireless users in Texas. The FCC's Eleventh Report in

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<sup>13</sup> *Report to the 79th Texas Legislature - Scope of Competition in Telecommunications Markets of Texas*, PUC of Texas (Jan. 2005).

<sup>14</sup> The "traditional CLEC" operates under a PUC-issued Certificate of Operating Authority (COA) or Service Provider Certificate of Operating Authority (SPCOA) using twisted pair or fiber facilities that it either owns or has leased from another Certificated Telecommunication Utility (CTU).

WT Docket 06-17 was used to determine the proportion of mobile wireless service users who had moved from using traditional wireline access to using only wireless service.<sup>15</sup>

Finally, the Commission gathered data on the number of Vonage subscribers from the Vonage web site, [http://www.vonage.com/corporate/index.php?lid=footer\\_corporate](http://www.vonage.com/corporate/index.php?lid=footer_corporate).

## **B. Competitive Landscape**

Today, the competitive landscape includes the following types of service providers: ILECs, CLECs, cable telephony companies, non-facility VoIP companies, and wireless companies. These companies provide the following services: voice telecommunications services, data services, and video services.

### **1. The Voice Telecommunications Market**

Though the number of mobile wireless subscribers in Texas (15,620,248 as of December 2005)<sup>16</sup> significantly exceeds the number of access lines provided by Texas ILECs and CLECs (11,516,519 as of June 2006),<sup>17</sup> the FCC states that most of the mobile wireless services are not direct substitutes for the voice telecommunications services that are the topic of this report.<sup>18</sup> For the purpose of this report, a distinction is made between mobile wireless subscribers who use their wireless service as a substitute for traditional wireline service and those who use wireless in addition to wireline service. Only the portion of those mobile wireless “lines” used by customers as primary telephone lines (as substitutes for traditional wireline service) are considered in this competitive analysis. It also should be noted that while Verizon Wireless and Cingular Wireless are 55% and 60% owned and controlled by Verizon and AT&T Texas respectively,<sup>19</sup> mobile wireless “lines” of those companies were not included in the ILEC data in this report.

Figure 2 shows ILEC, CLEC, cable telephony, VoIP, and primary-use mobile wireless access lines for 2000 through 2006; this figure illustrates how new entrants in the marketplace have changed the competitive landscape. The number of ILEC access lines in Texas has generally been decreasing since 2000, while CLEC access lines increased until 2004. At that point, as explained in Chapter 1, regulatory changes created a much less favorable environment for the CLECs and their access lines decreased from that time forward. In addition, a portion of the decrease in CLEC lines can be attributed

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<sup>15</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 06-17 (Terminated), Eleventh Report, FCC 06-142 (Rel. Sep. 2006) (*CMRS Competitive Analysis - Eleventh Report*).

<sup>16</sup> *High-speed Services for Internet Access* at Table 14, FCC (July 2006).

<sup>17</sup> See Figure 2.

<sup>18</sup> *CMRS Competitive Analysis - Eleventh Report* at ¶205.

<sup>19</sup> Cingular – Cingular Wireless LLC, SEC Form 10-Q for the quarter ending June 30, 2006, Item 1, No. 1, “Summary of Significant Accounting Policies.”

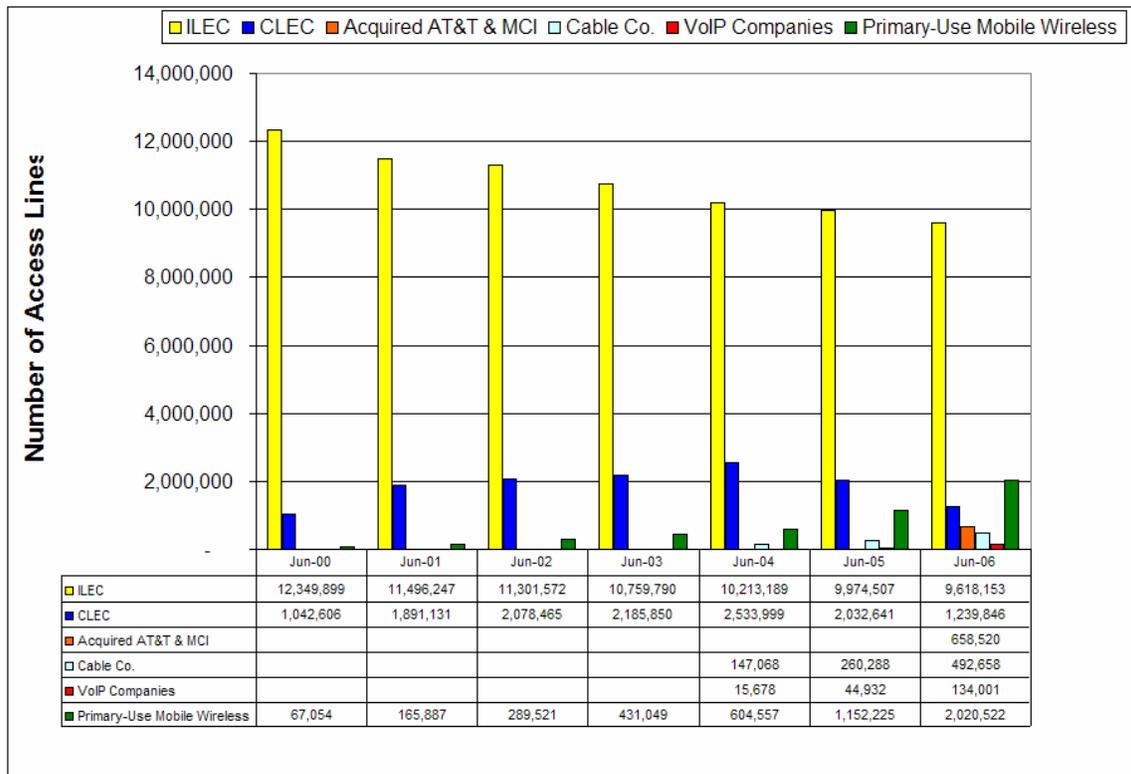
Verizon Wireless – Cellco Partnership, SEC Form 10-K for the fiscal year ending December 31, 2002, Item 12, “Security Ownership of Certain Beneficial Owners and Management.”

to the treatment of lines reported by the pre-acquisition AT&T and MCI entities in this report. Lines that were reported as former AT&T and MCI lines were counted as lines in a unique category for purposes of this report, notwithstanding the fact that such lines could be considered either CLEC lines or ILEC lines, depending on whether they are within the serving territory of the acquiring ILEC.

The mobile wireless companies perceptibly penetrated the market in 2000 and sustained high percentage growth for their primary-use mobile wireless lines throughout this period, ending with approximately two million primary-use lines (as compared to 11 million ILEC access lines) in 2006.

Cable companies have been gaining market share since 2004, while the non-facilities based VoIP companies appear to be just mounting their challenge.

**Figure 3 – Voice Telecommunications Access Lines in Texas**

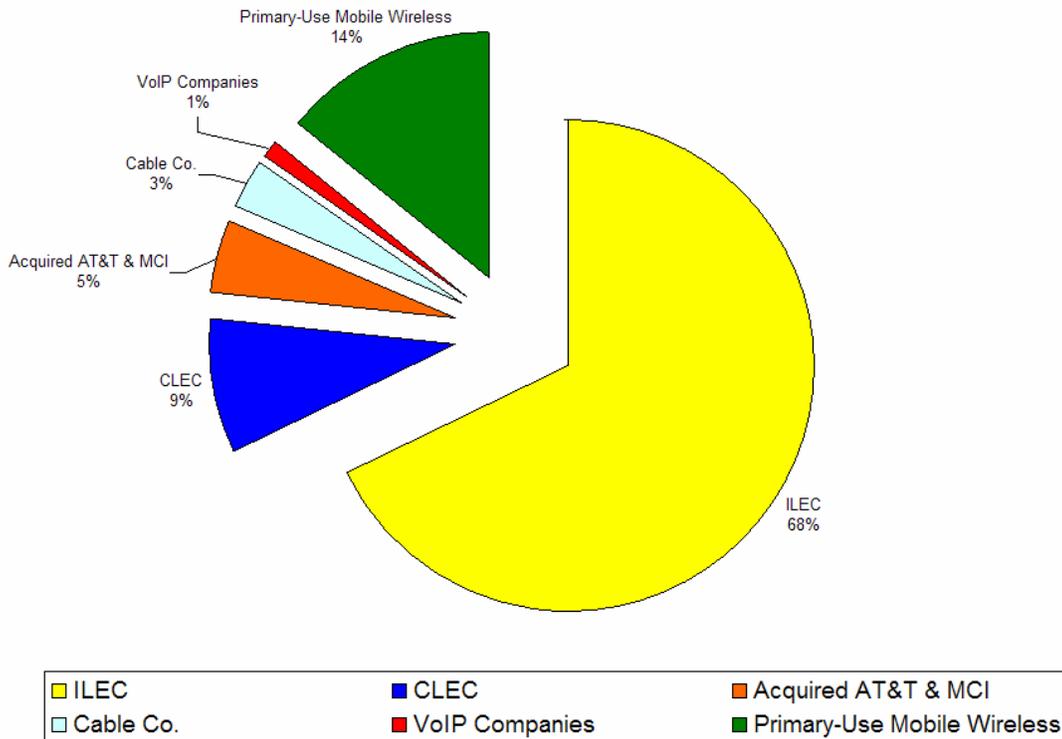


SOURCES: Public Utility Commission of Texas 2006 Scope of Competition Data Responses, Texas Cable & Telecommunications Association, *High-speed Services for Internet Access*, FCC (July 2006), [http://www.vonage.com/corporate/index.php?lid=footer\\_corporate](http://www.vonage.com/corporate/index.php?lid=footer_corporate), *Local Telephone Competition Reports*, FCC (July 2006).

## 2. Market Share

Figure 3 presents a “snapshot” of market shares as of June 2006. The ILECs still hold the majority share. However, the mobile wireless companies have already passed the CLECs for “primary-use lines” (this does not count the many wireless phones that are used in addition to the primary traditional phone lines). The cable companies and VoIP companies still have relatively small market shares by comparison.

**Figure 4 – Voice Telecommunications Market Share in Texas as of June 2006**

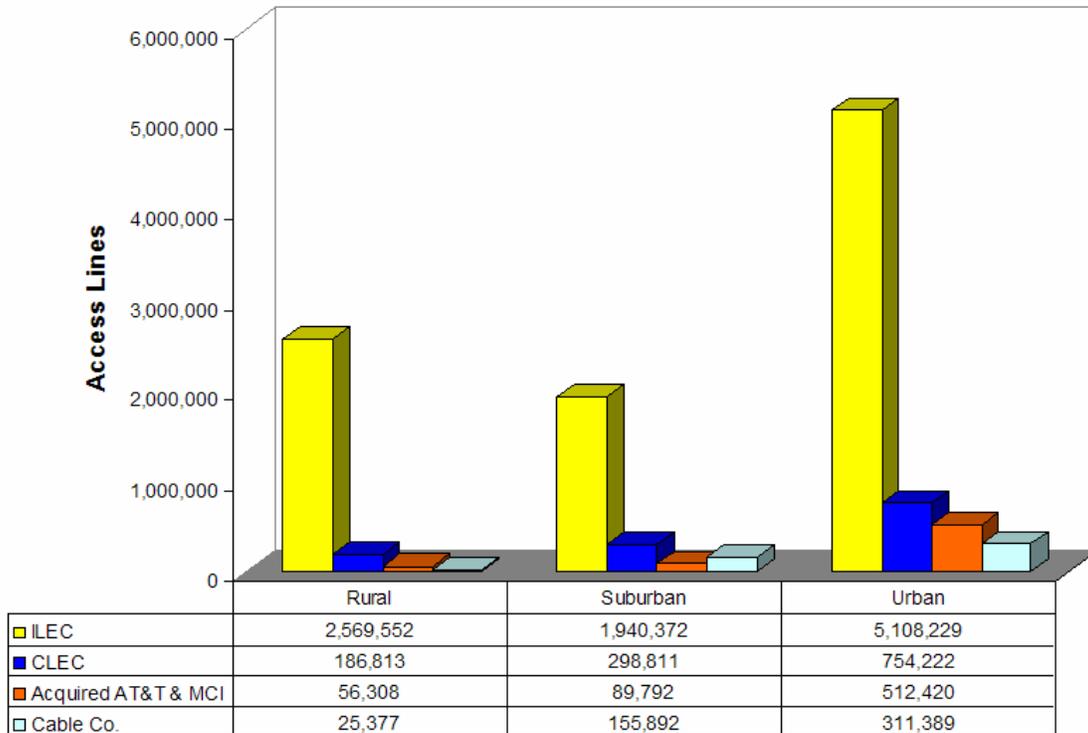


SOURCES: Public Utility Commission of Texas 2006 Scope of Competition Data Responses, Texas Cable & Telecommunications Association, *High Speed Services for Internet Access*, FCC (July 2006), [http://www.vonage.com/corporate/index.php?lid=footer\\_corporate](http://www.vonage.com/corporate/index.php?lid=footer_corporate), *Local Telephone Competition Reports*, FCC (July 2006).

