

**Report to the 83<sup>rd</sup>  
Texas Legislature**

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

***Public Utility Commission of Texas  
January 2013***

***ACKNOWLEDGEMENTS:***

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## *Public Utility Commission of Texas*

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January 14, 2013

Honorable Members of the Eighty-Third Texas Legislature:

We are pleased to submit our 2013 Report on the Scope of Competition in Telecommunications Markets as required by Section 52.006 of the Public Utility Regulatory Act.

Competition in the telecommunications industry continues to develop and much of the change has been driven by technological advances and investment in mobile and broadband technologies. Mobile wireless companies play an increasingly significant role in the voice and broadband competitive market in Texas, and provision of telephone service using Voice over Internet Protocol (VoIP) technology has become an important feature of the telephone market. Additionally, some companies are using other technologies, such as satellite, to provide telecommunications services to rural customers and customers residing in previously unserved areas of the state. The availability of broadband service, principally from local exchange companies, cable companies, and, in particular, mobile wireless companies, at affordable prices has resulted in significant growth in the number of broadband subscribers in Texas.

In the video services market, the state-issued certificates of franchise authority (SICFA) that were introduced through legislation enacted in 2005 have eased the entry of competitors and have encouraged investment in the video/cable market. Cable companies can apply for state-issued franchise prior to the expiration of their municipal franchises. SICFAs also provide a vehicle for a telecommunications provider to enter the market for cable television services. As a result, competition in the video/cable market is increasing across Texas.

This report discusses the competitive offerings prevalent in the industry such as bundling of multiple services and pricing trends in the industry. The report highlights major commission activities since the previous Scope of Telecommunications Report including projects that reviewed and evaluated the status of the Texas Universal Service Fund. The report concludes with Commission recommendations for the Legislature to consider in the 83<sup>rd</sup> legislative session. In addition to this report, on November 1, 2012, the Commission submitted the *2013 Report to the 83<sup>rd</sup> Texas Legislature: Review and Evaluation of the Texas Universal Service Fund Pursuant to Senate Bill 980, 82<sup>nd</sup> Legislature, Regular Session*, in which it evaluated whether the Universal Service Fund is accomplishing its purposes, as prescribed by PURA § 56.021, or whether changes are necessary to accomplish those purposes.

We look forward to continuing to work with you on these 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,

Donna L. Nelson  
Chairman

Kenneth W. Anderson, Jr.  
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# 2013 Scope of Competition in Telecommunications Markets of Texas

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## EXECUTIVE SUMMARY

This Report examines the status of competition in the telecommunications markets in Texas. This Report also examines evolving trends affecting competition in the telecommunications industry, effects of competition on rates, service availability and universal service, customer protection and complaint issues, competition in the broadband and cable/video markets, and Commission activities of notable interest over the last two years. The Report concludes with its legislative recommendations.

Competition in the telecommunications industry continues to develop and much of the change has been driven by technological advances and investment in mobile and broadband technologies. Mobile wireless companies play an increasingly significant role in the voice and broadband market in Texas so that today, there are over twice as many mobile wireless subscribers as land-line subscribers served by incumbent local exchange carriers (ILECs) and Non-ILECs. Currently, the largest market share of primary-use lines, other than that served by ILECs, is held by mobile wireless companies. Today there are approximately 4.43 million primary-use wireless lines as compared to approximately 7 million ILEC wireline access lines including interconnected Voice over Internet Protocol (VoIP) lines. VoIP technology rather than traditional circuit switch technology is increasingly being used by ILECs and Non-ILECs to provide local telephone service. There has been a significant growth in the number of broadband subscribers in Texas. Broadband subscribers in Texas have increased from 2008 to 2011 by 233 percent with mobile wireless service holding the largest share of the broadband subscribership. Mobile wireless broadband subscribers have increased by 351 percent from 2008 to 2011 indicating that wireless technology has emerged as an effective competitor to landline broadband service.

The state-issued certificates of franchise authority (SICFAs) have enabled ILECs to enter and move rapidly to compete in the video market in Texas because, under the prior regime, a provider had to obtain franchise authority from each municipality in which the provider intended to operate. Cable companies have also obtained SICFAs to provide cable service in new markets and in existing markets prior to the expiration of their current municipality-issued franchises. As of July 2012, 45 percent of the counties in Texas are or will be served by at least two video and cable providers. The entry of ILECs in the video market has resulted in competition between ILECs and cable companies for customers through “triple play” bundles of voice telecommunications service, broadband Internet, and television programming that are often offered with a one to two-year term agreement.

The availability and affordability of stand-alone basic local telecommunications service (BLTS) for residential and business customers in deregulated areas in the state is increasingly influenced by competition. In contrast, the availability and affordability of stand-alone BLTS in areas that remain regulated do not appear to be impacted by competition but rather are mandated by state laws and Commission regulations. In the

last two years, the rates for basic local telephone rates in regulated areas served by the four largest ILECs have increased to offset the decrease in subsidy for BLTS caused by the reduction in support from the state universal service fund. While the rural areas have not attracted robust local exchange competition, they have, in many instances, been afforded the options of cable, wireless, or satellite telecommunications service as alternatives to consider for telecommunications service.

In the last two years, the Commission has undertaken numerous projects to review and evaluate the Texas Universal Service Fund (TUSF) and to improve transparency and accountability in the administration of the TUSF. The review of the TUSF that provides assistance for the four largest ILECs in the state has resulted in the determination of a reasonable rate for BLTS for these companies. The amount of additional revenue that would result if each carrier were to charge the reasonable rate will be deducted from each carrier's universal service support over a four-year transition period beginning on January 1, 2013. Other significant Commission activities include the deregulation of markets served by ILECs, the determination of non-discriminatory and reasonable rates for the attachment of facilities of telecommunications carriers on electricity poles and the implementation of a new area code in the 512 area code territory.

For information on Commission activities and issues not addressed in this Report, please refer to prior reports including the 2011 Report on Scope of Competition in Telecommunications Markets of Texas.

## I. THE EVOLVING TELECOMMUNICATIONS INDUSTRY

### A. Overview

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The telecommunications industry continues to undergo rapid change both in Texas and nationally. Much of the change has been driven by technological advances and investment by providers in mobile wireless and broadband technologies. Key indicators for these changes are the increase in mobile wireless and broadband subscribers and the decline in land-line telephone subscribers, so that today in Texas there are over twice as many mobile wireless subscribers as land-line subscribers served by incumbent local exchange carriers (ILECs). Broadband subscribers in Texas have increased from 2008 to 2011 by 233 percent (going from about 7.5 million to about 17.5 million subscribers) with mobile wireless service holding the largest share of the broadband subscribership. Mobile wireless broadband subscribers increased by 351 percent from 2008 to 2011.

Competition in local telecommunication markets has become increasingly intermodal-competition among companies using different types of telecommunication facilities rather than competition between telephone companies using traditional wireline-based technology. The competition that was envisioned in the Federal Communications Act of 1996 relied heavily on competitive local exchange carriers (CLECs) using portions of the wireline networks operated by the ILECs (and paying them for the use of these facilities). The new telecommunications arena primarily features competition between ILECs and competitors that deploy different types of facilities, such as cable companies and wireless companies. In addition, non-facilities-based companies, such as Vonage and Skype have gained customers.

Broadband service is principally being offered by local exchange carriers, cable companies and wireless companies. Broadband is being used to provide Internet and television programming, but it is also providing telephone service. The development of Voice over Internet Protocol (VoIP) has enabled ILECs to offer telephone service using an alternative technology and enabled competitors of ILECs such as cable companies to begin offering telephone service over their own facilities. In addition, VoIP technology is being used by “non-facilities based” companies such as Vonage and Skype to provide telephone service over broadband facilities furnished to the end-user customer by another company, whether a cable company or a land-line telephone company using digital subscriber line (DSL) technology.

The state-issued certificates of franchise authority (SICFAs) have eased the entry of new participants (such as the ILECs) into the video market in Texas and the entry of existing cable companies into new markets because, under the prior regime, a provider had to obtain franchise authority from each municipality in which the provider intended

to operate.<sup>1</sup> The ILECs have moved rapidly to compete in this new environment by offering television services in partnership with direct broadcast satellite operators, while investing in fiber optic network upgrades to offer Internet access and video programming on landline facilities. In addition, cable companies have also obtained SICFAs to provide cable service in new markets and in existing markets prior to the expiration of their current municipality-issued franchises. As of July 2012, 45 percent of the counties in Texas (114 counties) are or will be served by at least two video and cable providers. Smaller markets have also benefited from the entry of telecommunications companies into the video market. ILECs are increasing their presence in the video markets in Texas and are competing for customers with cable companies through “triple play” bundles of voice telecommunications service (local and long distance), broadband Internet, and television programming at a fixed monthly rate. Although the “all-distance” voice service bundles and triple-play offerings dominate intermodal competition, ILECs with wireless networks are pursuing a “quadruple play” marketing strategy that integrates wireless service into the triple play offering. To compete effectively with telephone companies, cable companies are also considering offering quadruple play bundles by either partnering with wireless companies or acquiring wireless assets.

Mobile phones have had a huge impact on consumer telephone use. According to the Federal Communications Commission (FCC), the overall wireless penetration in the United States is over 290 million subscribers.<sup>2</sup> Texas ranked second in the nation in June 2011 with 23.5 million wireless subscribers,<sup>3</sup> nearly 91 percent of its population.<sup>4</sup> Wireless phones are increasingly serving as a substitute for traditional wireline telephone service. According to a 2011 survey, nearly one of every three American homes (34 percent) had only wireless phones.<sup>5</sup> According to a 2010 state-specific survey, 32.5% of all adults in Texas lived in households with wireless-only connections, up from 19.9% in 2007.<sup>6</sup> Technological advances and investments in wireless network capacity in the last decade have permitted wireless providers to offer a range and quality of service that is comparable to wireline technologies, including voice, data, and even video services, with the added benefit of mobility. Wireless technology is increasingly being used to provide a range of mobile broadband services at faster speeds which effectively compete with

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<sup>1</sup> Act of September 7, 2005, 79<sup>th</sup> Leg., 2<sup>nd</sup> C.S., Ch. 2, Tex. Gen. Laws (Senate Bill 5).

<sup>2</sup> *Local Telephone Competition: Status as of June 30, 2011*, Federal Communications Commission (FCC), (*Local Telephone Competition Report*) at Table 18, (June 2012). Available online at: <http://transition.fcc.gov/wcb/iatd/comp.html>.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Census Bureau, State and County QuickFacts. Available online at: <http://quickfacts.census.gov/qfd/states/48000.html>

<sup>5</sup> *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2011*, National Health Center for Health Statistics, Centers for Disease Control and Prevention (CDC), (*Wireless Substitution Report*, (Released June, 2012). Available online at [www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf](http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf)

<sup>6</sup> *Wireless Substitution: State-level Estimates from the National Health Interview Survey, January 2007-June 2010*, National Center for Health Statistics, Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (April 20, 2011). Available online at [www.cdc.gov/nchs/data/nhsr/nhsr039.pdf](http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf)

landline broadband service, given the ever increasing smartphone penetration rates and a host of new devices such as tablets, netbooks, and mobile internet devices (MIDs). The increase in the availability of mobile handsets with Wi-Fi data service capability allow customers to access high-speed Internet connections at locations such as restaurants, coffee shops, libraries, hotels, airports, convention centers, and city parks that have wireless access points.<sup>7</sup>

In sum, the competitive landscape continues to be transformed through intermodal competitors, such as wireless and cable providers. Intermodal competitors actively compete in the local telephone market against landline companies for customers. The competitive environment in the video market is also changing with the entry of telecommunications providers since 2005.

## **B. Technology**

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

- **VoIP** – Voice over Internet Protocol, or VoIP, permits Internet technology to be used for voice transmission. This permits 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. Interconnected VoIP service enables real-time, two-way voice communications and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. Cable companies and telephone companies offer VoIP service by using their broadband data services, while third-party service providers such as Vonage rely on their customers' existing broadband connections to provide VoIP service. Some companies such as Skype permit customers to call any other Skype customer on a computer-to-computer basis.

The FCC has imposed numerous obligations on providers of interconnected VoIP service. Such providers are required to comply with FCC rules relating to provision of 911 service, Local Number Portability rules, use of customer proprietary network information (CPNI), Telecommunications Relay Services (TRS) requirements and to ensure that their services are available to and usable by individuals with disabilities, if such access is readily available. The FCC also requires interconnected VoIP providers to comply with the Communications Assistance for Law Enforcement Act of 1994 (CALEA) and to contribute to the Federal Universal Service Fund (FUSF). However, the increasing use of VoIP service has also raised some concerns. Because some VoIP providers offer their customers multiple phone numbers and phone

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<sup>7</sup> *Commercial Mobile Radio Service Competitive Analysis*, Twelfth Report, FCC, at ¶ 253 (February 4, 2008). Available online at: [http://wireless.fcc.gov/index.htm?job=cmrs\\_reports](http://wireless.fcc.gov/index.htm?job=cmrs_reports).

numbers in any area code, the service has raised issues concerning the exhaustion of telephone numbers and the jurisdictional identification of traffic (interstate or intrastate) for compensation purposes. Concerns have also been raised about the interoperability of VoIP with other systems, such as alarm systems, and the ability of VoIP operators to provide Enhanced 9-1-1 (E911) emergency calling functions. The appropriate regulatory treatment of VoIP in the overall telecommunications framework has not been fully resolved. For example, the FCC has yet to rule as to whether VoIP based services are properly classified as telecommunications service or information service.