### 3. Geographic Variations

Figure 5 examines the distribution of lines based on whether the subscribers are in rural, suburban or urban areas of the state. No data is available for the distribution of mobile wireless subscribers or VoIP company subscribers in the state, but geographic-specific information was provided by ILECs, CLECs and the Texas Cable and Telecommunications Association.

**Figure 5 – Voice Telecommunications Access Lines by Geography in Texas as of June 2006**



SOURCE: Public Utility Commission of Texas 2006 Scope of Competition Data Responses and Texas Cable & Telecommunications Association.

### C. Broadband Market in Texas

The analysis in this chapter so far addresses various voice telecommunications services, particularly those that provide the end user's primary telephone access line. However, broadband services are beginning to provide major revenues and provide a platform for communications firms to offer most information content, such as entertainment and video. In addition, the addition of VoIP to broadband lines is very inexpensive, so a broadband line may well substitute for a traditional telephone access line.

As an increasing number of Texans subscribe to online services, broadband becomes a larger player in the telecommunications market. The number of broadband subscribers in Texas has increased 80% from 2003 to 2005 (the time period since the previous *Scope Report*),<sup>20</sup> demonstrating a high rate of adoption of broadband service as its price drops to a level that more Texans can afford.

<sup>20</sup> See Table 2.

As shown in Table 2, broadband subscribership in Texas has grown from 152,518 in December 1999, to more than 3.4 million as of December 2005. In comparison with other states, Texas has the fourth-highest number of high-speed lines.<sup>21</sup>

**Table 2 — Broadband Subscribers in Texas Compared to Other States**

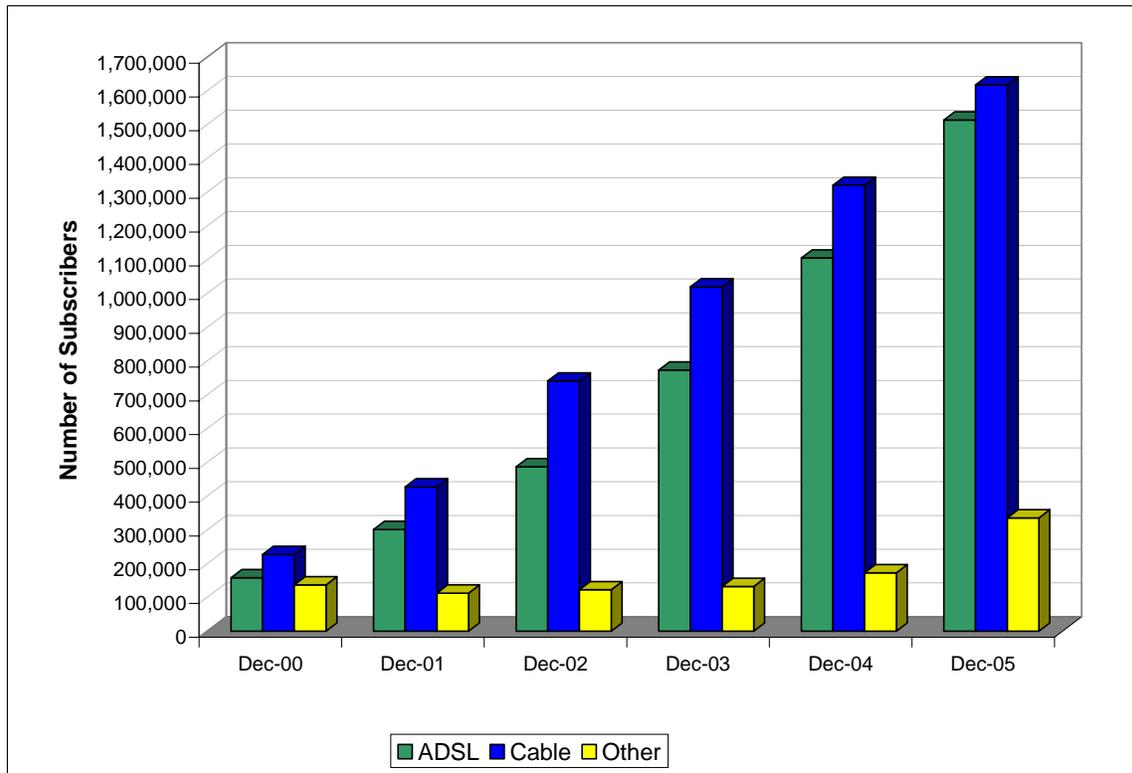
STATE	<u>DEC. 1999</u> TOTAL	<u>DEC. 2000</u> TOTAL	<u>DEC. 2001</u> TOTAL	<u>DEC. 2002</u> TOTAL	<u>DEC. 2003</u> TOTAL	<u>DEC. 2004</u> TOTAL	<u>DEC. 2005</u> TOTAL	PERCENT CHANGE 2003/2005
California	547,179	1,386,625	2,041,276	3,035,756	4,165,658	5,382,849	7,325,304	76%
New York	186,504	603,487	1,199,159	1,725,296	2,262,804	2,808,553	3,660,500	62%
Florida	190,700	460,795	911,261	1,405,976	1,986,938	2,683,058	3,514,999	77%
<b>Texas</b>	<b>152,518</b>	<b>522,538</b>	<b>840,665</b>	<b>1,349,628</b>	<b>1,924,664</b>	<b>2,597,539</b>	<b>3,466,494</b>	<b>80%</b>
Pennsylvania	71,926	176,670	376,439	631,717	971,170	1,405,317	1,998,409	106%
New Jersey	101,832	285,311	590,192	839,095	1,106,541	1,472,766	1,989,803	80%
National	2,754,286	7,069,874	12,792,812	19,881,549	28,230,149	37,890,646	50,237,139	78%

SOURCE: *High-speed Services for Internet Access*, FCC (July 2006).

Although customers have several options available to them, cable modem service and Digital Subscriber Line (DSL) service continue to hold the largest shares of the broadband market (see Figure 6). DSL allows customers to use their existing phone lines to transmit and receive data over the same copper facility. Similarly, cable modem service utilizes the same coax facility used to transmit video for broadband service. Other media of broadband service include fixed wireless, satellite, fiber-to-the-premise (FTTP), and broadband over power lines (BPL).

Figure 6 depicts various technologies used in providing broadband service. Although cable-modem technology continues to lead the industry, DSL is gaining ground in the broadband market. Cable had 50 percent greater market share than ADSL in 2000, however market shares for cable and ADSL are practically even today.

<sup>21</sup> Federal Communications Commission, Industry Analysis and Technology Division, *High-Speed Services for Internet Access, Status as of December 31, 2005*. WIRELINE COMPETITION BUREAU, July 2006. Available online at: [www.fcc.gov/wcb/iatd/comp.html](http://www.fcc.gov/wcb/iatd/comp.html).

**Figure 6 – Broadband Subscribers in Texas**

SOURCE: *High-speed Services for Internet Access*, FCC (July 2006).

As shown in Table 3, customers in an increasing number of counties have multiple choices of providers when subscribing to broadband service. The number of counties without broadband providers may have increased from 16 in 2004 to 22 in 2006, but the number of counties with more than one provider has increased from 145 to 195 in the same period. The number of counties with more than 15 broadband providers has decreased to one – Denton County.

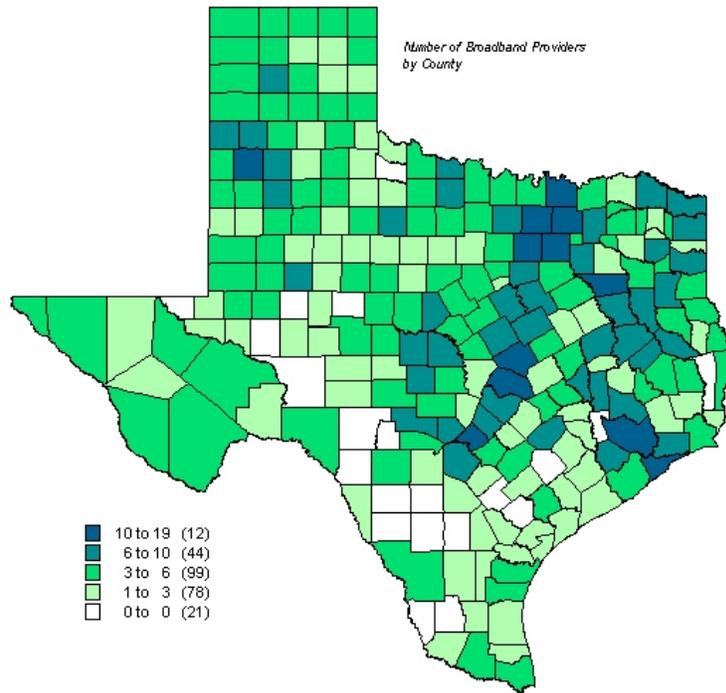
**Table 3 — Number of Broadband Providers in Texas**

Number of Providers	Number of Counties in 2004	Number of Counties in 2006
0	16	22
1	93	37
2-6	117	157
7-15	22	37
16-24	6	1

SOURCES: Public Utility Commission of Texas 2006 Scope of Competition Data Responses and Texas Cable & Telecommunications Association.

Figure 7 depicts the number of broadband providers operating in the various regions of Texas. Obviously, many providers are available in and around metropolitan areas. However, the availability of multiple broadband service providers in many rural areas is also significant. Wireless broadband technology promises to increase the number of broadband competitors in rural areas even further.

**Figure 7 – Number of Broadband Providers per County as of June 2006**



SOURCE: Public Utility Commission of Texas 2006 Scope of Competition Data Responses and Texas Cable & Telecommunications Association.

NOTE: As of June 2006, there were no broadband providers for the following counties: Coke, Crockett, Dimmit, Edwards, Foard, Frio, Glasscock, Goliad, Jasper, Jim Hogg, Karnes, Kinney, La Salle, Lavaca, Loving, McMullen, Real, Upton, Waller, Zapata, and Zavala.

## CHAPTER III. EFFECTS OF COMPETITION ON RATES AND SERVICE AVAILABILITY

The increasing competition in both the regulated and deregulated markets of Texas continues to have very little effect on the affordability and availability of basic local telephone service (BLTS)<sup>22</sup>. Even prior to the onset of competition, BLTS has been and is still available ubiquitously in Texas, and local telephone rates in Texas for years have been below the national average. Historically, this has been accomplished by the combination of legally capped rates, Provider of Last Resort obligations, Federal Universal Service Fund (FUSF) and Texas Universal Service Fund (TUSF) support programs.

However, rates for individual “vertical services” such as Caller ID Service and Call Waiting Service have continued to increase as allowed by Public Utility Regulatory Act (PURA) Chapters 58 and 59 incentive regulation and the new Chapter 65 deregulation. It should also be noted that more telecommunications customers are buying packages and bundles of different services that, in some instances, provide clearly identifiable discounts as compared to “a la carte” prices. In many instances, both residential and business customers are willing to spend more in total to obtain multiple telecommunications services.

### A. Effects of Competition on Rates

For many Texas customers, rates for residential local telephone service (when combined with one or more vertical services) have increased since the introduction of Chapter 65, under which “transitioning”<sup>23</sup> incumbent local exchange companies (ILECs) are permitted to modify the rates for BLTS in combination with vertical services in those markets that are deregulated. Stand-alone rates for BLTS may not be increased before the Commission has the opportunity to revise the support amounts of the Texas High Cost Universal Service Plan (THCUSP), even in markets that have been deregulated. Pursuant to PURA § 56.031, the Commission may revise the monthly per line support amounts to be made available from the THCUSP at any time after September 1, 2007, after notice and an opportunity for hearing.

For telecommunications providers regulated under Chapters 58 and 59, rates for vertical services and other services have continued to rise. However, for all transitioning and partially-regulated companies there has been a continuing trend toward packages, bundles, and term agreements that offer discounts to residential and business customers. A greater choice of packages has given more flexibility to high dollar users or those customers willing to purchase multiple features or multiple services from a single provider.

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<sup>22</sup> Basic local telephone service, for purposes of this report, is flat rate telephone service without any features included beyond access to the public local exchange telephone network.

<sup>23</sup> A transitioning company is one that has had one or more of its markets, but not all markets, deregulated. On December 28, 2005, in Project No. 31831, an Order was issued by the Commission classifying AT&T, Verizon and Embarq-Centel as “transitioning” companies.

## 1. Local Telephone Service Rates

Chapter 65 allows “transitioning” ILECs to change the rates for BLTS, when combined with at least one other vertical service, in those exchanges (markets) that have been deregulated. As a result, in one instance local rates have risen in the range of 17% to 70%.<sup>24</sup> These increases have been approximately \$2.00 to \$3.00 per month per line.

The election of PURA Chapter 58 and 59 regulations by a majority of the medium-sized ILECs continues to restrict increases in residential rates for BLTS. Chapters 58 and 59 regulations “cap” basic local service rates and only allow increases in the rates as a result of any allowed 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.<sup>25</sup> 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. The mandatory extended area service monthly fees are capped under Chapter 58 and 59 regulations, thereby restricting any increases in an electing ILEC’s rates. However, under Chapter 65, the ILEC has the option of classifying mandatory extended area service as basic.

## 2. Vertical Services Rates

Vertical service rates are not capped under Chapters 58 and 59, or Chapter 65 of PURA. As such, the rates of many of the most popular vertical services 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 one of the largest electing ILECs in the state, Verizon, indicate that since 2004, the monthly rate for Caller ID Name and Number service has increased by 19%.<sup>26</sup> The monthly rate for three-way-calling service increased 6.25% for Verizon and 19% for AT&T Texas (formerly SBC Texas), another of the state’s largest ILECs.<sup>27</sup>

The following tables compare a list of common and popular vertical service rate changes for Verizon and AT&T Texas since these companies’ elected incentive regulation:

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<sup>24</sup> AT&T Tariff Control No. 32671 - AT&T Residential Price Changes for deregulated exchanges - Implementation of Standard Line and Standard Plus Line designations for differentiation of regulated and deregulated line charges (eff. June 1, 2001).

<sup>25</sup> 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.

<sup>26</sup> See Table 9 – Comparison of Residential Rate Packages as of October 2004 and August 2006 for AT&T and Verizon.

<sup>27</sup> See Table 7 and Table 8.

**Table 4 – Sample of Changes in Verizon’s Pricing for Vertical Services**

Service	Texas Residential Retail Price		
	Before September 1999	As of September 2004	As of September 2006
Three-Way Calling – Per Event	\$0.75	\$0.95	\$0.95
Automatic Busy Redial – Per Event			
Automatic Call Return – Per Event			
Three-Way Calling – Monthly	\$2.70	\$4.00	\$4.25
Automatic Call Return – Monthly	\$3.00	\$4.00	\$4.25
Remote Call Forwarding – Monthly	\$14.50	\$17.00	\$17.00
Caller ID Name and Number	\$6.50	\$7.75	\$9.25
Caller ID Name and Number with Automatic Call Block	\$6.75	\$7.95	\$9.25
Operator Verification – Per Event	\$1.35	\$2.50	\$2.50
Operator Interrupt – Per Event	\$2.20	\$5.00	\$5.00
Local Directory Assistance – Per Event	\$0.25	\$1.25	1.25
National Directory Assistance – Per Event	Not Available	\$1.25	\$1.25
Additional Directory Listing – Per Listing	\$.55	\$1.10	\$3.00
Return Check Charge – Per Event	\$10.00	\$25.00	\$25.00
Rate for Non-published Number	\$1.65/month	\$1.65/month	\$4.95/month

SOURCE: Public Utility Commission of Texas filings.

**Table 5 – Sample of Changes in AT&T Texas’s (formerly SBC) Pricing for Vertical Services**

Service	Texas Residential Retail Price		
	Before September 1999	As of September 2004	As of September 2006
Three-Way Calling – Monthly	\$2.10	\$5.00	\$5.99
Call Forwarding – Monthly			
Speed Calling 8 – Monthly			
Anonymous Call Rejection - Monthly	\$1.00	\$2.00	\$3.99
Auto Redial – Monthly	\$2.00	\$4.50	\$5.99
Call Waiting – Monthly	\$2.80	\$2.80	\$3.99
Call Waiting ID – Monthly	\$3.00	\$4.50	\$6.00
Caller ID Name – Monthly	\$4.95	\$7.00	No change
Caller ID Number – Monthly	\$4.95	\$7.00	No change
Caller ID Name and Number - Monthly	\$6.50	\$8.95	\$9.95
Call Blocker – Monthly	\$2.00	\$5.00	\$5.99
Priority Call – Monthly	\$2.00	\$3.00	\$3.99
Personalized Ring – Monthly	\$3.50	\$2.95	No change
Call Return	\$0.50 each use	\$1.25 each use	\$1.99 each use
Three-Way Calling	\$0.75 each use	\$1.25 each use	\$1.99 each use
Call Trace	\$8.00 each use	\$6.00 each use	\$6.00 each use
Directory Assistance	\$0.30 each use	\$1.25 each after 3	\$1.25
Rate for Non-published Numbers – Monthly	\$1.10	\$4.95	\$5.50 each use
Call Completion	\$0.30 add'l each use	\$0.25 add'l each use	\$0.25 add'l each use

SOURCE: Public Utility Commission of Texas filings

### 3. Packages, Bundles, Term Commitments and Promotions

While bills for residential local telephone service (when bought with vertical services, but not as a “bundle”) have been increasing due to higher rates for vertical services, many customers are getting greater value for their dollar by purchasing service packages or bundles from ILECs, CLECs, and cable telephony companies. This continuing trend is geared toward packaging of residential and business basic local service with vertical services and long-distance services or bundling other services such as video service and internet access with voice telephone service. Some of the packages and bundles shown in the tables that follow illustrate how a customer can get a lot for just a little extra money as compared to two years ago (e.g., for \$4.00 more you can add high-speed internet service to your package for a year).

Bundled and packaged services provide residential and business customers with one stop shopping for all of their communications and video entertainment needs. The inclusion of a term agreement of one to five years provides the customers with even

larger discounts while giving the telecommunications provider a more predictable revenue stream.

Cable companies and VOIP providers continue to offer special promotions to lure customers away from the ILEC, while the ILEC continues to regularly offer special promotions to former residential and business customers in order to “winback” their business. Both forms of promotions generally provide temporary economic incentives to induce customers to switch their local telephone service, video service and/or high-speed internet service back to the other party.

The following tables illustrate some of the residential and business packages available two years ago and today:

**Table 6 – Comparison of Residential Rate Packages as of October 2004 and August 2006**

<b>Landline Telephone Providers</b>			
<b>Company</b>	<b>Package Name</b>	<b>Description Provided by Company</b>	<b>Price/Mo.</b>
Southwestern Bell d/b/a SBC Texas	All Distance in 2004	Unlimited Local Service, Unlimited National Long Distance, Caller ID and choice of two vertical services ( <i>i.e.</i> : Call Waiting, Call Forwarding, Call Blocking, etc.), Call Notes (answer & messaging service), Inline (telephone wire and jack maintenance plan)	\$48.95
SBC d/b/a/ AT&T Texas	All Distance Select with High-speed Internet Express in 2006	Unlimited Local, Unlimited L.D., Caller ID and choice of two vertical services ( <i>i.e.</i> : Call Waiting, Call Forwarding, Call Blocking, etc.), Inline (telephone wire and jack maintenance plan) AND High-speed Internet Express	\$52.98 per month for 12 months, \$75.98 after 12 months.
Verizon TXC & TXG	Verizon Freedom in 2004	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
Verizon	Freedom Essentials in 2006	Unlimited Local & Toll Service, Unlimited U.S. & Puerto Rico Long Distance, Caller ID, Home Voice Mail, Call Waiting	\$39.95
	Freedom Plan In 2006	Now includes both Canada and Puerto Rico	\$57.99

**Table 6 – Comparison of Residential Rate Packages as of October 2004 and August 2006 (continued)**

Company	Package Name	Description Provided by Company	Price/Mo.
Embarq (formerly Sprint)	Personal Solutions with Unlimited Long Distance in 2004	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
	Personal II Solutions with Unlimited Long Distance in 2006	Unlimited Interstate Long Distance, Unlimited Local, Caller ID, Call Waiting, Three-Way Calling, Call Forwarding, Return Call, and Repeat Dial, and a choice of ONE premium services (Voicemail, Line Guard, CPE Warranty or Sprint Privacy ID®)	\$38.95 (\$10 for LD and \$28.95 for local pkg.)
AT&T Texas	Quad Pack 2006	Personal Choice Telephone Service, Nationwide 100 LD, High-speed Internet Access (DSL), Cingular 450 Cell phone with rollover and Dish Network Top 60 Television	\$124.92
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
	Unlimited 2006	With 18 features	\$49.95
		Bundles with TWO other services	\$39.95
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
	Unlimited Calling 2006	Now Including Canada and Puerto Rico	\$49.95
		In a Package With Cable TV	\$44.95
		In a Package With Cable TV and High-speed Internet	\$39.95
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
	Premium Plan 2006	Now with unlimited calls to Puerto Rico, Italy, France, Spain, the UK and Ireland.	\$24.99

**Table 7 – Comparison of Small-Business Rate Packages as of October 2004 and August 2006**

<b>Landline Telephone Providers</b>			
<b>Company</b>	<b>Package Name</b>	<b>Description Provided by Company</b>	<b>Price/Mo.</b>
Southwestern Bell d/b/a SBC Texas	“Business Unlimited“ 2004	Unlimited Local Service, Unlimited National Long Distance, Caller ID, Call Forwarding, Three-Way Calling, and Call Return	\$48.95
	2006		\$49.99
Verizon	Currently Not Available	N/A	N/A
Embarq (formerly Sprint)	Unlimited Priority Solutions 2004	Unlimited Local, Toll and Long Distance, Caller ID with Name, Call Waiting, and Call Forwarding	\$60.90
	Economy Solutions 2006	Unlimited Local, Toll and Long Distance, Caller ID with Name, Call Waiting, and Call Forwarding	\$60.90
<b>Voice Over Internet Protocol (VOIP) or Digital Phone Service<sup>28</sup></b>			
<b>Company</b>	<b>Package Name</b>	<b>Description Provided by Company</b>	<b>Price/Mo.</b>
GalaxyVoice	GalaxyVoice Phone Service	Unlimited Local and Long Distance, Voice Mail, Call Forward, Call Transfer, Repeat Dialing, and Caller ID Block.	\$44.95
	Galaxy 2006	Unlimited Local and Long Distance, Voice Mail, Call Forward, Call Transfer, Repeat Dialing, and Caller ID Block.	\$44.95
Cox Cable	Not Available	Business service not available in Texas	
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
	SBU 2006	Now includes unlimited calls to Puerto Rico, Italy , France, Spain, Uk, and Ireland	\$49.99

<sup>28</sup> 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&GTKW=voip> and [http://www.vonage.com/products\\_premium\\_sb.php](http://www.vonage.com/products_premium_sb.php).

#### **4. Other Service and Feature Rates**

The fees for directory-assistance service have continued to escalate as more ILECs have eliminated the residential three call allowance per month and replaced it with charges of approximately \$0.25 to \$1.25 per directory assistance call. Late-fee assessments have generally stayed at 2004 levels. Rates for services such as directory listings, non-published-number service, and non-listed-number service have continued to increase.

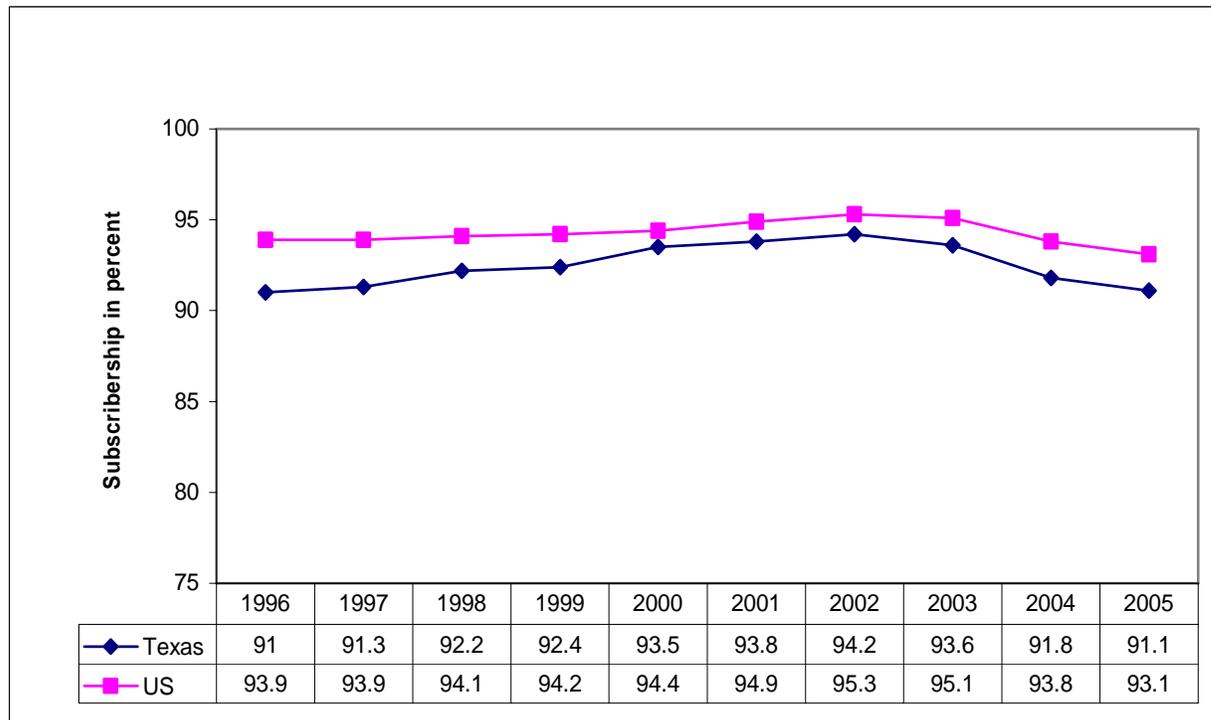
#### **B. Effects of Competition on Service Availability**

As discussed previously, the availability of BLTS has not changed as a result of competition. However, availability of peripheral services, features and functionality provided in conjunction with BLTS has become more prevalent.