- **Satellite Access** – Increased demand for voice and data satellite services has lowered costs for service providers and prices for consumers, making satellite access more attractive, particularly in rural markets where the cost of providing wireline service is often very high.
- **Fixed wireless** – This technology consists of point to multipoint wireless radio and can be used to provide broadband and VoIP services to customers located in remote areas. Southwest Texas Telephone Company was granted approval in September 2012 to use this technology for the provision of telecommunications service to certain customers who are located remotely from company facilities and from one another. The system consists of base station distribution units, base station radios, and subscriber premise radios (SPR) that are compatible with simple network management protocol (SNMP) standard. At the SPR, Ethernet service is delivered to the premises to enable broadband data and VoIP service. The services offered by such systems are perceived by end-users as a wireless Digital Subscriber Line (DSL) solution. It provides customers with combinations of Voice Telephony and an always-on high-speed Internet connection, comparable to the capabilities of wired DSL solutions. Usually, these devices provide Ethernet packet rates at up to 2.3 Mbit/s in the downlink and 1.5 Mbit/s in the uplink. The system operates in licensed radio frequency spectrum of 1.8 GHz to 4 GHz.
- **Broadband over Power Line (BPL)** – This technology delivers broadband telecommunications signals over existing power lines. Previously, electric companies were considering BPL both for commercial voice and data services and for internal uses, such as remote meter reading, but at this time interest appears to be shifting to the use of BPL for utility applications only. Concerns continue to be raised about the potential for BPL to interfere with users of the radio spectrum because, unlike the coaxial cable used by cable companies, electric wires are not shielded and the BPL signals may generate radio waves.
- **WiFi** – A radio frequency protocol for communicating using a wireless router. WiFi makes it possible for a laptop, tablet computer, desktop computer or even a television set to wirelessly access the internet. For cell phones with WiFi capability, this protocol makes it possible to make VoIP calls or access the internet directly without making use of the cell phone carrier's network and without causing the user to incur charges from the cellphone carrier. WiFi has a very limited range; a typical wireless access point using 802.11b or 802.11g with a stock antenna might have a range of

120 feet indoors and 300 feet outdoors. IEEE 802.11n, however, can more than double the range.

- **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 was initially undertaken only in new neighborhoods but has since expanded into existing neighborhoods.
- **Very High-speed Digital Subscriber Line** (VDSL) – Another new technology involves extending fiber further into the network, but uses a portion of the existing copper lines to provide high-speed data and video to customers. This approach provides much higher capacity than the DSL service at a lower cost than FTTH.

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## **II. EFFECTS OF COMPETITION ON RATES, SERVICE AVAILABILITY, AND UNIVERSAL SERVICE**

### **A. Introduction**

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The introduction of new and different competition into both the regulated and deregulated markets of the State continues to have an impact on the pricing and availability of choice in telephone service. Options such as cellular telephone service and Voice over Internet Protocol services provided over high-speed broadband lines have lured customers away from the traditional incumbent local telephone company network.

ILECs and non-ILECs now offer VOIP-based services which provide voice communications over a broadband connection and allow users to receive and place calls like traditional phone service. Additionally, mobile wireless carriers' service plans are designed to compete directly with wireline local telephone services.

Rates for basic local telecommunications service (BLTS) and stand-alone "Vertical Services" such as Caller ID Service and Call Waiting Service continue to increase under PURA Chapters 58 and 59 incentive regulation and Chapter 65<sup>8</sup> deregulation; this is largely due to local telephone rates being subsidized and therefore priced below market-based pricing. However, telecommunications providers continue to guide subscribers to packages of services and bundles of different services (e.g. video and Internet) that, in most instances, provide clearly identifiable discounts over buying the same services individually, to both residential and business customers with higher spending habits for telecommunications services.

### **B. Competitive Landscape in Texas - Voice Telecommunications Market**

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Communication used to be dominated by landline delivery of telephone calls and faxes; however, communication today involves traditional landlines, coaxial cable, fiber optics, and wireless technologies, delivering calls, television programming, Internet content, and other data. While the competitive landscape in Texas over a decade ago was dominated by competition between ILECs and CLECs using traditional wireline infrastructure, technological innovation has broadened the scope of competition within the telecommunications industry.

Telecommunications competition is now between providers that use different modes of providing service (intermodal competition) rather than between providers that use the same wireline network. The primary providers of telecommunications services in

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<sup>8</sup> Chapter 65 ILECs are companies whose markets or a portion of their markets are fully competitive. Unlike Chapter 58 companies, these companies are allowed to increase rates for basic network services through an informational notice filing.

the local exchange market are ILECs, Non-ILECs (aka CLECs) and wireless providers. The category of Non-ILECs includes CLECs that provide traditional switched access service as well as CLECs that deploy different types of facilities such as cable and VoIP technology. ILECs and some CLECs have historically provided local services using traditional wireline switched access services. In the last few years, ILECs and Non-ILECs have begun offering retail interconnected VOIP service, which enables voice communications over a broadband connection and allows users both to receive calls from, and place calls to, the public switched telephone network, like traditional phone service.<sup>9</sup>

As subscribers have begun to use wireless service as a replacement for traditional wireline service, wireless providers have steadily increased their market share of local exchange access lines. Though the number of mobile wireless subscribers in Texas (23,482,000 as of June 2011)<sup>10</sup> significantly exceeds the number of access lines provided by Texas ILECs and CLECs (9,593,000 as June 2011),<sup>11</sup> and wireless substitution continues to increase, many customers continue to subscribe to landline service, even though they also subscribe to a mobile wireless service. For the purpose of this report, a distinction is made between mobile wireless subscribers who use their wireless service instead of 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 in place of traditional wireline service are considered in the analysis of local competition of telecommunications providers.<sup>12</sup> Using publicly available data collected from various sources, this section addresses the state of intermodal-competition in the local telephone market between ILECs, CLECs and wireless providers. It provides a general overview of the different telecommunication facilities being utilized by ILECs, Non-ILECs and wireless companies in the local and broadband market. The research methodology used in analyzing data pertaining to the competitive landscape for the voice telecommunications and broadband markets (Chapter IV of this report) is described in Appendix A.

## 1. Market Share

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Market share among telecommunications providers, as Figure 1 shows, has continued the trends begun earlier in the decade. The number of traditional wireline access lines served by ILECs and CLECs decreased from 2010 to 2011. Non-ILEC total market share, on the other hand, has remained relatively the same from 2010 to 2011;

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<sup>9</sup> The FCC’s rules (at 47 C.F.R. § 9.3) state:

An interconnected Voice over Internet Protocol (VoIP) service is a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broad band connection from the user’s location;
- (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

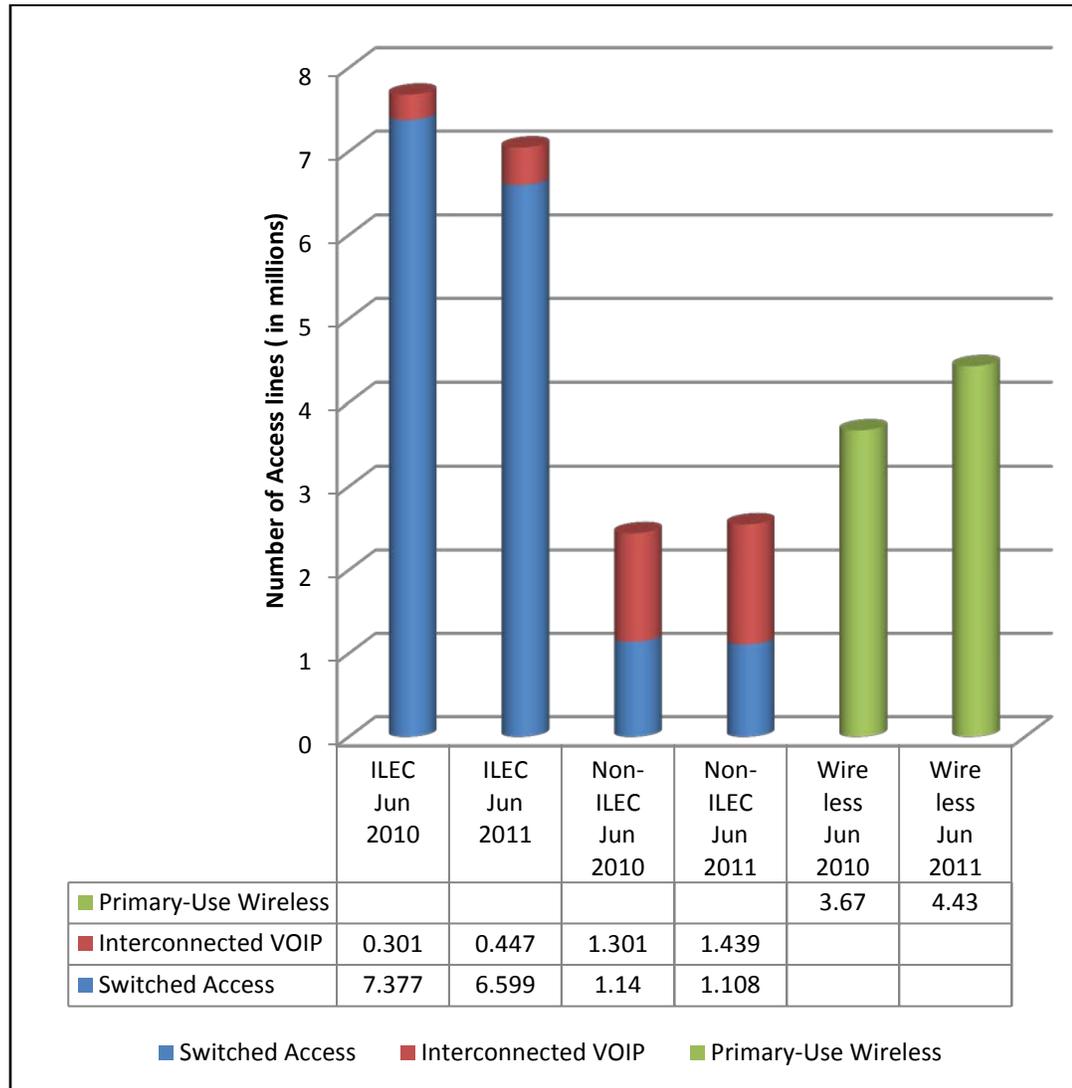
<sup>10</sup> *Local Telephone Competition Report (June 2012) Status as of June 30, 2011* at Table 18.

<sup>11</sup> *Id.* at Table 9.

<sup>12</sup> While exact percentages are difficult to determine, the percentages used in this section underestimates the numbers of Texas subscribers that exclusively use wireless service for local calls.

however, unlike the ILECs, 56 percent of the access lines served by Non-ILECs are provided through interconnected VOIP service instead of traditional switched access services. With VoIP technology becoming an increasingly popular method of providing telephone and internet services, the number of subscriptions to landline telephone service offered by Non-ILECs can be expected to increase in the future. The most significant increase is seen in the primary wireless lines served by wireless companies which experienced a 21 percent increase in lines. As a result, today there are approximately 4.43 million primary-use wireless lines (as compared to 7 million ILEC access lines including interconnected VoIP service lines).