##### **1. Subscribership**

The percentage of households that have telephone service (telephone penetration) is one of the fundamental measures of the extent of universal service. The FCC reports this data based on surveys conducted by the Census Bureau. In recent years, the question asked by the census is: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other types of telephone."

The following figure identifies the percent level of telephone service subscribership in Texas over the past ten years as compared to the national average. Subscribership at the state level declined by approximately 0.77 percent from 2004 to 2005, declining at a pace almost identical to what happened at the national level.

**Figure 8 – Percentage of Telephone Subscribership**

SOURCE: Telephone Subscribership in the United States, Table No. 3, FCC (May 2006).

There appears to be no correlation between the level of local competition over the last two years and subscribership levels.

## 2. Basic Telephone Service in Uncertificated Areas

An uncertificated area is an area of the state not included in any ILEC's certificated area, or the area where the ILEC is required to provide service. Service to these areas may be provided by eligible telecommunications providers (ETPs) who receive reimbursement for this provision of service (see below for a discussion of ETP designation). On July 22, 2005, DialToneServices, L.P. (DTS) filed an application for an amendment to its designation as an eligible telecommunications carrier (ETC), and its designation as an ETP in certain uncertificated areas. DTS requested reimbursement for the provision of universal service in the uncertificated areas of the following 19 Texas counties: Childress, Collingsworth, Crane, Ector, Gaines, Gray, Hartley, Hemphill, Irion, Jeff Davis, Lipscomb, McMullen, Oldham, Pecos, Potter, Reagan, Tom Green, Upton, and Wheeler.

DTS' application stated that customers within the uncertificated areas will be able to receive an unlimited calling plan. DTS made a commitment to provide a flat rate calling plan for \$14.95 with either 300 minutes of local and long distance usage or unlimited local usage as desired by the customer within the uncertificated areas.

The Commission approved DTS' application and calculated the support amount to be applied to the uncertificated areas, using a simple average of the monthly per line support amounts in the contiguous surrounding exchanges.<sup>29</sup>

### **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.<sup>30</sup> Once an ETP 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.<sup>31</sup> On July 15, 2004, SBC Texas was authorized to initiate service in the uncertificated area near Colorado City. The other docket requesting the designation of an ETP for an uncertificated area near Sabine County has not been resolved. In that case, the petitioners and the proposed ETPs were not able to come to an agreement on the estimated construction and service costs. A procedural schedule for the hearing was set on September 29, 2006.

#### **C. Summary of Effects of Competition on Basic Local Service**

In summary, competition has only a minimal effect on BLTS rates. The primary reasons that competition has had only a minimal effect on BLTS rates in certificated areas are that:

- (1) ILEC residential rates for BLTS have generally been capped by law prior to January 1, 2006; ILEC stand-alone residential BLTS rates are still capped until the Commission has the opportunity to revise the support amounts of the THCUSP;
- (2) the combination of support from the TUSF and the FUSF that the ETPs receive ensures reasonable rates for customers;
- (3) Provider of Last Resort (POLR) responsibility mandates that the POLR must provide telephone service to any customer requesting such service in the POLR's serving area;

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<sup>29</sup> See Docket No. 31401.

<sup>30</sup> 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.

<sup>31</sup> 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.

(4) providers receiving TUSF and FUSF support are required to provide customers a certain quality of service;<sup>32</sup> and

(5) SUBST. R. 26.421(i)(3) places a cap of \$3,000 on the aid to construction cost that a LEC may charge a customer in an uncertificated area to place facilities in order to provide telecommunication service. Commercial Mobile Radio Service (CMRS) and satellite technology are currently being utilized in remote areas to provide telephone service because the cost to place these type of facilities is typically less than traditional landline. The lower cost of construction for these type of technologies can then be passed on to the customer in the form of lower aid to construction costs.

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<sup>32</sup> See PURA § 56.023(b).



## CHAPTER IV. COMMISSION ACTIVITIES: 2004 - 2006

This section provides an overview of some of the Commission's activities since the *2005 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 *2005 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 incumbents' networks as required by the FTA. These include key arbitration cases and monitoring of dominant certificated telecommunications utilities (DCTUs) 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 (ICA). An ICA 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 (UNEs). ILECs and CLECs are required to negotiate ICAs 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 8, carriers in Texas conduct substantial numbers of voluntary negotiations for interconnection, services, and UNEs.

##### a. Successor Agreement

The Commission established Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, to address the non-costing issues necessary to develop a successor ICA to the Texas 271 Agreement (T2A). Costing issues were addressed in a prior docket. On August 29, 2005, the Commission issued the final order approving the six conformed ICAs that were developed between various CLECs and AT&T Texas (formerly known as SBC Texas). CLECs that were not an active participant to Docket No. 28821 were able to opt into any of the various approved ICAs.

**Table 8 – Type and Number of Interconnection Agreements in Texas**

TYPES OF INTERCONNECTION AGREEMENTS	FROM SEPTEMBER 1, 2004— AUGUST 2006
Negotiated Agreements	207
Amendments	125
Texas 271 Agreements	125
Adoptions	37

**b. Compulsory Arbitration**

Under its procedural rules, the Commission distinguishes between arbitration proceedings that address disputes regarding terms and conditions in existing interconnection agreements and those that develop terms and conditions for new interconnection agreements. As reflected in Tables 8 and Table 9, far fewer interconnection agreements are developed through arbitrations or dispute resolutions than through voluntary negotiations.

**Table 9 – Type and Number of Arbitrations in Texas**

TYPES OF DISPUTE RESOLUTION	FROM SEPTEMBER 1, 2004 THROUGH AUGUST, 2006	
	OPEN	CLOSED
Arbitrations	14	14
Post-Interconnection Dispute	12	19

**2. FCC’s Triennial Review Remand Order (TRRO)**

On February 20, 2003, the FCC revised its rules concerning ILEC obligations to make elements of their networks available on an unbundled basis to competitors. The states were given authority to implement these rules. However, in 2004, the D.C. Circuit Court vacated significant portions of the rules and remanded it back to the FCC. This led to the issuance of the TRRO, which specified new guidelines for requiring ILECs to make elements of their networks available to competitors.

The Commission implemented the TRRO via Docket No. 28821 – Phase II, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, and Docket No. 31303, *Post Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification* in 2005 and 2006. Decisions were rendered by the Commission in these dockets regarding several disputed issues, including from the exemption of ILECs from certain network sharing requirements based on TRRO guidelines and the terms for managing and updating these network sharing guidelines.

**3. AT&T Texas Performance Measures**

The Commission established wholesale performance measurements (PMs) and a remedy plan for all dominant certificated telecommunications utilities (DCTUs) for SBC

Texas as part of the Texas 271 Agreement in October 1999, which allowed SBC Texas to enter the interLATA long-distance market. The purpose of the performance-remedy plan is to encourage AT&T Texas (formerly known as SBC) to providing non-discriminatory wholesale services to its competitors who rely, to varying degrees, on AT&T Texas's legacy network to provide service. Initially, the DCTU plan consisted of 131 measures, but the number of measures has been reduced to 35 measures after three collaborative reviews and the post TRRO Commission ruling in Docket No. 28821. The aggregate CLEC performance data reports are filed at the Commission by AT&T Texas on a monthly basis, and the penalty-payment summaries are posted on a password-protected website to assist in monitoring AT&T 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). The performance remedy plan specified that if AT&T Texas did not meet certain customer affecting performance measurements on a monthly basis, then Tier-1 liquidated damage payments were required to be made to compensate CLECs. Likewise, if AT&T Texas did not meet certain competition-affecting performance-measurement standards for three consecutive months, then Tier-2 assessments were made to the State until September 2005. In Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, the Commission approved the modified performance measurements and remedy plan, as agreed to by AT&T Texas and the CLECs, under which the Tier-2 liquidated damage payments are no longer applicable and only Tier-1 liquidated damage payments are to be made to the CLECs. The performance remedy plan continues to be self-executing as it relates to Tier-1 payments to the CLEC. AT&T Texas is required to file the aggregate CLEC performance data on a monthly basis. In addition, AT&T Texas provides the CLEC performance analysis report on its website. In the event AT&T Texas misses any Tier-2 measurement for two consecutive months, and for each succeeding violation of that measurement, the report outlines the results of its investigation to identify the problem and take corrective action. AT&T Texas is also required to provide an ITRAK report showing the number and the percent of orders tracked individually outside of its mechanized ordering system.

As shown in the table below, since 2003 the penalty payments have decreased in comparison to the payment levels in 2000, 2001, and 2002. However in 2004, the Tier-1 payment increased due to increased CLEC activity and subsequently dropped significantly during 2005 and 2006. In general, the drop in the level of Tier-1 payments level may be attributable to the following factors:

- a. improved performance delivered to CLECs;
- b. lower number of performance measures;
- c. reduced CLEC activity and fewer number of CLECs after increased merger activities;

- d. elimination of UNE-P and certain UNEs in Docket No. 28821 based on TRO and TRRO; and
- e. an increase in the number of commercial agreements between the CLECs and AT&T Texas that do not include the performance remedy plan approved in Docket No. 28821.

**Table 10 – 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
2004	\$5,573,552	\$659,500
2005	\$726,513	\$91,800 *
As of May 2006	\$87,100	N/A
<b>Total</b>	<b>\$26,565,355</b>	<b>\$10,893,100</b>

\* Tier-2 payments were made until September 2005.

#### 4. ETC Certifications

Eligible telecommunications carrier (ETC) certification is a prerequisite for obtaining support from the Federal Universal Service Fund (FUSF). FUSF support is provided to qualifying phone companies to assist in the financial ability to provide basic telephone service at reasonable rates. The FCC requires state commissions to process these certifications. On August 2, 2005, the Commission approved the ETC application of the first satellite provider that applied for ETC designation. Satellite service provider DialtoneServices, LP (DTS) filed an application seeking designation as an ETC pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418 in certain exchanges of SBC and Verizon so that it could seek support from the FUSF. The Commission required the company to submit the following additional reports to the Commission: (1) the results of an annual customer satisfaction survey, and any relevant background documents, such as a copy of the survey itself, within 30 days of the completion of the survey; (2) the total number of complaints received, per 1,000 customers, on an annual basis; and (3) a point of contact within DTS to address any customer service or service quality complaints received by the Commission or Office of Public Utility Counsel.<sup>33</sup>

<sup>33</sup> See Docket No. 30765, 30812.

## **5. Summary of Selected Proceedings**

### **a. Interconnection with ILECs with Rural Exemption**

On April 23, 2005, Sprint, a CLEC, filed a petition for compulsory arbitration of certain terms and conditions for interconnection with Brazos Telecommunications, Inc. (BTI). BTI is a rural ILEC with a rural exemption from obligations to interconnect with CLECs under certain provisions. On May 13, 2005, BTI filed a motion to dismiss Sprint's petition on the grounds that BTI's rural exemption relieves the company of any obligation to negotiate the type of interconnection requested by Sprint. Ultimately, the Commission found that Sprint's request was premature and that if Sprint wanted to request interconnection with BTI, it must first petition the Commission to lift BTI's rural exemption.

### **b. Termination of Rural Exemptions**

On March 31, 2006, Sprint filed a petition to terminate Consolidated Communications of Fort Bend Company's (CCFB) and Consolidated Communications of Texas Company's (CCTX) (collectively Consolidated) rural exemption. In order to terminate this rural exemption, Sprint had to prove that its request for interconnection with Consolidated was: (1) bona fide; (2) technically feasible; (3) not unduly economically burdensome; and (4) consistent with the universal service goals of § 254 of the Communications Act. Sprint showed that its interconnection request would bring one of the first competitive wireline voice-service offerings to the areas served by Consolidated. The advanced services resulting from Sprint's interconnection with Consolidated would foster competition and provide rural customers with services on par with services available to customers in urban areas. Accordingly, the Commission found that Sprint's interconnection request was consistent with universal service goals and terminated Consolidated's rural exemption.<sup>34</sup>

## **B. Commission Activities under PURA**

### **1. Legislation – Senate Bill 5**

In September 2005, the Texas Legislature passed Senate Bill 5, entitled "Act Relating to Furthering Competition in the Communication Industry," in the second called session of the 79<sup>th</sup> Texas legislature which amended PURA in order to implement the deregulation of qualifying ILEC markets in Texas. The timeline for this deregulation, as specified in the bill, divides ILEC markets by population size, as indicated in the subsections below. The bill resulted in a classification of all ILECs as regulated, transitioning, or deregulated and included provisions to allow deregulated ILECs to raise local rates in certain instances. Senate Bill 5 included some significant changes to Texas Local Government Code, Section 283; this code specifies how certified

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<sup>34</sup> See Docket No. 32582, Final Order.

telecommunications providers compensate municipalities for the use of public rights of way. The following subsections detail these provisions of the bill.

The bill also required the PUC to undertake certain studies for the Legislature. These studies include: an evaluation and review of the Texas Universal Service Fund (Project No. 31863), a study of distance learning discounts for private network services offered to certain public entities (Project No. 31925), and a study of whether current law protects customer choice for Internet-enabled applications associated with broadband service (Project No. 32527).

**a. Deregulation of ILEC Markets**

PURA §§ 65.051, 65.052, and 65.053 specify that the Commission must determine by January 1, 2006, whether all ILEC markets with a population greater than 30,000 can be classified as deregulated. ILECs that wished to remain regulated were required to file an affidavit with the Commission by December 1, 2005. ILEC markets with a population greater than 100,000 were not allowed to remain regulated after the January cutoff date. For those markets with a population between 30,000 and 100,000, the ILEC was required to demonstrate that three separate competitors serve the market in order to be classified as deregulated. For those ILECs with a population less than 30,000, the Commission must make a determination by November 30, 2006.

The 62 ILECs operating in Texas are listed in Appendix B.<sup>35</sup> Of those 62 companies, seven are regulated under Chapter 58 “incentive regulation” and seven are regulated under Chapter 59 “incentive regulation.” Three ILECs are classified as “transitioning companies” whereby at least one, but not all of the company’s markets have been deregulated.<sup>36</sup> These deregulated markets contain approximately 70% of the local telecommunications lines in Texas.

**i. Markets with Populations Greater than 100,000**

Markets with populations greater than 100,000, could not remain regulated after the cutoff date of January 1, 2006. Accordingly, on December 28, 2005, the 36 markets listed in the table below were deregulated.<sup>37</sup>

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<sup>35</sup> December 19, 2005, in Project No. 31869, an Order was issued by the Commission that finds fifty-seven (57) ILECs in the State of Texas shall be classified as and remain “regulated” companies.

<sup>36</sup> December 28, 2005, in Project No. 31831, an Order was issued by the Commission classifying AT&T, Verizon and Embarq-Centel as “transitioning” companies. Effective January 1, 2006, fifty-three markets (exchanges) were declared deregulated, thirty-nine AT&T markets, eleven Verizon markets, and three Embarq-Centel markets.

<sup>37</sup> See PURA § 65.052(b)(1) and Docket No. 31831.

**Table 11 – Deregulated Markets Pursuant to PURA § 65.052(b)(1)**

<b>Company</b>	<b>Markets with Population &gt;100,000</b>					
AT&T	Houston	Dallas	Fort Worth	San Antonio	Austin	El Paso
Texas	Corpus Christi	Mission	Lubbock	Waco	Laredo	Amarillo
	Brownsville	Spring	Tomball	Frisco	McAllen	Tyler
	Pharr	Odessa	Abilene	Beaumont	Midland	Wichita Falls
	Longview	McKinney				
Verizon	Plano	Garland	Lewisville	Irving	Bryan/College Station	Carrollton
	Denton	San Angelo				
Embarq	Humble	Killeen				

ii. Markets with Populations of at Least 30,000 but Less than 100,000

Markets with populations of at least 30,000, but less than 100,000, that met the market test specified in PURA § 65.052 were to be deregulated by January 1, 2006. On December 28, 2005, the Commission classified the 18 markets listed in Table 12 as deregulated.<sup>38</sup>

**Table 12 – Deregulated Markets Pursuant to PURA § 65.052(b)(2)**

<b>Company</b>	<b>Markets with Population of 30,000-100,000</b>					
AT&T	Allen	Bastrop	Big Spring	Cypress	Donna	Edinburg
Texas	Harlingen	Mercedes	Nederland	New Braunfels	Rockwall	San Benito
	Seguin	Temple				
Verizon	Grapevine	Keller	Rowlett			
Embarq	Copperas Cove					

iii. Markets with Populations Less than 30,000

On June 20, 2006, the Commission adopted a rule, P.U.C. SUBST. R. 26.134, establishing the market test to be applied in determining whether a market with a population of less than 30,000 should remain regulated after January 1, 2007. The rule provides that such markets shall be deregulated only if the ILEC providing services to that market submits evidence that the population is less than 30,000 and that there are

<sup>38</sup> See Docket No. 31831.

three separate competitors, in addition to the ILEC, in that market. The rule further provides that for markets with a population less than 30,000 where a rural exemption, as provided for in Section 251(f)(1) of the Federal Communications Act of 1934, is effective, the Commission must approve a petition for removal of the rural exemption in order for the market to be deregulated.

On October 17, 2006, the Commission determined that the following 17 markets should be classified as deregulated.<sup>39</sup>

**Table 13 – Deregulated Markets Pursuant to PURA § 65.051**

Company	Markets with Population < 30,000					
AT&T Texas	Alice	Anthony	Beeville	Belton	Bridge City	Lockhart
	Luling	Orange	San Diego	Silsbee	Smithville	Snyder
	Sweetwater	Taylor	Vidor			
Embarq	Hutto	Nolanville				

**b. Access Charge Reductions**

Senate Bill 5 also required transitioning and deregulated ILECs to achieve reductions in switched access rates and to maintain parity with federal switched access rates. The mechanisms for achieving these reductions differ slightly depending on the number of access lines served by the transitioning company. All transitioning companies were required to begin implementing switched access rate reductions by July 1, 2006.

A “transitioning” company under new PURA Chapter 65 with no more than three million access lines must reduce its switched access rates by the lesser of either 25 percent of the difference between federal and state switched access rates or an amount derived by multiplying the difference between federal and state access rates by a percentage equal to the number of the company’s markets that are deregulated divided by the total number of the company’s markets.<sup>40</sup> The following are examples of switched access rate reductions in these types of transitioning markets.

- The Commission deregulated a total of eleven of Verizon’s markets (exchanges) out of a total of 240 exchanges pursuant to PURA Section 65.052(d). The deregulated exchanges represent 4.6% of the total number of exchanges served by Verizon in Texas. Accordingly, Verizon filed and the Commission approved a tariff revision that reduces the End Office Switching rate elements, originating and terminating, from \$0.0162665 per minute of use to \$0.0157200 per minute of use. This results in a revenue reduction to intrastate switched access charges of more than \$1 million.<sup>41</sup>

<sup>39</sup> See Docket No. 32977.

<sup>40</sup> See PURA § 65.203.

<sup>41</sup> See Tariff Control No. 32756.

- The Commission deregulated three of Embarq's 43 markets. The percentage change to per-minute-of-use switched access charges that Embarq must enact pursuant to law is 6.977% of the difference between state and federal switched access rates. Embarq filed, and the Commission approved, multiple rate reductions consistent with the law. Embarq's revenue reduction to intrastate switched access charges is in excess of \$200,000.<sup>42</sup>

A transitioning company that has more than 3 million access lines must reduce its switched access rates by an amount equal to 33% of the difference between federal and state switched access rates.<sup>43</sup> On December 28, 2005, in Docket No. 31831, the Commission deregulated numerous AT&T Texas markets and declared the company "a transitioning" company under new PURA Chapter 65. Accordingly, AT&T Texas filed, and the Commission approved, compliance tariff revisions.<sup>44</sup>

### c. Local Rate Changes

During the past two years, there have been numerous vertical services rate changes, including package rate changes, by ILECs. The following are selected examples of such filings from this year:

- On June 29, 2006, AT&T Texas filed an informational notice to the Commission pursuant to new sections of PURA § 65.152-153. This filing increased the monthly rate for residence Call Waiting from \$2.80 to \$3.99.<sup>45</sup>
- On July 20, 2006, Embarq filed an informational notice to the Commission, increasing its monthly rate for residential Call Waiting from \$2.50 to \$4.50.<sup>46</sup>
- On June 30, 2006, Verizon filed an informational notice to the Commission to modify its rates for residential package offerings. The rates for Verizon Local Package and Verizon Local Package Extra will increase by \$1.04 and the rates for Verizon Regional Package, Verizon Regional Package Extra and Verizon Regional Package Unlimited will increase by \$1.00.<sup>47</sup>
- On July 31, 2006, Verizon filed an informational notice to the Commission to modify the rates for selected Value Added Services (VAS)

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<sup>42</sup> See Tariff Control No. 32757.

<sup>43</sup> See PURA § 65.202.

<sup>44</sup> See Tariff Control No. 32837.

<sup>45</sup> See Docket No. 32881.

<sup>46</sup> See Docket No. 32976.

<sup>47</sup> See Docket No. 32890.

for residential customers. The increases to these rates range from \$.05 to \$3.00. This filing also maintains the current Caller ID service rates for customers who are at least 65 years of age, pursuant to PURA §58.051(a)(10).<sup>48</sup>

#### d. Changes to Texas Local Government Code

The enactment of Senate Bill 5 resulted in two changes to Texas Local Government Code, Section 283, *Management of Public Right-of-Way Used by Telecommunications Provider in a Municipality*. Section 283 is the law that established a uniform method for certified telecommunications providers (CTPs) to compensate Texas municipalities for the use of public rights-of-way.

First, the bill changed the definition of a “certificated telecommunications provider” in Local Government Code Section 283.002 to include any person that provides voice service, regardless of whether that person holds a Certificate of Convenience and Necessity (CCN), a Certificate of Operating Authority (COA), or a Service Provider Certificate of Operating Authority (SPCOA). Second, Senate Bill 5 added a definition of “voice service” to Section 283.002 clarifying that any person who delivers voice communications through wireline facilities located, at least, in part in the public right-of-way is a CTP, regardless of the technology employed. There is one technology exception: voice service provided by commercial mobile service providers is expressly excluded.

Local Government Code 283 was initially implemented by P.U.C. SUBST. R. 26.461-26.467 in stages from 1999 to 2000.<sup>49</sup> These rules use “access line” as the base unit of measurement in calculating the amount a CTP shall pay to a municipality for the CTP’s use of the public right-of-ways. Local Government Code Section 283.003 permits the Commission by rule to periodically modify the definition of “access line” to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation to the municipalities.

The Commission initiated a rulemaking in August 2006 to (1) implement the changes by Senate Bill 5 to Local Government Code Section 283.002 and (2) to consider whether changes to the definition of “access line” are necessary considering the criteria established in Section 283.003.<sup>50</sup> The rulemaking contemplates changes to P.U.C. SUBST. R. 26.461, 26.463, and 26.465. The Commission has solicited written comments and held a public hearing on the matter. One important issue that has been brought to the Commission’s attention is whether non-facilities based<sup>51</sup> Voice over Internet Protocol (VoIP) providers such as Vonage and Skype should be required to pay municipal right-

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<sup>48</sup> See Docket No. 33011.

<sup>49</sup> See Municipal Right of Ways, Implementation of HB1777, Project No. 20935.

<sup>50</sup> See Proceeding to Implement Senate Bill 5 Amendments to Local Government Code Chapter 283 and to Address the Redefinition of Access Line Pursuant to Local Government Code Chapter 283.003, Project No. 33004 (pending).

<sup>51</sup> Non-facilities based VoIP providers provide voice service (via software application) over the Internet but neither own nor lease facilities in the public right-of-way.

of-way access fees under the rule. Another issue is the decline in municipal right-of-way revenue from CTPs in recent years, probably due to the dramatic rise in the use of wireless telephones and VoIP technology. The Commission is considering current market conditions, the current state of technology including the trend towards the use of voice-over-internet protocol technology, and the stakeholders' views on the issues to determine if the definition of "access line" should be changed and, if so, to what extent.

**e. State-issued Cable/Video Franchises**

On May 16, 2006, the Commission adopted a new Substantive Rule for State-issued Certificate of Franchise Authority (CFA) certification criteria, in accordance with provisions of Senate Bill 5.<sup>52</sup> The new rule establishes the certification criteria for a state-issued CFA to provide cable and/or video services in the state and sets forth certain reporting requirements of CFA holders as well.<sup>53</sup> As of October 2006, there were 34 new CFAs issued and 2 new CFAs pending. Appendix C lists the companies issued CFAs.

**2. Texas Universal Service Fund (TUSF)**

The TUSF plan contains programs that, in conjunction with the Federal Universal Service Fund (FUSF), assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas. These include the Texas High Cost Universal Service Plan (THCUSP), the Small and Rural ILEC Universal Service Plan (SRIUSP) and Lifeline. The THCUSP and SRIUSP help subsidize rates in high cost, rural areas. Lifeline Service is a retail local exchange telephone service available to qualifying low-income customers that provides the customer with a local service discount. Qualifying Lifeline customers (generally low-income) receive a discount of up to \$13.50 from their Lifeline provider, which is reimbursed to the Lifeline provider from a combination of the TUSF and the FUSF. Participating carriers offer Link-Up service to qualified low income customers that provides a discount of up to \$30 for installation of residential telephone service and is supported by FUSF.

Table 14 shows the number of customers enrolled in the Lifeline program and Table 15 shows Link-Up disbursements for 2003 through 2006. More than 526,000 subscribers to basic local telephone service in the state participate in the Lifeline service program.