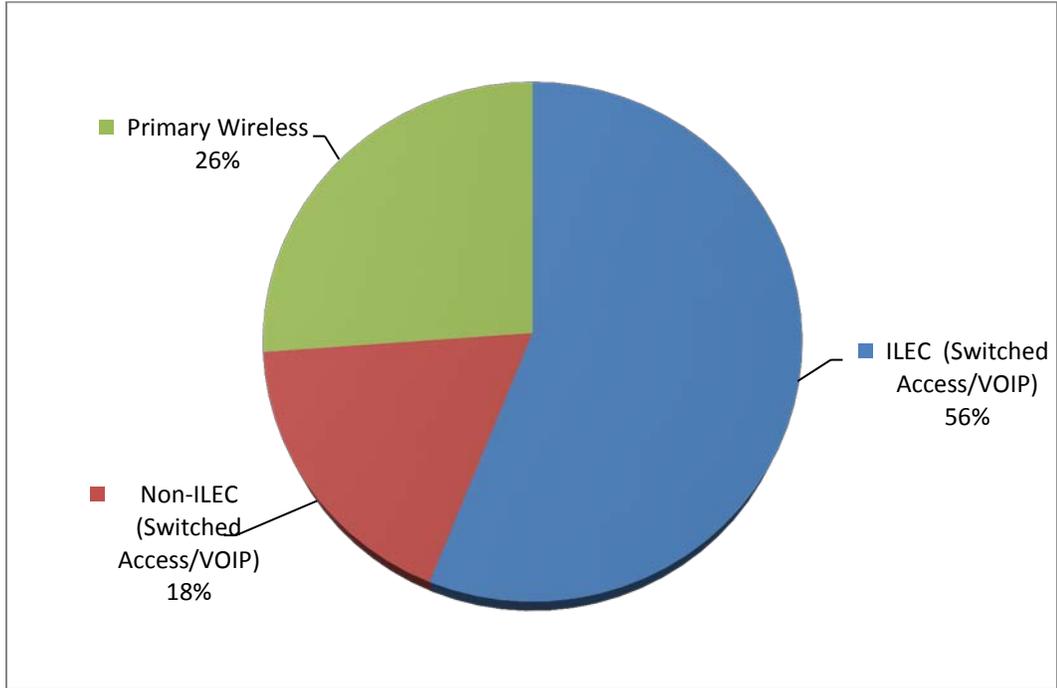
**Figure 1 - Lines in Texas by Company Type: ILEC, CLEC and Primary Use Wireless Companies<sup>13</sup>**



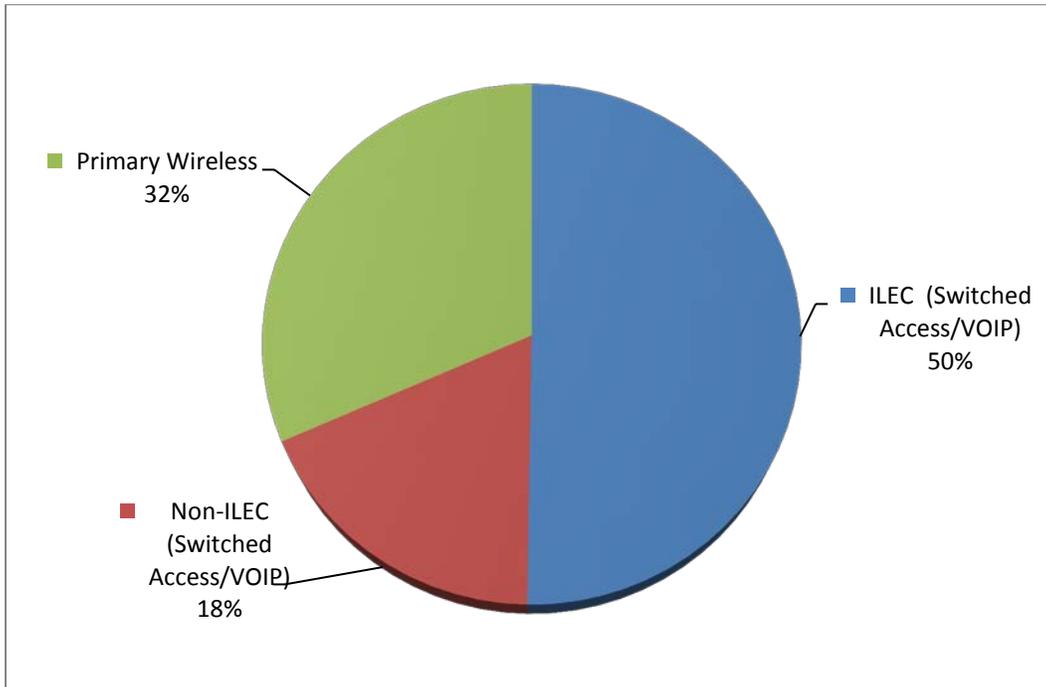
As shown in Figures 2 and 3, ILECs’ share of switched access lines decreased from 56 percent in 2010 to 50 percent in 2011. The percentage Non-ILEC wireline access lines remained at 18 percent from 2010 to 2011. Wireless companies share of primary access lines significantly increased from 26 percent in 2010 to 32 percent in 2011. The percentage increase in primary wireless lines is proportional to the decline in ILEC access lines.

<sup>13</sup> *Local Telephone Competition Report* (Status of June 30, 2010) at Table 8 (March 2011), *Local Telephone Competition Report* (Status of June 30, 2011) at Table 9 (June 2012), *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey* (Released 6/2012).

**Figure 2 - Local Telecommunications Market Share in Texas by Company Type:  
June 2010**

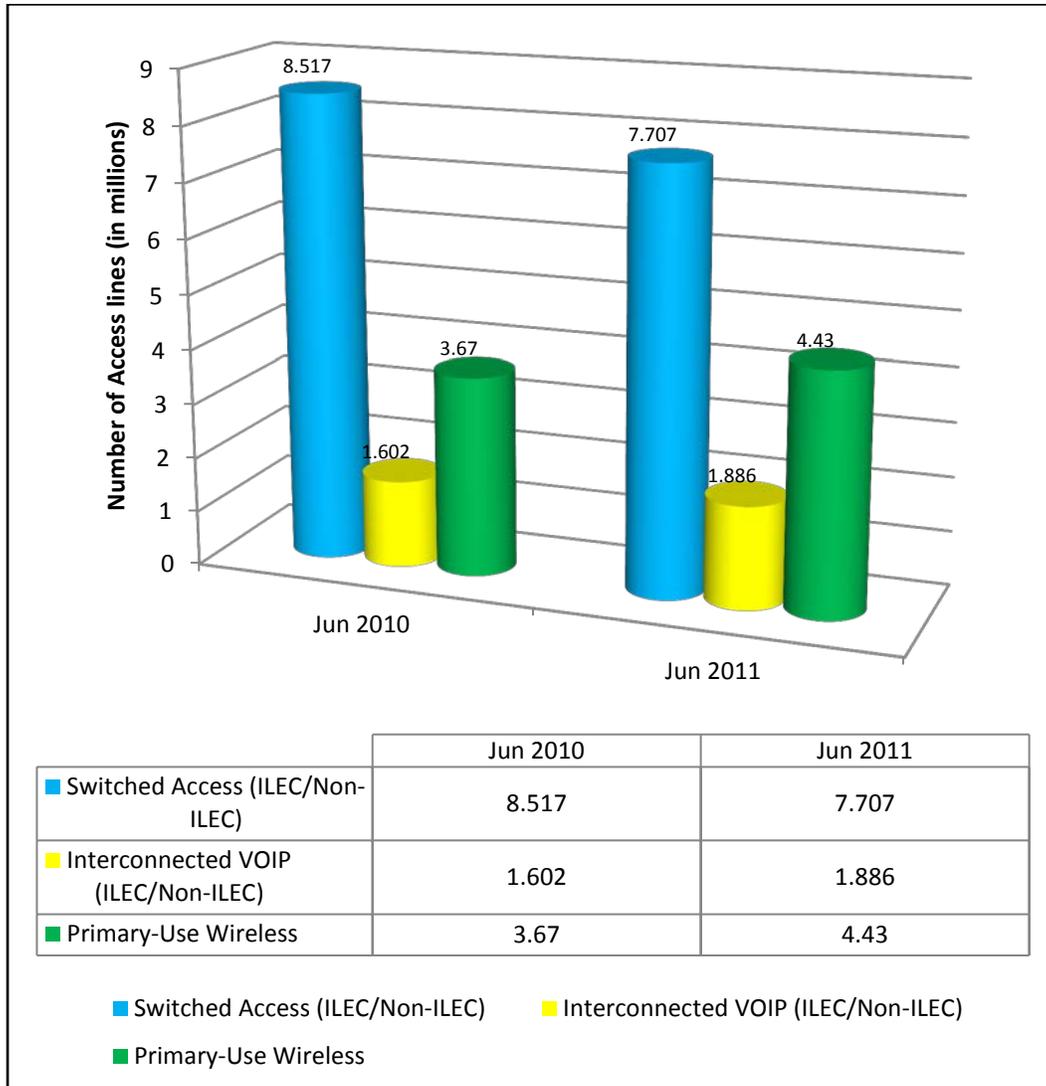


**Figure 3 - Local Telecommunications Market Share in Texas by Company Type:  
June 2011**



Switched access wireline facilities continue to be the predominant facilities deployed in the local market. As of June 2011, there were approximately 7.7 million switched access lines and 1.8 million interconnected VOIP lines. However, as shown in Figure 4, primary wireless technology is replacing traditional wireline switched access technology. Subscribership to services provided over wireless facilities has experienced the highest growth from 2010 to 2011. There are approximately 4.4 million access primary-use wireless lines.

**Figure 4 - Local Telecommunications Market Share in Texas by Technology Type<sup>14</sup>**

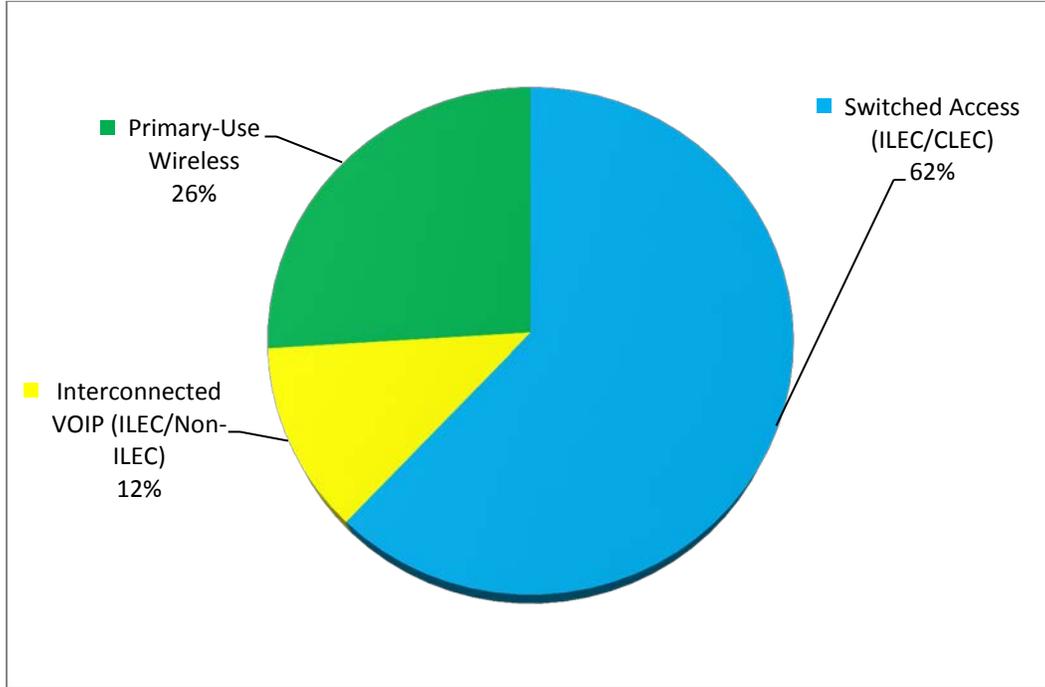


As shown in Figures 5 and 6, the share of access lines provided by switched access facilities significantly decreased from 62 percent in 2010 to 55 percent in 2011. The number of Interconnected VOIP access lines slightly increased from 12 percent 2010

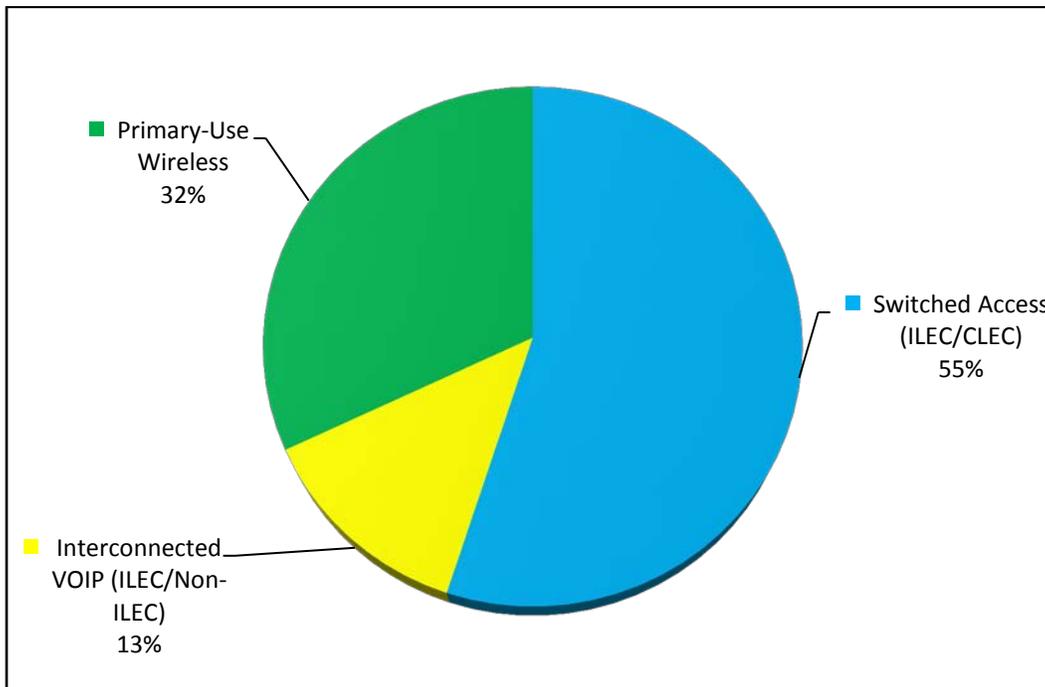
<sup>14</sup> *Id.*

to 13 percent in 2011. In contrast, primary wireless lines served by wireless facilities significantly increased from 26 percent in 2010 to 32 percent in 2011.