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<sup>52</sup> See P.U.C. SUBST. R. 28, Substantive Rules Applicable to Cable and Video Service Providers, and P.U.C. SUBST. R. 28.6, relating to State-issued Certificate of Franchise Authority Certification Criteria.

<sup>53</sup> See Project No. 32171.

**Table 14 – Lifeline Enrollments, 2003-2006**

2003 Lifeline	2004 Lifeline	% Increase/Decrease	2005 Lifeline	% Increase/Decrease	2006 Lifeline	% Increase/Decrease
456,365	584,056	27.98%	579,339	-.81%	526,327	-9.15%

SOURCE: Solix – LIDA.

**Table 15 – Link-Up Disbursements, 2003-2006**

2003 Link-Up	2004 Link-Up	% Increase/Decrease	2005 Link-Up	% Increase/Decrease	2006 Link-Up	% Increase/Decrease
\$1,778,422	\$2,371,664	33.36%	\$2,365,303	-.27%	\$2,609,343	10.32%

SOURCE: Universal Service Administrative Company.

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) (now SOLIX) 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.<sup>54</sup> The new methodology was adopted in response to the decision of the United States Court of Appeals for the Fifth Circuit in *AT&T Texas Corp. v. Public Utility Commission of Texas*, 373 F. 3d 641 (5th Cir. 2004) (AT&T Decision). 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 TUSF 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. Effective October 1, 2006, the assessment rate was lowered to 5%.<sup>55</sup>

The Commission adopted an amendment to P.U.C. SUBST. R. 26.420, relating to Administration of the TUSF. This adopted amendment revises the existing rule to reflect the current assessment methodology adopted by the Commission.<sup>56</sup>

Senate Bill 5 instituted PURA § 56.301 and the Commission adopted new rule P.U.C. SUBST. R. 26.424 regarding financial assistance from the TUSF to support a free

<sup>54</sup> See Docket No. 21208, Order Regarding TUSF Assessment of Intrastate Telecommunications Services Receipts, July 29, 2004.

<sup>55</sup> See Project No. 21208, Order Changing The TUSF Assessment. (July 24, 2006).

<sup>56</sup> See Project No. 28708.

telephone service that offers blind and visually impaired residents access to the text of newspapers using synthetic speech. The rule sets forth requirements the Audio Newspaper Program (ANP) provider must meet and the eligibility and registration requirements for users. Further, the rule outlines the process for selecting the ANP through a request for proposal.<sup>57</sup>

Appendix D describes each of the TUSF programs. Appendix E sets forth the TUSF disbursements by program.

### **3. Earnings Review**

Each year by May 15, 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 16 and 17 show the reported earnings of the electing Chapters 58 and 59 companies.

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<sup>57</sup> See Project No. 31864.

**Table 16 – 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	
	2004	2005	2004	2005	2004	2005	2004	2005
AT&T Texas	\$4.7B	\$4.59B	8,853,497	8,350,161	12.39%	13.34%	26.83%	34.67%
Verizon TXG – GTE Southwest, Inc.	\$817.7M	\$794.3M	1,554,609	1,444,897	4.86%	1.29%	3.79%	-5.40%
Embarq - United Telephone Company	\$96.3M	filed as confidential	162,021	filed as confidential	16.48%	filed as confidential	25.36%	filed as confidential
Embarq – Central Telephone Company of Texas	\$119.8M	filed as confidential	214,190	filed as confidential	9.31%	filed as confidential	14.56%	filed as confidential
Valor Telecom	\$214.8M	\$211.1M	290,891	280,443	48.57%	128.14%	822.89%	379.13%
TXU Communications (now Consolidated Communications)	\$72.3M	\$71.7M	120,845	113,812	17.5%	25.13%	52.91%	52.82%
Fort Bend Telephone (now Consolidated Communications)	\$26.5M	\$24.9M	44,331	42,554	11.72%	16.56%	27.90%	33.05%

SOURCE: Public Utility Commission of Texas filings.

**Table 17 – 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	
	2004	2005	2004	2005	2004	2005	2004	2005
Sugar Land Telephone Company	\$41.5M	filed as confidential	76,999	filed as confidential	31.80%	filed as confidential	31.80%	filed as confidential
CenturyTel of San Marcos	\$15.7M	\$15.3M	26,208	24,360	16.62%	22.54%	16.62%	22.55%
CenturyTel of Port Aransas	\$2.1M	\$2.1M	4,978	4,759	13.99%	16.07%	14.38%	16.07%
CenturyTel Lake Dallas	\$6.8M	\$6.2M	12,511	11,857	15.69%	18.77%	20.26%	18.89%
Kerrville Telephone Company (dba KTC)	\$13.1M	\$13.8M	26,205	25,288	15.52%	20.86%	16.19%	21.16%
Texas Alltel, Inc.	\$15.7M	filed as confidential	31,466	filed as confidential	12.79%	filed as confidential	14.93%	filed as confidential
Big Bend Telephone Company	filed as confidential	filed as confidential	filed as confidential	filed as confidential	filed as confidential	filed as confidential	filed as confidential	filed as confidential

SOURCE: Public Utility Commission of Texas filings.

## **4. Commission Response to Emergency Situations**

Since the last report the Commission has given increased attention to disaster recovery. The Commission's Emergency Management Response Team (EMRT) has been assigned the task of responding to emergency situations that may cause harm to the infrastructure of telecommunications utilities and the customers they serve. An emergency can be either a terrorist event or a natural disaster, such as a tornado, hurricane, flood, or wildfire.

The EMRT's primary function is to provide accurate utility outage and restoration information to the State Operation Center (SOC) during an emergency situation. This information is included in a report that is delivered to the Governor to assist in determining the State's resource allocation during the course of an emergency situation.

### **a. Hurricane Rita**

On September 19, 2005, the EMRT sent out a mass email to all utilities in Texas asking them to review their emergency plans, check inventories, and prepare their crews for Hurricane Rita. All of the major utilities along the coast responded promptly with a summary of their emergency plans. All of the companies had crews prepared, inventories stocked, and generators gassed up, in addition to activating their emergency centers.

Hurricane Rita made landfall in the early morning hours of September 24, 2005 in the Beaumont/Port Arthur area as a strong category 3 hurricane. This was less than one month after Hurricane Katrina made landfall in the New Orleans area as a category 4 hurricane.

Telecommunications utilities operating in the Houston, Beaumont, and Sabine Pass areas reported wide spread damage to distribution facilities due to Hurricane Rita. The distribution facilities for telecommunications utilities included outside aerial cable plant, including poles and attachments, digital remotes located on the ground and certain central office facilities. Telecommunications utilities identified certain operational issues relating to logistics, work coordination, commercial power and generator fuel availability and transportation.

The PUC EMRT logged over 750 hours on Hurricane Rita restoration efforts. This was the largest restoration effort in the Commission's history.

### **b. Hurricane Infrastructure Investigation**

On December 15, 2005, the Commission established Project No. 32182, *PUC Investigation of Methods to Improve Electric and Telecommunications Infrastructure That Will Minimize Long Term Outages and Restoration Costs Associated with Gulf Coast Hurricanes*, to investigate the damage caused by Hurricane Rita and subsequent restoration of service.

This investigation surveyed the infrastructure that was in place prior to Hurricane Rita, what infrastructure was subsequently installed to restore service post Hurricane Rita, and what infrastructure may be installed in the future to lessen or prevent damage from future hurricanes. This investigation also examined the costs of “hardening” the network and how it would be recovered by the utilities.

The Commission staff (Staff) conducted industry workshops and town hall meetings in the Houston, Beaumont, and Corpus Christi areas to identify ways to improve telecommunications infrastructure and to minimize utility downtime occurring as a result of Gulf Coast hurricanes. In the course of these workshops and meetings, the Staff obtained input from telecommunications utilities as well as interested parties.

The telecommunications utilities generally agreed that damage to above-ground distribution facilities following a hurricane resulted primarily from flooding and the impact of trees and flying debris.

Based on recommendations by Staff, the Commission will establish several rulemaking projects to explore adopting rules directed at vegetation control, facilities maintenance, and system design elements that would decrease the probability of damage due to high winds and flooding.

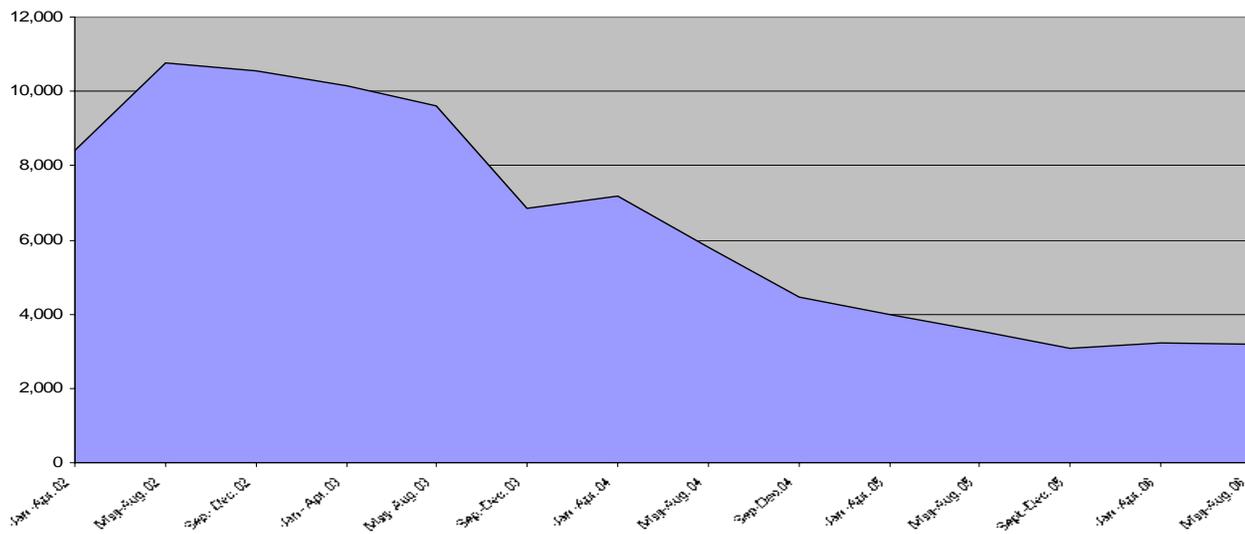
## CHAPTER V. CUSTOMER PROTECTION/COMPLAINT ISSUES

The Commission is required to adopt rules establishing customer-protection standards and protecting customers from fraudulent, unfair, misleading, deceptive, or anti-competitive practices.<sup>58</sup> Under these rules people may complain to the Commission about their utility service and the Commission is required to keep records of the complaint. This chapter discusses the number and types of complaints received.

### A. Complaints Received

As shown in the figure below, complaints declined from May 2005 to December 2005. A slight increase occurred during the January to April 2006 period totaling 3,233 complaints filed. A slight decrease occurred from May to August 2006, ending with about 3,196 complaints.

**Figure 9 – Total Telephone Complaints Received January 2002 –August 2006**



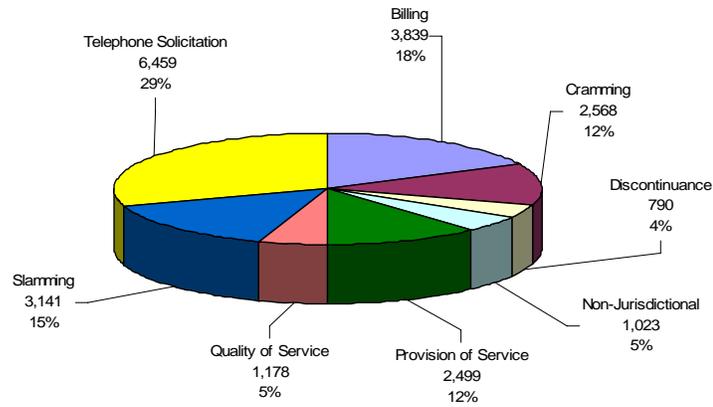
### B. Type of Complaints

Complaints related to the “Texas No Call List” now constitute the largest category of telecommunications complaints with 29% in FY 2006. The majority of other telecommunications complaints received included billing allegations at 18%, slamming at 15% and cramming at 12%, as well as provision of service at 12%. Slamming is the

<sup>58</sup> See PURA § 64.001.

switching of a customer's telecommunications service without proper authorization and verification. The Commission, like the FCC, maintains a zero-tolerance policy regarding the prevention and elimination of slamming. Similarly, cramming is an unauthorized charge on a customer's telecommunications utility bill without proper consent and verification of authorization from the customer.

**Figure 10 – Telecommunications Complaints Received 9/1/04-8/31/06**



## CHAPTER VI. INVESTIGATIONS AND ENFORCEMENT ACTION

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 rights-of-way issues. The Commission also adopted an amendment to the Texas No-Call rule to enhance the Commission's enforcement capability and to add new requirements under the rule.

The Commission is pleased to report that the instances of complaints pertaining to service quality, telemarketing-related activity, municipal access line reporting, slamming, cramming, and violations of Commission orders are down significantly from past years. Through investigative efforts the Commission did discover that several prepaid calling card providers were selling cards in violation of the Commission's rules. An administrative penalty was agreed upon in the amount of \$10,000. The Commission continues to investigate the industry and will continue to aggressively enforce Commission rules pertaining to prepaid calling cards.

### A. Enforcement Actions

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 \$25,000 per violation per day. For violations of the Texas No-Call statute, the Commission may impose administrative penalties of up to \$1,000 per violation per day.<sup>59</sup>

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 an informal warning or 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

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<sup>59</sup> Tex Bus. & Comm. Code, §44.102(b).

of the violation and the amount of the recommended penalty.<sup>60</sup> The NOV also gives the respondent three options: (1) pay the penalty amount; (2) request a hearing; or (3) request a settlement conference.

During the past two years, the Commission imposed \$611,458 in administrative penalties. The Commission also employed its enforcement authority to remedy service quality violations, although it imposed no financial penalties in regard to service quality complaints. The Commission's enforcement activities relate to five general categories of violations committed by CTPs and other entities under the Commission's jurisdiction: (1) service quality, (2) telemarketing-related activity, (3) municipal access line reporting, (4) prepaid calling cards, slamming and cramming, and (5) violations of Commission orders.

## **B. Cases Brought**

In June 2005, the Commission entered into a settlement agreement with AT&T Communications of Texas (AT&T Texas) regarding allegations that AT&T Texas had violated PURA and/or the Commission's substantive rules regarding unauthorized carrier charges, also known as "cramming." Although AT&T Texas denied any wrongdoing in regard to the allegations, AT&T Texas agreed to require its customer care representatives to comply with certain sales practices enumerated in the settlement agreement. AT&T Texas also agreed to pay a settlement payment of \$195,000 to the Commission and a settlement payment of \$195,000 to the Office of the Attorney General. Furthermore, AT&T Texas agreed to refund \$805,393 to customers who were erroneously billed.

In February 2005, Staff filed an enforcement action against Corona Communications (Docket No. 30748). Staff alleged that Corona had violated various provisions of PURA and the Commission's rules including failure to provide accurate international call prices through a toll-free number printed on its prepaid phone cards, failure to file a tariff with the Commission, and Corona's operator's failure to provide correct information upon request on how to file a complaint with the Commission. Staff also alleged that Corona's prepaid phone cards failed to provide a maximum per minute rate, failed to include all required information in both English and Spanish, and failed to identify the minutes as domestic or international. Staff and Corona negotiated a settlement of this case in which Corona agreed to pay an administrative penalty of \$10,000. The Commission approved the settlement in July 2005.

In November 2006, Staff filed four enforcement actions against companies who sell pre-paid calling cards. The Notices of Violation (NOVs) allege that the companies failed to register with the Commission, failed to disclose information on the calling cards required by PUC rules, failed to file a tariff, failed to provide accurate international rates through toll-free number, and failed to provide the minutes advertised on the cards. The recommended penalties for the four cases total \$131,108.<sup>61</sup>

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<sup>60</sup> PURA §15.024(b).

<sup>61</sup> See Docket No. 33462, 33467, 33468, 33469.

## CHAPTER VII. LEGISLATIVE RECOMMENDATIONS

### A. Evaluation of Commission Reports

The 79th Legislature required the Commission to perform a comprehensive review of reporting requirements, whether required by statute or PUC rules, relating to telecommunications providers. This review and report were performed under Commission Project No. 32460, *Pursuant to SB 408, §13 Evaluation of Telecommunications Carriers' Reports to the Public Utility Commission of Texas*. In that report, the Commission recommended that the Legislature consider reevaluating two sections of PURA: PURA § 52.057, which requires the Commission to “approve” customer-specific contracts, and PURA § 52.256, which requires the submission by all state utilities of five-year plans related to the use of historically underutilized businesses (HUBs) and workforce diversity.

#### 1. Historically Underutilized Businesses (HUB) Reports

PURA §§ 12.251–12.255 and § 52.256 require all telecommunications companies to file an annual report on their use of Historically Underutilized Businesses (HUB). P.U.C. SUBST. R. 26.80 provides the requirements for the reports and the definition of a HUB is derived from Texas Government Code § 481.191. PURA § 52.256 required each company to file a comprehensive five-year plan, before January 1, 2000, that detailed the companies’ HUB utilization at that time and its plans for contracting with small and historically underutilized business over the following five years. The objective was to require companies to examine their performance and create, or enlarge, initiatives, programs and activities that might be pursued to increase HUB usage.

The Commission is persuaded that the HUB Report duplicates material in the Workforce Diversity Report and believes that the requirements of P.U.C. SUBST. R. 26.80 may be consolidated into those of P.U.C. SUBST. R. 26.85, related to Workforce Diversity, in a joint rulemaking proceeding. In such a proceeding the Commission may also re-examine the companies’ concerns regarding inaccurate reporting.

However, the Commission does not have the authority to provide waivers to telecommunications providers of the statutory requirement to provide this information under the provisions of PURA § 52.256. The expiration of the five-year initial period allows an opportunity for the Legislature to re-evaluate this statute to determine whether its usefulness may be enhanced by limiting the scope or application of the reports.

Therefore, the Commission recommends that the Legislature review this requirement, and, if the Legislature determines that legislative action is unnecessary, the Commission will then initiate a rulemaking proceeding in which it will propose to eliminate the separate HUB Report, combining it with the Workforce Diversity Report, and examine parties’ other concerns regarding materials in the report.

## **2. Workforce Diversity Reports**

In addition to the HUB Report, all telecommunications companies must file an annual Workforce Diversity Report. This report is also required by PURA § 52.256, and was part of the companies' five-year plans submitted in late 1999. The objective of the report is an annual update of the companies' progress in expanding workforce diversity. Filing requirements and report contents are codified in P.U.C. Subst. R. 26.85. Again, the report encourages companies to enlarge initiatives, programs and activities that might be pursued to increase the diversity of their workforce.

Again, the specifics of this report and the HUB Report are required by rule and the Commission may propose consolidating the requirements of P.U.C. Subst. R. 26.80, related to the HUB Report, with those of P.U.C. Subst. R. 26.85.

However, as noted previously in the discussion of the HUB Report, the expiration of the initial five-year plan period raises the issue of a Legislative re-evaluation of the scope of this report and the application of PURA § 52.256.

The Commission recommends legislative review of the statute to be followed by appropriate rulemaking activity to implement any legislative action. The Commission also notes that it has the authority under PURA § 14.003 to request information from any company within its regulatory authority related to the use of historically underutilized business and the diversity of the workforce as it is needed.

## **3. Report on Customer Specific Contracts**

The quarterly Report on Customer Specific Contracts is provided by ILECs. These reports provide information on customer specific contracts pursuant to the requirements set forth in P.U.C. SUBST. R. 26.211(d), established pursuant to PURA § 14.003 and § 52.057. These contracts relate to competitive services, usually between large telecommunications companies and large business customers, involving volume pricing. The quarterly reports provide the detail of customer-specific contracts, such as types of service and customers, locations and quantities for provided services, rates and terms, and supporting affidavits (these reports are generally provided under a Protective Agreement as confidential documents).

The Commission believes the quarterly Report on Customer Specific Contracts should be eliminated in a rulemaking proceeding to amend P.U.C. SUBST. R. 26.211(d), and that a requirement that companies maintain the customers' contract records for established time periods replace the reporting requirement. This requirement should be adequate to allow customers access to their contract records as needed and to allow the Commission access to any customer-specific contract if there is a need for review. Because PURA § 52.057 requires the Commission to "approve" customer specific contracts, the elimination of the quarterly Report on Customer Specific Contracts would simply result in companies returning to the individual filing of their customer-specific contracts as occurred prior to the adoption of P.U.C. SUBST. R. 26.211(d).

Therefore, the Commission recommends that PURA § 52.057 be re-evaluated during the 80<sup>th</sup> Legislative Session to determine if the requirement of this statute is suitable in the current competitive market.

## **B. Confidentiality of Enforcement Investigations**

The Commission has expended significant resources over the past biennium to enhance its investigations and prosecutions in telecommunications and electricity markets in Texas. The Commission believes that vigorous, fair, and appropriate enforcement of Texas statutes and Commission rules is critical to ensuring well-functioning marketplaces and a level playing field for companies competing for customers.

The Commission is concerned that the release of information related to investigations while those investigations are underway will hamper the ability of the agency to perform its enforcement duties and unfairly impugn the business practices of telecommunications or electric providers before all the facts have been determined.

Specific areas of concern about the premature release of information related to enforcement investigations include:

- Public disclosure may discourage company employees, competitors, or contractors from acting as “whistle-blowers” because specific allegations may be traced to individuals who could face retribution.
- Public disclosure may result in a company (either the company directly involved or a company that may be engaged in similar behavior) discovering the Commission’s legal strategy or analysis which could enable the company to mask their behavior or circumvent the law, ultimately making prosecution more difficult.
- Public disclosure may create a more antagonistic and litigious atmosphere between the Commission and the company involved during the early stages of an investigation when cooperation can facilitate the Commission’s efforts to determine the accuracy of basic facts and to determine the scope, severity, and nature of a potential violation.
- Public disclosure may create an unfair presumption of a company’s guilt that may not be supported by the actual facts or evidence and that may be difficult to remedy once the investigation is complete. The company’s reputation may be unfairly harmed, which can negatively affect the company, its employees, its investors, and the public’s confidence in the company and in the operation of the competitive market.

Section 552.101 of the Public Information Act exempts from disclosure information that is considered confidential by law. The enabling statutes of many state agencies with investigative authority, enforcement obligations, and administrative penalty assessment authority over licensees of the agency provide that investigation files are confidential as a matter of law. For example:

- Article 581-28 of the Securities Act provides that “all information of every kind and nature received in connection with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation” by the State Securities Board are considered confidential.

- Section 531.1021 of the Health and Safety Code provides that all information and materials compiled by the Office of Inspector General of the Health and Human Services Commission as part of an audit or investigation are confidential and not subject to disclosure under the Public Information Act.
- Section 773.0612 of the Health and Safety Code provides that reports, records, or working papers used or developed in an investigation by the Texas Department of State Health Service (now part of the Texas Department of Health) relating to patient care or emergency medical service personnel are confidential.
- Section 142.009 of the Health and Safety Code provides that investigation reports, records, and working papers used or developed in an investigation of home and community support services agencies are confidential and may not be released to the public, except in certain circumstances.
- Section 241.051 of the Health and Safety Code provides that all information and materials obtained or compiled by the Texas Department of Health in an investigation of a hospital are confidential.
- Section 801.207(b) of the Occupations Code provides that investigation records of the Texas State Board of Veterinary Medical Examiners are confidential, including investigation records relating to a complaint that is ultimately found to be groundless.
- Section 205.3544 of the Occupations Code provides for confidentiality of complaints filed with the Texas State Board of Acupuncture Examiners.
- Section 201.206 of the Occupations Code provides that investigation files of the Texas Board of Chiropractic Examiners are confidential, privileged, and not subject to release.

The Commission believes that to enhance confidence in the electric and telecommunications markets and in the Commission's enforcement activities, the Legislature should make the Commission's IMM's investigation records confidential as a matter of law.

### **C. Commission's Deliberation Concerning Confidential Information**

In executing its duties under PURA, the Commission is often required to examine information that is confidential by law or otherwise excepted from public disclosure under the Texas Public Information Act (TPIA). See, TEX. GOV'T. CODE ANN. Chapter 552 (West 2004). Additionally, PURA §39.001(b)(4) declares that it is in the public interest to protect the competitive process "in a manner that ensures the confidentiality of competitively sensitive information." As a result of the move to competitive markets in the Texas electric industry, the Commission has seen a very large increase in the amount of information reviewed by the Commission for which a claim of confidentiality is asserted. The Commission also has agreed to act as the Hearing Body in enforcement proceedings for the ERCOT region related to electric reliability standards

under the Energy Policy Act of 2005 (federal Act).<sup>62</sup> The Federal Energy Regulatory Commission (FERC) has adopted rules implementing the federal Act that require that certain information be treated as “nonpublic information” during the hearing process, including information that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed.

There is no provision in the Open Meetings Act (TEX. GOV’T CODE ANN. Chapter 551 (Vernon 2006)) allowing a state agency to hold a closed meeting or executive session to consider information that is excepted from disclosure under the TPIA. The Attorney General has held that there is no implied authority in the Open Meetings Act for an agency to meet in executive session to consider information that is excepted from disclosure under the TPIA and that the exceptions from disclosure under the TPIA do not permit a closed session where none is authorized by law.<sup>63</sup> The Attorney General has also held that the Administrative Procedure Act creates an exception to the Open Meetings Act for “contested cases” so that claims of privilege may be reviewed in a closed meeting.<sup>64</sup> The claim must be made during the course of a contested case and resolution of the claim must require examination and discussion of the allegedly privileged information. The Attorney General stated, “Only that portion of the deliberations which would reveal the information can be closed; the remainder must be held in public.”<sup>65</sup> If the claim can be deliberated and decided in public without disclosing the information, the meeting must be open to the public.