**Figure 5 - Local Telecommunications Market Share in Texas by Technology Type: June 2010**



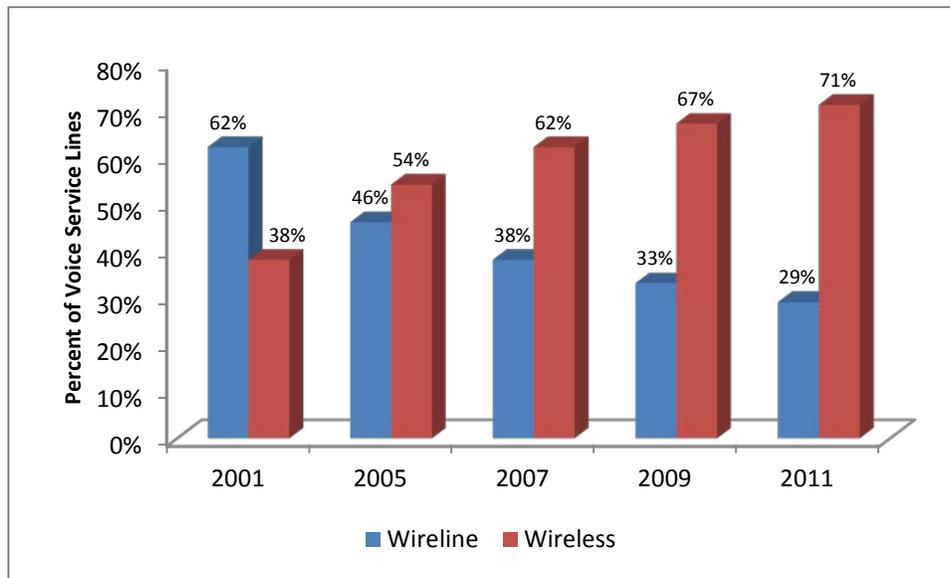
**Figure 6 - Local Telecommunications Market Share in Texas by Technology Type: June 2011**



## 2. Wireline and Wireless Market Share

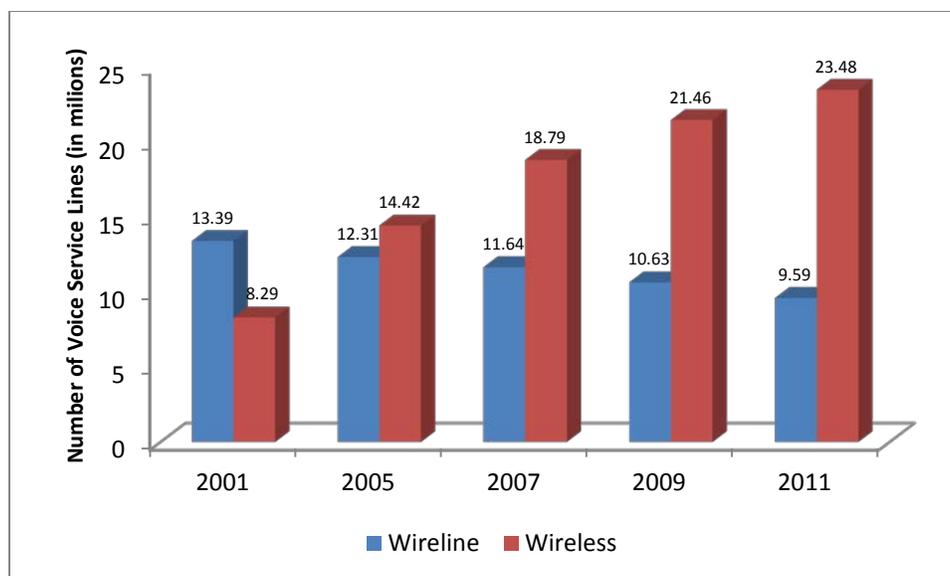
Figure 7 shows the change in the percentage of wireline and wireless voice service lines over the last decade. Figure 8 shows the change in the number of wireline and wireless voice service lines over the same period. From 2001 to 2011, there has been significant growth in mobile wireless subscribership, while wireline subscribership has experienced an equally significant decline. Taking into consideration all wireless subscribers (not just those who use wireless as their primary voice service), the wireless market share has grown from 38 percent of all voice service lines in 2001 to 71 percent of all voice service lines in 2011 (see Figure 7). However, when the change is considered in terms of number of voice service lines as shown in Figure 8, the change is significant for wireless lines (an increase of approximately 15 million lines) but not as significant for wireline lines (a decrease of approximately 4 million lines). The number of wireline lines in Figures 7 and 8 includes interconnected VoIP and traditional switched access voice lines served by ILECs and CLECs in Texas.

**Figure 7 – Percent of Wireline and Wireless Voice Telecommunications Lines in Texas<sup>15</sup>**



<sup>15</sup> 2009 and 2011 Reports on the Scope of Competition in Telecommunications Markets of Texas, *Local Telephone Competition Report* (Status of June 30, 2009) at Table 8 and 17 (September 2010), *Local Telephone Competition Report* (Status of June 30, 2011) at Tables 9 and 18 (June 2012).

**Figure 8 – Number of Wireline and Wireless Voice Telecommunications Lines in Texas<sup>16</sup>**



### C. Effects of Competition and Regulation on Rates

The expansion of competition in the telecommunications market has only recently begun to show signs that it might affect rates. Telecommunication rates in Texas have largely been influenced to this point by regulation rather than competition. Over the last two years, rates for local telephone service, stand-alone vertical services, and packages and bundles have all risen to some degree. Following is detail regarding the levels of these increases, rationale for them, and information regarding some of the offsetting nature of package and bundle rates versus “a-la-carte” pricing.

Most of the competition in telephone services is in connection with wireless service and service packages from wireline companies (including cable companies) that provide customers enhanced services like caller ID, unlimited long distance, or with bundled services, such as Internet or video. It seems clear that competition is strong in metropolitan areas for premium packages that include telephone service. It is not as clear that competitive forces are influencing BLTS rates.

For purposes of this report we categorize the ILECs into two groups: (1) Fully regulated (Chapter 52), and (2) Partially or fully deregulated (Chapters 58, 59, and 65). Rates for competing non-ILECs (aka CLECs, including cable companies and wireless companies) are not regulated by the PUC.

<sup>16</sup> *Id.*

## 1. Fully regulated ILEC areas

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In general the fully regulated ILEC areas are the more rural parts of Texas. In the more rural areas of the state, BLTS rates are priced below the economic cost of providing the service and are supported through universal-service-fund mechanisms at both the Federal and State level. Two prior reports indicated that competition was not likely to drive the price of BLTS lower in those areas, and in fact, if anything, deregulation in these areas would drive the price of local service higher. In these areas, universal service subsidies and subsidies from Switched Access Charges have not been reviewed since 2000.<sup>17</sup>

In these largely rural areas, over the last two years, the ILECs' rates for basic local service, vertical services, and packages have generally increased through Commission approved filings. However, as the local rates are still being subsidized in these areas, the rates are still below cost. The Commission has adopted a rule in Project No. 39938 regarding the Texas Universal Service Fund (TUSF) high-cost plan for these areas which would offset reductions in TUSF support in these areas by increases in rates for BLTS over a transitional period. This rulemaking could further impact local rates in these areas, but that impact cannot be projected at this time.

## 2. Partially or fully deregulated ILEC areas

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### a. Chapter 58 and 59 Regulation

The election of PURA Chapter 58 and 59 regulations by a majority of the medium-sized ILECs (eight companies) continues to restrict increases in residential basic local service rates for the customers of those companies. Chapters 58 and 59 regulations "cap" BLTS rates for these companies. Chapters 58 and 59 regulations allow increases in the rates only in limited circumstances.

For the smaller telecommunications providers regulated under Chapters 58 and 59, rates for vertical services and other services continue to rise. Twenty-seven small telephone companies filed for rate increases in the 2012 fiscal year. The rate increase filings were largely driven by the rate floor established by the FCC in its USF/ICC Transformation Order.<sup>18</sup> The FCC stated in the Order that it will reduce universal service support to the extent that a carrier's residential rates (including state regulated fees) do not meet the urban rate floor of \$14.00. Consequently, many of the small telephone companies increased their rates to meet compliance with the FCC Order in order to avoid forgoing USF revenue.

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<sup>17</sup> *Compliance Proceeding for Implementation of the Small and Rural ILEC Service Plan*, Docket No. 18516, Final Order (January 14, 2000).

<sup>18</sup> *In the Matter of Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Released November 18, 2011), ¶¶238-239. Available online at: <http://www.fcc.gov/document/fcc-releases-connect-america-fund-order-reforms-usficc-broadband>

b. *Chapter 65 Regulation*

Chapter 65 allows a “transitioning” ILEC to modify the rates for BLTS with one or more features upward.<sup>19</sup> That has in fact been the case for the largest telephone company in Texas. More importantly, however, rate increases have been reviewed and approved over the past four years for the four largest telephone companies in the state as a result of changes in the TUSF.

Chapter 65 also allows “transitioning” ILECs to increase the rates for BLTS, when combined with at least one other vertical service, in those exchanges that have been deregulated.

The last report to the legislature indicated that sixty-nine markets of three ILECs had been deregulated since 2005. The deregulated exchanges are served by Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas), GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), and Central Telephone Company of Texas, Inc. d/b/a CenturyLink, which are presently classified as “transitioning” companies whereby at least one, but not all of the company’s markets have been deregulated.<sup>20</sup> Since the last report, AT&T Texas<sup>21</sup> and Verizon<sup>22</sup> have been granted additional deregulated exchanges to bring the total to 195 deregulated markets. In August 2012, AT&T Texas requested deregulation of sixty-three additional markets for which Commission decision is pending.<sup>23</sup>

As with past reporting, transitioning and partially regulated companies continue promoting and introducing new packages, bundles, and term agreements that offer discounts to residential and business customers.

The last two years saw an increase in BLTS rates for the four largest telephone companies in the state as the subsidy for BLTS also decreased through a reduction in

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<sup>19</sup> A Chapter 65 transitioning ILEC is an ILEC with one or more, but not all, of its market areas deregulated.

<sup>20</sup> *Staff’s Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831 (December 28, 2005). On December 28, 2005, an Order was issued by the Commission classifying SBC, Verizon and Central Telephone as “transitioning” companies. Effective January 1, 2006 fifty-three markets (exchanges) were declared deregulated, thirty-nine SBC markets, eleven Verizon markets and three Sprint-Centel markets. *AT&T Texas’ Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) with Populations Less than 30,000 Should Remain Regulated*, Docket No. 32977 (October 17, 2006). On October 17, 2006, an Order was issued by the Commission deregulating seventeen additional SBC and Centel markets.

<sup>21</sup> *Petition of AT&T Texas to Determine Whether Certain Markets with Population Less Than 100,000 Should Remain Regulated*, Docket No. 39962. On February 24, 2012, an Order was issued by the Commission deregulating forty-one additional AT&T Texas markets.

<sup>22</sup> *Petition of Verizon Southwest to Deregulate Certain Markets*, Docket No. 40398. On July 30, 2012, an Order was issued by the Commission deregulating fifty-seven additional Verizon markets. *Petition of Verizon Southwest to Deregulate Certain Markets*, Docket No. 40646. On October 26, 2012, an Order was issued by the Commission deregulating twenty-seven additional Verizon markets.

<sup>23</sup> *Petition of AT&T Texas to Determine Whether Certain Markets with Population Less Than 100,000 Should Remain Regulated*, Docket No. 40631 (August 3, 2012);

TUSF support. Economically speaking, the gradual elimination of subsidies is necessary for true competition to exist in the partially regulated and deregulated markets affected by these changes.