The Commission is currently operating as required by law but is concerned that the proliferation of confidential information may inhibit its ability to discuss confidential information without revealing its content. The Commission notes that some regulatory agencies have been granted express authority to conduct closed meetings to consider information that is confidential by law. *See, e.g.*, TEX. GOV’T CODE ANN. §§551.079 and 551.081 (Vernon 2006). The Commission recommends amending PURA to make it clear that the Commission has the authority to conduct a closed meeting to deliberate on matters involving confidential information.

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<sup>62</sup> FPA, 16 USC §824.

<sup>63</sup> AG Opinion Nos. MW-578 and GA-0019.

<sup>64</sup> AG Opinion No. JM-645.

<sup>65</sup> *Id.* at 6.



## Appendix A. Research Methodology

This appendix discusses the methodology used by the Commission for collecting data for the 2007 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.<sup>66</sup> 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.<sup>67</sup> 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 498 certificated telecommunications utilities (CTUs) in Texas, 193 submitted responses to the 2006 Scope of Competition Report Data Request. The data compiled for this year's *Scope Report* include self-reported data from 160 ILECs and CLECs. 125 of the responding CTUs were CLECs as compared to the 222 CLECs who responded to the *Scope Report* Data Request in June 2004. Of the 125 CLECs responding to the data request, 33 claimed to not have any lines as of June 30, 2006. Overall, the Commission considers that it has received data from carriers providing effectively all of the access lines served in Texas. This conclusion is based on the comparison of the total of 11,549,271 lines reported to the Texas PUC as of June 2006 versus 11,689,407 lines reported to the FCC as of December 2005 (the number of lines is decreasing over time).

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.

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.

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<sup>66</sup> 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>.

<sup>67</sup> 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.

To obtain a historical context, the 2006 data were supplemented with data from the 2005 *Scope Report* and the Local Competition and Broadband Reports published semi-annually by the FCC.<sup>68</sup> 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.

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<sup>68</sup> 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](http://www.fcc.gov/wcb/iatd/comp.html).

## Appendix B. Incumbent Local Exchange Carriers

ILECs	Chapter 65 Status	Incentive Regulation Election
AT&T Texas (formerly Southwestern Bell)	Transitioning	Chapter 58
Embarq – Central Telephone Co. of Texas, Inc.	Transitioning	Chapter 58
Verizon Southwest	Transitioning	Chapter 58
Alenco Communications (d/b/a A.C.I.)	Regulated	
Big Bend Telephone Company, Inc.	Regulated	Chapter 59
Blossom Telephone Company, Inc.	Regulated	
Border to Border	Regulated	
Brazoria Telephone Company	Regulated	
Brazos Telecommunications, Inc.	Regulated	
Brazos Telephone Cooperative, Inc.	Regulated	
Cameron Telephone Company	Regulated	
Cap Rock Telephone Cooperative, Inc.	Regulated	
Central Texas Telephone Cooperative, Inc.	Regulated	
CenturyTel of Lake Dallas, Inc.	Regulated	Chapter 59
CenturyTel of Northwest Louisiana, Inc.	Regulated	
CenturyTel of Port Aransas, Inc.	Regulated	Chapter 59
CenturyTel of San Marcos, Inc.	Regulated	Chapter 59
Coleman County Telephone Cooperative, Inc.	Regulated	
Colorado Valley Telephone Cooperative, Inc.	Regulated	
Comanche County Telephone Company, Inc.	Regulated	
Community Telephone Company, Inc.	Regulated	
Consolidated Communications of Texas, Company	Regulated	Chapter 58
Consolidated Communications of Fort Bend County	Regulated	Chapter 58
Cumby Telephone Cooperative, Inc.	Regulated	
Dell Telephone Cooperative, Inc.	Regulated	
Eastex Telephone Cooperative, Inc.	Regulated	
Electra Telephone Company, Inc.	Regulated	
Embarq – United Telephone Co.	Regulated	Chapter 58
ENMR Telephone Cooperative, Inc.	Regulated	
Etex Telephone Cooperative, Inc.	Regulated	
Five Area Telephone Cooperative, Inc.	Regulated	

ILECs	Chapter 65 Status	Incentive Regulation Election
Ganado Telephone Company, Inc.	Regulated	
Guadalupe Valley Telephone Cooperative, Inc.	Regulated	
Hill Country Telephone Cooperative, Inc.	Regulated	
Industry Telephone Company	Regulated	
Kerrville Telephone Co.	Regulated	Chapter 59
La Ward Telephone Exchange, Inc.	Regulated	
Lake Livingston Telephone Company	Regulated	
Leaco Rural Telephone Cooperative, Inc.	Regulated	
Lipan Telephone Company	Regulated	
Livingston Telephone Company	Regulated	
Mid-Plains Rural Telephone Cooperative, Inc.	Regulated	
Nortex Communications	Regulated	
North Texas Telephone Company	Regulated	
Panhandle Telephone Cooperative, Inc.	Regulated	
Peoples Telephone Cooperative, Inc.	Regulated	
Poka-Lambro Telephone Cooperative, Inc.	Regulated	
Riviera Telephone Company, Inc.	Regulated	
Santa Rosa Telephone Cooperative, Inc.	Regulated	
South Plains Telephone Cooperative, Inc.	Regulated	
Southwest Arkansas Telephone Cooperative, Inc.	Regulated	
Southwest Texas Telephone Company	Regulated	
Sugar Land Telephone Company	Regulated	Chapter 59
Tatum Telephone Company	Regulated	
Taylor Telephone Cooperative, Inc.	Regulated	
Texas Alltel, Inc.	Regulated	Chapter 59
Valley Telephone Cooperative, Inc.	Regulated	
Valor Telecommunications of Texas, L.P.	Regulated	Chapter 58
West Plains Telecommunications	Regulated	
West Texas Rural Telephone Cooperative, Inc.	Regulated	
Wes-Tex Telephone Cooperative, Inc.	Regulated	
XIT Rural Telephone Cooperative, Inc.	Regulated Regulated	

## Appendix C. State-Issued Certificates of Franchise Authority (CFAs)

Company Name	Date Granted	Type
Guadalupe Valley Communications Systems	10/03/05	Cable and Video
GTE Southwest Incorporated d/b/a Verizon Southwest	10/21/05	Cable Service
Grande Communications Networks, Inc	10/25/05	Cable and Video
Southwestern Bell Telephone, L.P. d/b/a SBC Texas (AT&T Texas)	11/01/05	Video Service
Pathway Com-tel, Inc	11/03/05	Cable and Video
ETS Cablevision, Inc. d/b/a En-Touch Systems	11/07/05	Cable and Video
Millennium Telcom, LLC. d/b/a One Source Communications	12/15/05	Cable and Video
Time Warner Cable San Antonio, L.P. d/b/a Time Warner Cable	12/30/05	Cable Service
Time Warner Cable - Time Warner Entertainment - Advance/Newhouse Partnership (TWEANP-Austin)	01/03/06	Cable Service
Time Warner Cable - Texas and Kansas City Cable Partners, L.P. (TKCCP-Houston)	01/04/06	Cable Service
Time Warner Cable - Texas and Kansas City Cable Partners, L.P. (TKCCP-Southwest)	01/02/06	Cable Service
NTS Communications, Inc.	01/13/06	Cable and Video
FEC Communications, LLP.	01/19/06	Cable Service
Grayson CableRocket, LLC.	01/26/06	Cable Service
Cable One, Inc.	02/01/06	Cable Service
Cox Communicatons	02/02/06	Cable and Video
Time Warner Cable - Time Warner Entertainment- Advance/Newhouse Partnership (TWEANP-Waco)	2/9/2006	Cable Service

<b>Company Name</b>	<b>Date Granted</b>	<b>Type</b>
Northland Cable Ventures LLC. d/b/a Northland Cable Television and Northland Cable TV	2/21/2006	Cable Service
Comcast of Texas II, LP. d/b/a Comcast Cable of Texas II, LP.	2/22/2006	Cable Service
Comcast of Texas I, LP. d/b/a Comcast Cable of Texas I, LP.	2/22/2006	Cable Service
Comcast of Plano, LP. d/b/a Comcast Cable of Plano, LP.	2/22/2006	Cable Service
Optical Entertainment Networks, Inc.	2/6/2006	Video Service
Friendship Cable of Texas, Inc. d/b/a Cebridge Connections	3/15/2006	Cable Service
Charter Communications VI, LLC. d/b/a Charter Communications	4/19/2006	Cable Service
Universal Cable Holdings, Inc. d/b/a Cebridge Connections	4/26/2006	Cable Service
Rapid Acquisition Company, LLC.	4/28/2006	Cable Service
Phonoscope, Ltd.	5/19/2006	Cable Service
Northland Cable Television, Inc. d/b/a Northland Cable Television and Northland Cable TV	5/31/2006	Cable Service
Consolidated Communications Network Services, Inc.	6/26/2006	Video Service
ETAN INDUSTRIES, INC. d/b/a CMA Communications	7/20/2006	Cable Service
Northland Cable Properties, Inc.	9/7/2006	Cable Service
XIT Communications	9/22/2006	Cable and Video Service

Source: *State-Issued Certificate of Franchise Authority Directory*, available at [http://www.puc.state.tx.us/cable/directories/SICFA/SICFA\\_Directory.htm](http://www.puc.state.tx.us/cable/directories/SICFA/SICFA_Directory.htm).

## Appendix D. TUSF Programs

**Texas High Cost Universal Service Plan (THCUSP)** – provides financial assistance via Texas Universal Service Fund (TUSF) support to eligible telecommunications providers (ETPs)<sup>69</sup> 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 31,000 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.

**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

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<sup>69</sup> 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.

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.

**Audio Newspaper Program (ANP)** – a program that provides financial assistance from the Texas universal service fund to support a free telephone service that offers blind and visually impaired residents access to the text of newspapers using synthetic speech.

### Appendix E. TUSF Disbursements by Program (in dollars)

TUSF Program Disbursements	FY 2001 (Actual)	FY 2002 (Actual)	FY 2003 (Actual)	FY 2004 (Actual)	FY 2005 (Actual)	FY 2006 (Actual)	% of Total USF
Texas High Cost Universal Service Plan (THCUSP)	443,890,245	445,002,169	443,032,847	440,643,128	431,880,066	425,383,884	74.40%
Small and Rural ILEC Universal Service Plan (High Cost)	99,991,670	100,594,768	100,447,214	99,514,307	98,239,843	95,440,073	16.69%
Texas Relay Service	13,151,162	12,670,839	11,514,114	10,631,171	8,375,622	6,969,244	1.22%
Lifeline	9,224,641	15,829,769	17,664,460	21,529,197	27,459,478	26,034,089	4.55%
Specialized Telecommunications Assistance Program	761,023	1,344,227	2,338,080	3,315,463	3,589,626	7,126,452	1.25%
Implementation of PURA § 56.025	4,448,176	4,448,772	4,683,495	4,680,411	4,728,275	4,699,968	0.82%
USF Reimbursement for Certain IntraLATA Services	1,152,476	1,656,968	1,694,250	1,984,816	1,998,737	1,844,331	0.32%
Additional Financial Assistance (AFA)	0	0	0	0	0	0	0.00%
Service to Uncertificated Areas	0				12,507	372	0.00%
Tel-Assistance	2,210,733	1,465	0	0	0	0	0.00%
TCDHH	286,414	455,181	488,222	592,599	578,048	685,166	0.12%
PUC	203,505	166,769	358,760	466,964	342,537	429,930	0.08%
TDHS	277,438	9,275	0	0	0	0	0.00%
Other	0	0	398,607	2,112,874	2,312,245	2,321,585	0.41%
NECA	751,359	773,900	740,550	780,000	804,000	828,000	0.14%
ANP	0	0	0	0	0	0	0%
<b>TOTAL USF</b>	<b>576,348,842</b>	<b>582,954,102</b>	<b>583,360,599</b>	<b>586,250,930</b>	<b>580,320,984</b>	<b>571,763,094</b>	<b>100%</b>

Source: National Exchange Carriers Association Reports



## Appendix F. 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 <sup>th</sup> Cir. 1997) ( <i>Iowa Utilities Board I</i> ); <i>Affirmed in part and remanded, AT&amp;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 Report and Order on Reconsideration (January 19, 2001) (Line Sharing Reconsideration Order)	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 customer’s computer to an Internet service provider (ISP).

DATE	PROCEEDING OR CASE	DESCRIPTION
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) ( <i>USTA II</i> ) (The <i>USTA II</i> mandate issued on June 16, 2004); See also <i>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) ( <i>USTA II Stay Order</i> ).	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.

DATE	PROCEEDING OR CASE	DESCRIPTION
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. 01-338, Order and Notice of Proposed Rulemaking (August 20, 2004) (Interim Order)	<p>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 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>
February 2005	<i>In the Matter of Unbundled Access to Network Elements</i> , CC Docket No. 01-338, Order on Remand (released February 4, 2005) (Triennial Review Remand Order or TRRO)	<p>In 2004, the D.C. Circuit Court vacated significant portions of the rules and remanded it back to the FCC. This led to the issuance of the TRRO, which specified new guidelines for requiring ILECs to make elements of their networks available to competitors.</p>