Over the last four years BLTS rates in regulated exchanges served by the four largest telephone companies (AT&T Texas, Verizon, CenturyLink fka Embarq, and Valor Telecommunications of Texas L.P. d/b/a Windstream Communications Southwest (Windstream Communications Southwest)) in the state increased in an effort to offset the reduction in support received by these companies from the TUSF. To offset the reduced support, affected ILECs were allowed the option, under the terms of the Commission's order in Docket No. 34723, to gradually increase unbundled basic rates so that basic rates are within a range of \$15.50 to \$17 per month. This range was found to be reasonable by participating parties in Docket No. 34723.<sup>24</sup> The last of the allowed increases to BLTS rates are reflected in Table 1 below and were completed in January 2012.

In July 2012, a new proceeding was established to determine a reasonable rate for BLTS along with the corresponding reductions in support from the Texas High Cost Universal Service Plan (THCUSP) each ILEC would experience as a result of the newly determined reasonable rates for BLTS. This proceeding resulted in a revised reasonable rate for BLTS of \$24.00 per month for AT&T Texas, Verizon and CenturyLink fka Embarq. For Windstream Communications Southwest, the new rate was determined to be \$23.50 per month. Each of these ILECs is permitted the opportunity to request to raise its monthly residential BLTS rates by up to \$2.00 per year for a four-year period up to the applicable reasonable rates. The rate increases will be done in conjunction with a reduction in the THCUSP over the same four-year period.<sup>25</sup>

### 3. Local Telephone Service Rates

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#### a. Basic Rates

Table 1 below provides an illustration of BLTS rates applicable to residential service, single-line business service, and multiple-station business trunk service in deregulated and regulated markets in Texas served by ILECs regulated under various regulatory regimes.

As shown in Table 1, local telephone rates for business customers are higher than those charged to residential customers and rates in urban areas exceed the rates in rural areas in most cases. For example, the Dallas Metropolitan Exchange, a deregulated market served by AT&T Texas, offers residential local telecommunications service at a

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<sup>24</sup> *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. Subst. R. 26.403*, Docket No. 34723, Motion for Approval of the Unanimous Settlement Agreement (April 8, 2008).

<sup>25</sup> *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. Subst. R. 26.403*, Docket No. 40521, Order (September 28, 2012).

rate of \$21.00 per month. This rate reflects the culmination of increases over the last four years as AT&T Texas seeks to offset the reduction of support from the TUSF. Generally, the rates of local service in the deregulated exchange of Dallas in North Texas are higher than the pricing of local service in the rural exchanges of Fort Davis in West Texas and Gonzales in the San Antonio area for residential consumers, and are even higher than rates in other rural areas of Huxley in East Texas, and Blossom in North East Texas and Port Aransas in the Corpus Christi area. Generally speaking, the rates in deregulated exchanges, with the exception of certain grandfathered, lifeline, and tribal rates, are uniform throughout AT&T Texas's service territory that has been deemed competitive. Similarly, the rates in regulated exchanges, with the exception of certain grandfathered, lifeline, and tribal rates, are uniform throughout AT&T Texas's regulated service territory. The same can generally be said for the deregulated and regulated rates for Verizon.

The rates for single-line business service in the rural exchanges appear to depend on whether the ILEC serving the exchange has the ability to exercise pricing flexibility. As shown in Table 1, the single-line business rates in the rural areas of Huxley and Port Aransas are less than the rates for the same service in the rural areas of Fort Davis and Gonzales. The difference in rates may be attributed to the fact that Fort Davis and Gonzales are served by ILECs (AT&T and Verizon, respectively) that have the flexibility to set prices for a non-basic service such as single-line business in these exchanges under PURA Chapter 58. On the other hand, Huxley and Port Aransas are served by Eastex Telephone Cooperative, a Chapter 52 ILEC and CenturyTel of Port Aransas d/b/a CenturyLink, a Chapter 59 ILEC, respectively, and these companies are constrained in their ability to engage in pricing flexibility for single-line business customers.

Recent FCC decisions on intercarrier compensation reform may also have an impact on residential and business local rates in Texas.<sup>26</sup> The FCC has required telecommunications carriers to reduce, over a period of six to nine years, the rates they charge to transport and terminate another carrier's telecommunications traffic. The FCC has permitted ILECs to recover at least part of the lost intercarrier compensation revenues caused by the reduction in intercarrier compensation rates through increases in end-user charges and new universal service support. Specifically, ILECs are permitted to charge a limited monthly charge called Access Recovery Charge (ARC) on wireline telephone service, with a maximum annual increase of \$.50 for consumers and small businesses, and \$1.00 per line for multi-line businesses. This monthly charge may not be imposed on consumers whose total monthly rate for local telephone service is at least \$30 and on multi-line business customers if the ARC and existing subscriber line charge (a federal fee) exceeds \$12.20 per line.

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<sup>26</sup> *In the Matter of Connect America Fund, et al*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Released: November 18, 2011), ¶¶. 35-37. Available online at: <http://www.fcc.gov/document/fcc-releases-connect-america-fund-order-reforms-usficc-broadband>

**Table 1 - Sample of Basic Local Telephone Service Rates in Texas<sup>27</sup>**

<i>Serving Company</i>	<i>Major City/ Local Access Transport Area (LATA)</i>	<i>Exchange served</i>	<i>Basic Single Line Service Rates</i>		
			<b>Residential</b>	<b>Business</b>	<b>Business Trunk</b>
AT&T Texas – Chapter 65	Dallas/ Dallas LATA	Dallas Metropolitan Exchange - <i>deregulated</i>	\$21.00	\$57.00	\$57.00
AT&T Texas – Chapter 58	Ft. Davis/Midland LATA	Fort Davis Exchange - <i>regulated</i>	\$16.15	\$57.00	\$57.00
Verizon – Chapter 65	Irving/Dallas LATA	Irving Exchange - <i>deregulated</i>	\$19.03	\$40.95	\$43.95
Verizon – Chapter 58	Gonzales/San Antonio LATA	Gonzales Exchange - <i>regulated</i>	\$17.00	\$29.60	\$43.95
CenturyLink - Chapter 65	Humble/Houston LATA	Humble Exchange - <i>deregulated</i>	\$18.00	\$40.00	\$56.00
CenturyLink - Chapter 58	Hutto/Austin LATA	Hutto Exchange - <i>regulated</i>	\$17.00 <sup>28</sup>	\$25.50	\$32.00
Windstream Comm. SW - Chapter 58	Texarkana/Longview LATA	Texarkana Exchange	\$14.40	\$28.45	\$40.10
Blossom Telephone Company – Chapter 52	Blossom/ Dallas LATA	Blossom Exchange	\$7.00	\$9.00	n/a
Eastex Telephone Coop – Chapter 52	Huxley/Houston LATA	Huxley Exchange	\$11.50	\$16.09	\$23.62
CenturyLink - Chapter 59	Port Aransas/Corpus Christi LATA	Port Aransas Exchange	\$6.45	\$11.95	\$18.55

<sup>27</sup> Texas PUC tariff filings.

<sup>28</sup> CenturyLink also includes a \$1.00 expanded local calling (ELC) surcharges in the rate for BLTS for the Hutto exchange.

b. *Vertical Services Rates*

Vertical Service rates are not capped under Chapters 58, 59, and 65 of PURA. Thus, the rates of many of the most popular vertical features have generally continued to increase. The most popular vertical services include Caller ID Name and Number, Automatic Call Blocking, Call Forwarding, Speed Calling, Call Return and Three Way Calling.

Informational notice filings from the two largest electing ILECs in the state, AT&T Texas and Verizon, indicate that some price changes have been made to the monthly rates for the most popular services over the past two years. Some examples of residential rate increases by AT&T Texas include Three-way Calling (\$5.99 to \$6.99), Call Forwarding (\$5.99 to \$7.50), and Call Waiting (\$7.50 to \$8.50). A sampling of business rate increases for AT&T Texas over the past two years indicate rate increases for Caller ID, Call Forwarding, Call Waiting and Three-way Calling. Verizon did not raise residential vertical service rates in the last two years. It did, however, raise business rates for call waiting, call forwarding, Three-way calling and call forwarding busy line don't answer within the last two years. Other rate changes, and in some cases no changes, have occurred over the past two years for other individually priced discretionary calling services.

The following Tables 2 and 3 provide a list of common and popular business and residential vertical service rates for AT&T Texas and Verizon since those companies' election of incentive regulation.

**Table 2 - Sample of AT&T Texas's Pricing for Vertical Services<sup>29</sup>**

Service	Texas Retail Price	
	Business As of September 2012	Residential As of September 2012
Three-Way Calling - Monthly	\$8.00	\$6.99
Call Forwarding - Monthly	\$9.00	\$7.50
Speed Calling 8 - Monthly	\$11.70	\$7.50
Anonymous Call Rejection - Monthly	\$7.20	\$7.00
Auto Redial - Monthly	\$6.00	\$7.50
Call Waiting - Monthly	\$9.05	\$8.50
Call Waiting ID - Monthly	\$5.40	\$4.50
Caller ID Name - Monthly	\$10.00	\$7.00
Caller ID Number - Monthly	\$10.50	\$7.00
Caller ID Name and Number - Monthly	\$15.50	\$9.95
Call Blocker - Monthly	\$5.50	\$5.99
Priority Call - Monthly	\$5.10	\$6.00
Personalized Ring - Monthly	\$6.50	\$7.00
Call Return	\$7.00	\$3.00 each use
Three-Way Calling	\$8.00	\$3.00 each use
Call Trace	\$10.00 each use	\$10.00 each use
Directory Assistance	\$1.99 each after 2 calls	\$1.99 each after 2 calls
Rate for Non-published Numbers - Monthly	\$5.50	\$5.50
Directory Assistance Call Completion	\$5.50	\$0.00

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<sup>29</sup> Texas PUC tariff filings.

**Table 3 - Sample of Verizon's Pricing for Vertical Services<sup>30</sup>**

Service	Texas Retail Price	
	Business As of September 2012	Residential As of September 2012
Three-Way Calling – Per Event	\$0.95	\$0.95
Automatic Busy Redial – Per Event		
Automatic Call Return – Per Event		
Three-Way Calling - Monthly	\$8.75	\$5.25
Automatic Call Return - Monthly	\$6.25	\$5.50
Remote Call Forwarding - Monthly	\$26.50	\$17.00
Caller ID Name and Number	\$12.50	\$9.25
Caller ID Name and Number with Automatic Call Block	\$10.75	\$9.25
Call Waiting - Monthly	\$6.00	\$5.00
Local Directory Assistance – Per Event	\$1.50	\$1.50
National Directory Assistance – Per Event	\$1.50	\$1.50
Additional Directory Listing – Per Listing	\$4.00	\$3.00
Return Check Charge – Per Event	\$25.00	\$25.00
Rate for Non-published Number	\$4.95/month	\$4.95/month

*c. Packages, Bundles, Term Commitments, and Promotions*

As in the past few years, the trend has been for ILECs, CLECs, cable providers, and VoIP providers to market service packages to residential and business customers that include basic local service, vertical features and long-distance services bundled with video services and high speed internet access. The most prolific of bundles offered by telephone and cable companies is the “triple play” offering – a package comprising video service, high-speed Internet access, and voice telephone service. The triple play offerings are typically priced under \$100 with a one to two-year term commitment.

Cable companies and VoIP providers continue to offer special promotions to lure customers away from the incumbent, while the incumbent continues to regularly offer special promotions to former residential and business customers to “win-back” 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. As reported two years ago, the term agreement continues to be a common offering for large and small companies and provides revenue security for competitive telecommunications carriers.

The following Tables 4 and 5 illustrate some of the residential and business packages available as of September 2012. It is worth noting that in many instances,

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<sup>30</sup> Texas PUC tariff filings.

residential customers in rural areas have choices in packages and bundled offerings from a variety of providers that are comparable to those offered in metro and non-metro areas.

**Table 4 - Residential Packages and Rates as of September 2012**

<b>Landline Telephone Providers – Residential Packages Offerings in Metro , Non-Metro and Rural Areas</b>			
<b>Area</b>	<b>Company</b>	<b>Sample Bundles Available</b>	<b>Price/Mo.</b>
<b>Metro Areas</b>			
Houston	Vonage	U.S. & Canada Unlimited - VoIP unlimited local and long distance in U.S., Canada, and Puerto Rico with standard custom calling features	\$9.99/mo. for 3 months, \$24.99 thereafter
	Comcast	StarterXF Triple Play – High-Speed Internet, over 80+ digital channels, unlimited local and nationwide calling	\$139.95
		Blast Plus – High-speed Internet up to 30 Mbps, Digital Economy TV, XFINITY Streampix, streaming complete libraries of past seasons of current popular TV shows	\$79.95
AT&T (ILEC)	Triple Pack – All-Distance phone with unlimited local and long distance calling and popular calling features, high-speed Internet up to 6.0 Mbps, DIRECTV CHOICE XTRA Package – over 205 channels, 3 months free HBO, Showtime, STARZ, Cinemax, and NFL Sunday Ticket, with 4 free upgrades: HD DVR and up to 3 HD Receivers	\$73.99	
Dallas	AT&T	Triple Pack – All-Distance phone with unlimited local and long distance calling and popular calling features, high-speed Internet up to 6.0 Mbps, DIRECTV CHOICE XTRA Package – over 205 channels, 3 months free HBO, Showtime, STARZ, Cinemax, and NFL Sunday Ticket, with 4 free upgrades: HD DVR and up to 3 HD Receivers	\$93.94
	Time Warner Cable	Triple Bundle – Digital TV DVR Service, HBO and Cinemax included, High-Speed Standard Internet up to 10 Mbps, Unlimited Nationwide Calling with Voicemail	\$89.99/mo. for 12 months
	Verizon	Triple Play – DIRECTV Choice XTRA with HBO, STARZ, Showtime, and Cinemax free for 3 months and 2012 NFL Sunday Ticket, High-Speed Internet, Unlimited Nationwide Calling with Voicemail	\$74.99
Austin	AT&T	Triple Pack – High Speed Internet up to 6 Mbps, All distance Phone with unlimited nationwide calling and popular calling features, DIRECTV CHOICE XTRA Package with 2012 NFL Sunday Ticket, 205+ channels, 3 months free HBO, Showtime, STARZ, and Cinemax, 4 free upgrades: HD DVR and up to 3 HD Receivers	\$73.99/mo. for 12 months
	Grande Communications	Essential Bundle – 175+ HD channels, Starz and Showtime, Multi-room TiVO, High-Speed Internet up to 30 Mbps and Unlimited Nationwide Calling	\$119.99
	Time Warner Cable	Triple Bundle – Digital TV with 100+ channels, HBO and Cinemax 3 mos. free, HD-DVR Box with free service, Standard Internet up to 10 Mbps, Unlimited Nationwide calling and voicemail	\$98.98/mo. for 12 months

<b>Landline Telephone Providers – Residential Packages Offerings in Metro , Non-Metro and Rural Areas</b>			
<b>Area</b>	<b>Company</b>	<b>Sample Bundles Available</b>	<b>Price/Mo.</b>
	Galaxy Voice	250 Bundle – VoIP phone with popular custom calling features and 250 minutes	\$4.95 up to 250 minutes, 2.3¢/min. thereafter
El Paso	AT&T	All Distance Bundle – All Distance Home Phone Unlimited , DIRECTV Choice Ultimate Package with 2012 NFL Sunday Ticket, 3 months free HBO, Showtime, Starz, and Cinemax, over 225+ channels, 4 free upgrades: HD DVR and up to 3 HD receivers	\$79.99
	Sage Telecom	Sage Preferred Value – Unlimited local voice calling, 200 nationwide long distance minutes and bundle of custom calling features	\$29.99
	Time Warner Cable	TV & Phone – Unlimited Nationwide Phone with Custom Calling Features, Digital TV with over 200+ channels including some HD channels	\$61.98
	Sage Telecom	Accelerated Dial Up Internet Service available to Sage phone customers with anti-virus protection and scanning Sage Nationwide – Unlimited local and nationwide calling, including custom calling features	\$9.95 \$29.99
<b>Non-Metro Area</b>			
Brownsville	AT&T (ILEC)	All Distance Double Bundle – Unlimited Nationwide Calling with Custom Calling Features, High Speed Internet up 6 Mbps	\$61.95
		Unlimited Nationwide Calling One – Unlimited Long Distance with custom calling features	\$29.95
	Time Warner Cable	Triple Bundle – Digital TV with 100+ channels, 3 months free HBO and Cinemax, High-Speed Internet up to 10 Mbps, Unlimited Nationwide Phone and Voicemail	\$98.98
	PowerNet Global	Unlimited Nationwide Calling with custom calling features	\$19.99
		Digital Phone @ Home Unlimited Plus – Unlimited Local and Long Distance calling, Unlimited calls to Canada and select countries, Voicemail, Caller ID, Call Waiting	\$19.99
Tyler	PowerNet Global	Digital Phone @ Home + DIRECTV – Digital Phone with Unlimited Local and Long Distance calling and Custom Calling features with 3 months free HBO, STARZ, Showtime, and Cinemax	\$29.99/mo. for 12 months after rebate, w/ 24 mo. agreement
	Sage Telecom	Home Phone – Unlimited Local Voice Calling, 200 long distance minutes, custom calling features Internet Service - accelerated dial-up Internet available to phone customers	\$19.99 \$9.95
	Verizon	FiOS Digital Voice –unlimited local, regional, and long distance calling features in U.S. and to Canada and Puerto Rico, plus 20 popular custom calling features	\$44.99

<b>Landline Telephone Providers – Residential Packages Offerings in Metro , Non-Metro and Rural Areas</b>			
<b>Area</b>	<b>Company</b>	<b>Sample Bundles Available</b>	<b>Price/Mo.</b>
New Braunfels	AT&T (ILEC)	Triple Bundle - U-family TV with DVR Receiver and up to 130 channels, High-Speed Internet up to 3 Mbps, Unlimited nationwide calling, including Canada and U.S. Territories	\$105
	Time Warner Cable	Double Bundle – Standard High-Speed Internet up to 10 Mbps, Unlimited Nationwide calling with voicemail and other custom calling features	\$53.93
	Sage Telecom	Home Phone – Unlimited Local Voice Calling, 200 long distance minutes, custom calling features	\$19.99
<b>Rural Areas</b>			
Paris	Cox	Triple Bundle Cox Advanced TV + High Speed Internet up to 15 Mbps + Phone Starter;	\$99.99 for 6 months
		Surf, Talk, and Save - High Speed Internet + Unlimited Local Calling and Long Distance Calling to U.S. and Canada	\$69.99 for 6 months.
	dPi Teleconnect	Advantage Package with Unlimited Local Calling, Call Waiting, Caller ID, and first month free	\$46.99
	Sage Telecom	Unlimited Nationwide Calling – Unlimited Local Voice Calling, Unlimited Long Distance Minutes, Caller ID, Call Waiting, and Other Custom Calling Features	\$29.99
AT&T	Triple Pack Home Phone, 6.0 Mbps Internet and DIRECTV	\$93.94/mo. for 12 months	
Kingsville	Time Warner Cable	Broadcast TV with Features, High-Speed Internet up to 15 Mbps	\$49.99 per month for 12 months
		TV+Internet + Phone, Free HD-DVR Service, HBO and Cinemax free for 3 months	\$89.99 per month for 12 months
	AT&T	All Distance bundle phone and DIRECTV with 140+ channels, 3 months free Showtime	\$64.99/mo. for 12 months

<b>Landline Telephone Providers – Residential Packages Offerings in Metro , Non-Metro and Rural Areas</b>			
<b>Area</b>	<b>Company</b>	<b>Sample Bundles Available</b>	<b>Price/Mo.</b>
Pampa	NTS Communications	Gold Bundle 50+ channels, 2 set top boxes and 15 Mbps High Speed Internet	\$79.00
	AT&T	All Distance bundle phone and DIRECTV with 140+ channels, 3 mos. free Showtime	\$64.99/mo. for 12 months
		Triple Pack Home Phone, Internet & TV – 3.0 Mbps High Speed Internet, All Distance Home Phone, DIRECTV Choice XTRA Package with 200+ channels	\$99.99/mo. for 12 months
Uvalde	Sage Telecom	Preferred Value – unlimited local, free 200 nationwide long distance minutes, free bundle of Custom Calling Features (Caller ID, Call Waiting, etc.)	\$29.99
	AT&T	AT&T Triple Pack Home Phone, Internet & TV – 3.0 Mbps High Speed Internet, All Distance Home Phone, DIRECTV Choice XTRA Package with 200+ channels	\$93.94/mo. for 12 months
	Time Warner Cable	Digital TV Multi-Room Service with over 200+ channels, up to 10 Mbps High-Speed Internet, unlimited calling in the U.S., Canada, and Puerto Rico with Call Waiting, Caller ID, Call Forwarding, 3-Way Calling and Voicemail	\$99.99/mo. for 12 months
Port Neches	AT&T	All Distance Bundle, High Speed Internet Basic, DIRECTV Entertainment Package with 140+ channels, 3 months Showtime, Free HD DVR	\$79.94/mo. for 12 months
	Time Warner Cable	Digital TV Multi-Room Service with over 200+ channels, up to 10 Mbps High-Speed Internet, unlimited calling in the U.S., Canada, and Puerto Rico with Call Waiting, Caller ID, Call Forwarding, 3-Way Calling and Voicemail	\$99.99/mo. for 12 months

<b>Landline Telephone Providers – Residential Packages Offerings in Metro , Non-Metro and Rural Areas</b>			
<b>Area</b>	<b>Company</b>	<b>Sample Bundles Available</b>	<b>Price/Mo.</b>
Kaufman	dPi Advantage	Unlimited Local Calling, first month free, Call Waiting, Caller ID	\$46.99
	CenturyLink	Triple Bundle - Unlimited Local and Long Distance, Custom Calling Features (Caller ID, Voice Mail, Call waiting, Call Forwarding, Speed Call), High Speed Internet, Choice XTRA with DIRECTV HD, and 3 mos. free HBO, Showtime, Starz, Cinemax	\$132.00
	PowerNet Global	Bundle & Save – Unlimited Digital Phone, DIRECTV, with 3 months Showtime, HBO, Starz, and Cinemax	\$29.99/mo. for 12 months
Jasper	Sage Telecom	SmartValue Plan – Unlimited Local Calling, free 100 Long Distance minutes, Free Caller ID and Call Waiting	\$23.99
	AT&T	All Distance Bundle, High Speed Internet Basic, DIRECTV Entertainment Package with 140+ channels, 3 months Showtime, Free HD DVR	\$79.94/mo. for 12 months
Hooks	dPi Teleconnect	Basic Unlimited Local Calling, first month free, 100 Long Distance minutes	\$38.99/mo.
	Windstream	High Speed Internet up to 3 Mbps, Unlimited Phone, Digital TV with over 120+ channels	\$72.99
Nolanville	Time Warner Cable	Bundle with Digital TV and HD DVR Box, HBO and Cinemax for 3 months, High Speed Internet up to 10 Mbps, Unlimited Nationwide Calling with Voicemail	\$98.98/mo. for 12 months
	CenturyLink	Triple Savings Bundle Unlimited Local and Long Distance Phone with Custom Calling Features, High Speed Internet, HD DIRECTV Choice Xtra with over 200+ channels with free HBO, Showtime, Starz, and Cinemax for 3 months	\$122.34

**Table 5 - Small-Business Rate Packages and Rates as of September 2012**

Landline Telephone Providers		
Service Provider	Sample Business Packages Available	Price/Mo.
AT&T Texas	Standard Choice 1 Bundle All for Less – Broadband Internet up to 6 Mbps, Unlimited Local and Nationwide Long Distance Calling, Unified Messaging Service	\$85.00
	Business Unlimited Calling II – Unlimited state-to-state and in-state direct dialed long distance	\$15.00 per line for 12 months
	Business Local Calling Unlimited A – Unlimited local calling with custom calling features	\$35.00 per line for 12 months
Galaxy Voice	Business Broadband VoIP Phone 500 Bundle – 500 minutes included to U.S. and 30 international destinations	\$9.90/month, 2.3¢/min. after 500 minutes
Vonage	Small Business Premium Unlimited – Unlimited Local Calling and Long Distance over VoIP in U.S., Canada, and Puerto Rico, Dedicated Fax Line with 500 minutes of outgoing fax service and Custom Calling Features	\$49.99/month, 3.9¢/min. for fax line minutes over 500
	Small Business Basic 1500 – 1500 Minutes Outbound Local and Long Distance over VoIP in U.S., Canada, and Puerto Rico, Unlimited Incoming and Vonage-to-Vonage calls, and Custom Calling Features	\$39.99/month, 3.9¢/min. for minutes over 1500
Time Warner Cable	Business Class Phone with Unlimited Local, In-State, and Long Distance Calling within the United States, Canada, and U.S. Territories, with Custom Calling Features	\$39.95/month for 3 years
	Broadband High-Speed Data up to 7 Mbps	\$79.95/month for 3 years

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

The fees for directory-assistance service continue to climb with prices hovering at about \$1.50 per directory assistance call, an increase of \$0.25 per call over the past two years for local directory assistance. Late-fee assessments have generally not changed the last two years. Rates for services such as directory listings, non-published-number service and non-listed-number have generally remained unchanged over the past two years.

### **D. Effects of Competition and Regulation on Service Availability and Customer Choice**

In areas that remain regulated, service availability, or the ability of Texas residents to obtain some form of telephone service (aka “subscriberhip”), is not impacted by competition, but rather is ensured by state laws and PUC regulations.

However, the ability of Texas residents to choose from multiple providers of telephone service has been greatly enhanced with increasing competition.

In areas that have been deregulated (in the territories of Chapter 65 regulated companies), subscribership is no longer ensured by laws and regulations. There is no longer a carrier with provider of last resort (POLR) obligations in those areas. Instead, those areas were deregulated based on the proven availability of at least two telephone providers in addition to the incumbent, so that through the competitive market, customers have not only the ability to obtain some form of telephone service, but also have a choice of providers.

## **1. Subscribership**

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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. Although the level of subscribership in Texas has typically lagged slightly behind the national average over the past ten years, there has been an increase in telephone subscribership in Texas since 2005, as shown in Figure 8 below.

### **Figure 9 - Percentage of Telephone Subscribership<sup>31</sup>**

Subscribership, as defined by the FCC, includes any house, apartment or mobile home that has telephone service from which to make and receive calls. This metric does not distinguish between wireline and wireless service. This is the likely reason that

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<sup>31</sup> *Telephone Subscribership in the United States* at Table 3 (August 2010).

telephone subscribership has seen an increase despite the loss of traditional landline subscribers over the same period.

a. *Subscribership Regulation*

Legal and regulatory provisions are in place in Texas to ensure that telecommunications service is made available to customers residing in still-regulated areas. PURA and Commission rules require a POLR in all regulated, certificated areas in Texas, thereby guaranteeing at least one provider of telecommunications service for all areas in Texas, due to either regulation or proven competition in deregulated areas.<sup>32</sup>

For those areas in Texas that are uncertificated and therefore do not have an ILEC serving as a POLR, there are processes in place that enable customers to request telecommunications service.<sup>33</sup> In addition, wireless and satellite providers provide coverage in many of the uncertificated areas.

An uncertificated area is an area of the state where no ILEC is required to provide service. PURA Chapter 56, Subchapter F authorizes the Commission to designate a telecommunications provider to provide BLTS in uncertificated areas if the provider is otherwise eligible to receive high cost support from the TUSF. In July 2003, Western Wireless Corporation, a provider of cellular telecommunications service, became the first telecommunications provider authorized to provide basic telecommunication service to residential and business customers within an uncertificated area.<sup>34</sup> Retail rates for the BLTS in these uncertificated areas range from \$15 to \$20 per month.

In September 2005, the Commission authorized DialTone Services, L.P. to receive TUSF funding for the purpose of providing satellite telephone service to uncertificated areas. The Commission established monthly per-line support amounts for 17 different uncertificated areas located in 19 Texas counties in rural areas near Amarillo, Midland, San Angelo, and San Antonio.<sup>35</sup> Since that time, DialTone Services has provided approximately 45 satellite-telephone service connections for basic local service in these uncertificated areas of the state.

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<sup>32</sup> See PURA §§ 54.301-54.303. See also P.U.C. Subst. R. 26.22(a)(1) and 26.54(c)(1)

<sup>33</sup> See PURA Chapter 56, Subchapter F. See also P.U.C. Subst. R. 26.421 and 26.422.

<sup>34</sup> *Application of Western Wireless Corporation to Seek Reimbursement for the Provisioning of Universal Service in Uncertificated Areas of Roberts and Hutchinson Counties, Texas Pursuant to P.U.C. SUBST. R. 26.423*, Docket No. 27056, Notice of Approval (July 16, 2003). The Commission had previously approved Western Wireless as an eligible telecommunications provider in *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418*, Docket No. 22289, Final Order (October 30, 2000) and *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Provider Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.417*, Docket No. 22295, Order (Oct. 30, 2000).

<sup>35</sup> *Application of DialToneServices L.P. for Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider in Certain Uncertificated Areas*, Docket No. 31401, Notice of Approval (September 2, 2005).

No additional applications to serve uncertificated areas have been received since the 2009 Scope of Competition Report.

PURA § 56.210 and its implementation in P.U.C. SUBST. R. 26.423 establishes procedures for the Commission to designate an Eligible Telecommunications Provider (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 if potential subscribers agree to pay a portion of the ETP's start-up costs.<sup>36</sup> Once an ETP volunteers or is designated to serve the area, construction costs and monthly assistance rates may be approved for the new service.

To date four such petitions have been filed by potential subscribers living in uncertificated areas of the state. The most recent case involved the denial of aid to construction costs to provide telephone service to a residential area located in Big Lake in Reagan County. The Commission denied the application because the reimbursement to provide the service exceeded the statutory limit, 0.02 percent of the annual gross revenue reported to the TUSF in the preceding fiscal year, as prohibited by PURA § 56.209(e).<sup>37</sup>

#### *b. Programs Supporting Subscribership*

The THCUSP and the Small and Rural ILEC Universal Service Plan (SRILEC USP) provide financial support to eligible carriers in a competitive environment, to ensure that customers in high cost areas in Texas and low-income customers throughout the State of Texas have access to BLTS at just, reasonable, and affordable rates.

#### *i. Lifeline Service*

Lifeline service provides qualifying low-income customers a discount for local telephone service. Qualifying Lifeline customers receive a discount of up to \$12.75 from their Lifeline provider, which is reimbursed from a combination of the TUSF and the FUSF. In addition, eligible customers served by Lifeline providers operating in the service areas of AT&T Texas, Verizon Southwest, CenturyLink, and Windstream Communications Southwest, or their successors, will receive a discount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the four companies mentioned above as a result of the Unanimous Settlement Agreement adopted by the Commission on April 25, 2008.<sup>38</sup> This additional discount will be reimbursed from the TUSF. To receive support from the FUSF, a telecommunications carrier has to be designated by the Commission as an Eligible Telecommunications Carrier (ETC). To

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<sup>36</sup> Other requirements include actions such as entering into an agreement for subscription to basic local service for a period of time, proof of ownership of the residential or business property in question.

<sup>37</sup> *Application of Cathryn Cope Kesslet For Telecommunications Service in Uncertificated Area Pursuant to P. U. C. SUBST. R. 26.421*, Docket No. 36097, Order (May 17, 2010).

<sup>38</sup> P.U.C. SUBST. R. 26.412, *Lifeline Service Program; Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. SUBST. R. 26.403*, Docket No. 34723, Order (April 25, 2008).

receive support from the TUSF, a telecommunications carrier has to be designated by the Commission as an ETP. Prior to the enactment of Senate Bill 5 in 2005, only ETPs and ETCs were required to provide Lifeline service. As amended by Senate Bill 5, PURA § 55.015 now requires all certified telecommunication providers (CTPs) of local exchange telephone to provide Lifeline service. All certificated providers, other than resellers, can apply to become an ETC or ETP and can thereby qualify for support from the FUSF and/or the TUSF.<sup>39</sup> Total Service Resale (TSR) providers, which were not previously required to provide Lifeline service, but must now do so under PURA § 55.015, may also qualify to receive TUSF support for providing Lifeline service.<sup>40</sup>

Lifeline enrollment has decreased since 2009 primarily due to participants selecting wireless telephone Lifeline providers that are funded through the FUSF and receive no state support. The Low Income Discount Administrator continues to receive a direct feed from the Health and Human Services Commission of clients in approved Lifeline programs along with processing self-enrollment applications. Table 6 shows the enrollment figures since 2008.

**Table 6 - Lifeline Enrollments, 2008 - 2011<sup>41</sup>**

<b>2008 Lifeline</b>	<b>2009 Lifeline</b>	<b>Percent Increase/Decrease 2008 - 2009</b>	<b>2010 Lifeline</b>	<b>Percent Increase/Decrease 2009 - 2010</b>	<b>2011 Lifeline</b>	<b>Percent Increase/Decrease 2010 - 2011</b>
853,520	899,112	5.3%	815,615	-9.3%	712,543	-12.6%

*ii. Link Up Service*

In conjunction with Lifeline, participating carriers offer an installation discount, Link Up service, to qualified low-income customers that provides a discount of up to \$30 for installation of residential telephone service, supported by FUSF. As shown in Table 7, this discount of the non-recurring installation charge has supported the installation of telephone service for a large number of qualifying consumers.

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<sup>39</sup> P.U.C. SUBST. R. 26.417, *Designation of Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)* and P.U.C. SUBST. R. 26.418, *Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds..*

<sup>40</sup> P.U.C. SUBST. R. 26.419, *Telecommunication Resale Provides Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)for Lifeline Service.*

<sup>41</sup> Solix – Low-Income Discount Administrator (LIDA).

**Table 7 - Link Up Enrollments, 2008-2011<sup>42</sup>**

<b>2008 Link-Up</b>	<b>2009 Link-Up</b>	<b>Percent Increase/ Decrease 2008 - 2009</b>	<b>2010 Link-Up</b>	<b>Percent Increase/ Decrease 2009 - 2010</b>	<b>2011 Link-Up</b>	<b>Percent Increase/ Decrease 2010 - 2011</b>
240,154	222,866	-7.1%	197,694	-11.3%	136,237	-31.1%

## 2. Choice of Providers

The increased footprint of wireless providers, cable companies and VoIP providers has generally increased the availability of BLTS over and above what has been traditionally provided by ILECs. Moreover, the availability of peripheral services, features, and functionality provided in conjunction with BLTS has also become more widespread. Rural areas, with higher infrastructure costs and smaller populations, have not attracted robust local exchange competition, but they have, in many instances, been afforded the options of cable, wireless, or satellite telecommunications service as alternatives to consider when making a choice for telecommunications service. The provision of VoIP service appears to be increasing for business customers that use a variety of data and high-speed transmission services.

Texas, like the rest of the country, has experienced an explosion in the number of wireless customers – in June 2011, nearly 91 percent of the population in Texas had wireless phones. In June 2009, there were approximately 21.4 million mobile wireless telephone subscribers in Texas. By June 2011, that number increased to approximately 23.5 million subscribers for an increase of almost 10 percent over a two-year period.<sup>43</sup> Mobile voice and data services have been very popular, and the addition of broadband and video service applications to the wireless product may continue to change the telecommunications landscape over the next ten years and increase the level of subscribership levels overall.

As seen in the Table 8 below<sup>44</sup>, there were 296 municipalities in Texas that had at least 3 providers of residential service. Similarly for business providers, there were 312 municipalities in Texas that had at least 3 providers of business service. Not every service provider provides both residential and business service. The data shown in Table 8 below encompasses a total of 1106 municipalities in Texas. For comparison, there are a total of 1752 places in Texas consisting of 1214 incorporated places and 538 census designated places.<sup>45</sup> It should be noted that the data used from the PUC Website to create the Tables seen below does not include wireless providers.

<sup>42</sup> Universal Service Administrative Company (USAC).

<sup>43</sup> *Local Telephone Competition Report* (Status of June 2011) at Table 18 (June 2012).

<sup>44</sup> Source – PUC Website:

[http://www.puc.state.tx.us/consumer/phone/providers/Search\\_Phone.aspx](http://www.puc.state.tx.us/consumer/phone/providers/Search_Phone.aspx)

<sup>45</sup> Source – [http://www.census.gov/geo/www/guidestloc/st48\\_tx.html](http://www.census.gov/geo/www/guidestloc/st48_tx.html)

**Table 8 - Number of Landline Residential Service Providers in Texas Municipalities as of June 2012**

<b>Range of Residential Service Providers</b>	<b>Number of Municipalities</b>
1-2	497
3-5	296
6-10	225
11-15	68
16-20	16
21-30	3
31-35	1

**Table 9 - Number of Landline Business Service Providers in Texas Municipalities as of June 2012**

<b>Range of Business Service Providers</b>	<b>Number of Municipalities</b>
1-2	368
3-5	312
6-10	198
11-15	101
16-20	55
21-25	34
26-30	15
31-40	10
41-50	4
51-60	2

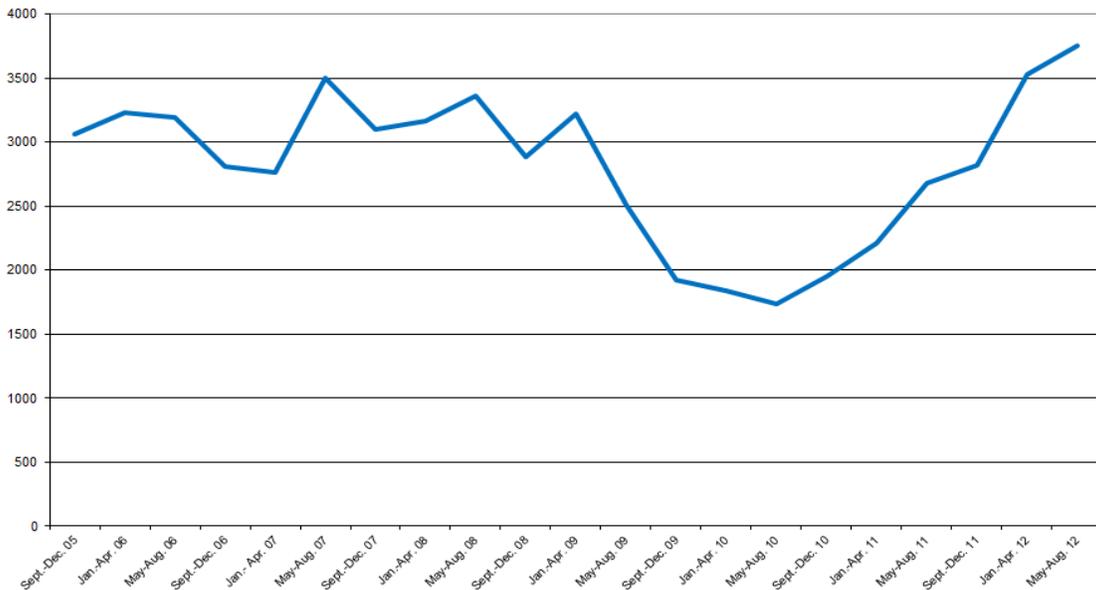
### III. CUSTOMER PROTECTION/COMPLAINT ISSUES

Commission rules permit consumers to complain to the Commission about their utility service, and the Commission is required to keep records of the complaints. This chapter discusses the number and types of complaints received.

#### A. Complaints Received

As shown in the figure below, complaints remained steady from December 2007 through April 2009. A decline in the number of complaints began in May 2009 and continued through August 2010 with an increase showing from January 2011 through August 2012.

**Figure 10 - Total Telephone Complaints Received September 2005 – August 2012**

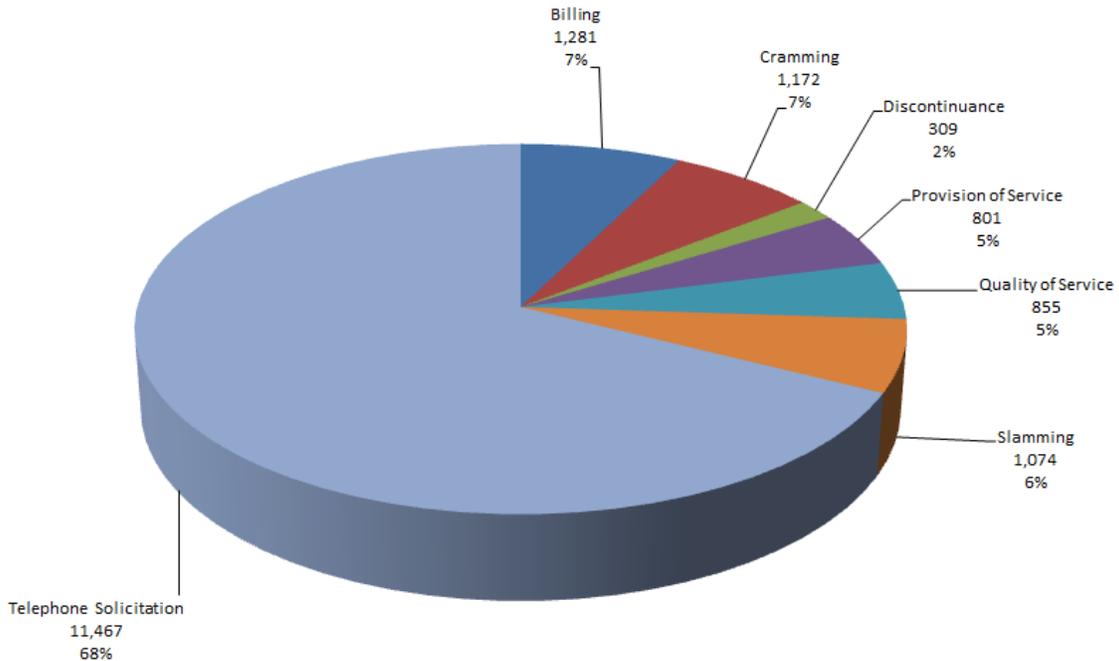


#### B. Type of Complaints

A total of 16,959 telecom complaints were received over the two-year period from September 2010 through August 2012. Complaints related to the “Texas No Call List” continue to constitute the largest category of telecommunications complaints at 68%. This is an 82% increase when compared with the previous period of September 2008 through August 2010. Quality of Service complaints increased by 14% over the previous period.

The decline in telephone complaints from September 2009 to August 2010 is likely due to customers switching from BLTS to mobile wireless and broadband services. With the number of wireless subscribers increasing there has been a decrease in land-line subscribers. Because these advanced technologies are not under the jurisdiction of the Commission, customers wishing to file complaints regarding mobile wireless and broadband services must be referred to the FCC for assistance.

**Figure 11 - Telecommunications Complaints Received:  
September 2010 – August 2012**



## IV. COMPETITION IN BROADBAND AND CABLE/VIDEO MARKETS

### A. Broadband Market

In today's digital world, broadband represents an increasingly important measure of competition and services available in the telecommunications market. Broadband services provide a platform for communications firms to offer information content, such as entertainment and video and business services involving data transfer. Services such as video, voice, or Internet are no longer limited by the type of delivery. All of these services are composed of bytes of information that can be transported over wire, cable, or through the air. Therefore as broadband services expand, they become increasingly important to the competitive environment of telecommunications service in Texas.

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 233 percent from 2005 to 2011 demonstrating a high rate of adoption of broadband service as its price continues to drop to a level that more Texans can afford.<sup>46</sup>

As shown in Table 10, the number of broadband subscribers in Texas has grown from approximately 1 million in June 2002, to more than 17.4 million as of June 2011. In June 2011, Texas ranked second in the nation with respect to number of high-speed lines (including mobile broadband connections).<sup>47</sup>

**Table 10 - Broadband Subscribers in Texas as Compared to Other States (000s)<sup>48</sup>**

State	Jun. 2002	Jun. 2003	Jun. 2004	Jun. 2005	Jun. 2006	Jun. 2007	Jun. 2008	Jun. 2009	Jun. 2010	Jun. 2011	Percent Change 2008/2011
California	2,527	3,378	4,609	5,955	9,395	14,447	12,649	14,691	18,779	26,029	206%
Texas	1,015	1,571	2,204	2,944	4,357	6,856	7,484	9,214	12,420	17,487	233%
New York	1,365	1,891	2,350	3,068	4,855	6,797	7,405	7,986	9,988	13,664	185%
Florida	1,103	1,635	2,237	2,958	4,408	6,349	6,729	7,571	9,479	12,720	189%
Illinois	526	841	1,271	1,817	2,666	4,305	4,265	4,843	6,274	8,645	202%
New Jersey	654	925	1,195	1,605	2,656	4,150	3,517	3,983	4,921	6,529	185%
Pennsylvania	502	756	1,124	1,579	2,647	4,121	4,225	4,775	6,067	8,212	194%
National	15,788	22,995	31,951	42,518	65,271	100,922	102,043	116,374	149,531	206,124	202%

<sup>46</sup> *Internet Access Services: Status as of June 30, 2011* at Table 18, (June 2012) (*Internet Access Services Report*). Available online at: [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

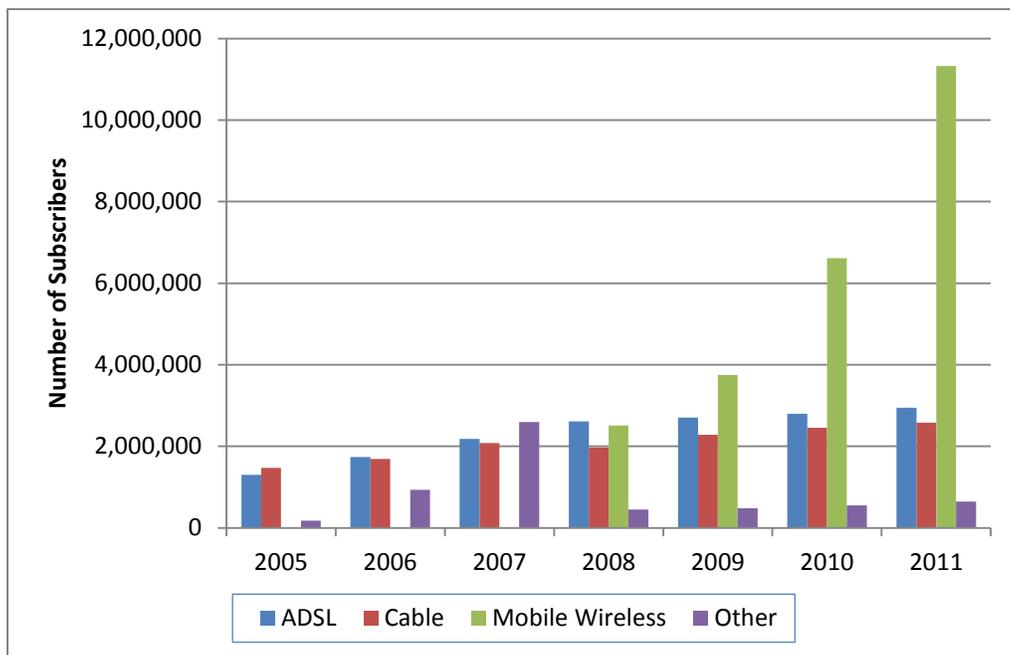
<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

Broadband service is principally being offered by local exchange carriers, cable companies and wireless companies. Local exchange companies use digital subscriber line (DSL) technology to provide service to its customers. 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 coaxial facility used to transmit video to also transmit broadband service. Other media for broadband service include symmetric DSL (SDSL), fixed wireless, satellite, Fiber-to-the-Home (FTTH), broadband over power lines (BPL) and other wireline technology which include all copper-wire based technologies other than DSL technologies such as Ethernet over copper and T-1 lines.

Figure 11 depicts the level of subscribership to various technologies used in providing broadband service from 2005 to 2011. Although customers have several options available to them, mobile wireless service holds the largest share of the broadband subscribership. This trend began in 2007 when mobile wireless was classified as “other” technology. Since that time, mobile wireless broadband subscribership has rapidly grown from 2.5 million connections in 2008 to 11.3 million connections in 2011 which represents a 351 percent increase in just three years. This increase in market share could be attributed to cheap pricing plans as well as the ever increasing smartphone penetration rates and a host of new devices such as tablets, netbooks, and mobile internet devices (MIDs).

**Figure 12 - Broadband Subscribers in Texas<sup>49</sup>**



<sup>49</sup> *Id.*

In this year's report, the number of broadband providers in Table 11 includes fixed and mobile broadband providers and was calculated using publicly available FCC data. As compared to the last scope report, there is a greater number of counties served by multiple broadband providers in 2010. This increase could be attributed to the difference in data sources and the inclusion of mobile wireless providers in determining the number of broadband providers. As shown in Table 11, customers in an increasing number of counties have multiple choices of providers when subscribing to broadband service. Since 2009, the number of counties served by as few as two providers and as high as 24 providers have remained fairly constant. In 2009, there were 19 counties that had more than 24 broadband providers. By 2011, that number had increased to 29. According to the latest data, there are now no counties in Texas where broadband service is unavailable or served only by a single broadband provider. Note, however that not all customers in each county served by multiple providers may have access to all broadband providers.

**Table 11 - Number of Broadband Providers in Texas<sup>50</sup>**

Number of Providers	Number of Counties June 2009	Number of Counties June 2010	Number of Counties June 2011
0	0	0	0
1	1	0	0
2-6	33	31	29
7-15	158	154	149
16-24	43	43	47
24+	19	26	29

## **B. Cable/Video Market**

PURA Chapter 66, enacted in 2005, provides for a state-issued certificate of franchise authority (SICFA) to new entrants as well as incumbent cable providers wishing to compete in new markets or obtain certificates in existing serving areas after the expiration of their current franchises. However, pursuant to a judgment of United States District Court for the Western District of Texas invalidating most of PURA § 66.004, an incumbent cable service provider or video provider may elect to terminate its current municipal franchise prior to its expiration date and seek a SICFA by providing written notice to the Commission and affected municipality.<sup>51</sup> Appendix C lists the companies issued new SICFAs from September 2010 through August 2012.

Collectively, video and cable service providers spent over \$1.5 billion in Texas in 2007 improving and expanding their cable and broadband infrastructure that carries cable and video service. By the end of 2007, the number of occupied homes having the

<sup>50</sup> <http://transition.fcc.gov/wcb/iatd/comp.html> - Census Tract Information Mapped for Internet Access Services faster than 200 kbps in at least one direction.

<sup>51</sup> *Texas Cable Association v. Hudson, No. A-05-CV-721-LY (W. D. Tex. May 31, 2012).*

potential of being served by a cable or video service operator promptly was approximately 18 million and the total number of subscribers to cable/video service was approximately 4 million. Video and cable service providers continue to improve and expand their cable and broadband infrastructure that carries cable and video service.

As shown in Table 12, customers in an increasing number of counties have multiple choices of cable and video service providers. The number of cable and video service providers in Texas counties continues to increase. In 2008, there were 185 counties with either one or no cable and video service provider; however, by 2012 that number has decreased to 72 counties. The number of counties with at least two providers has increased from 52 counties in 2008 to 114 counties in 2012. There are 2 counties in 2012 that are served by at least 12 cable and video service providers. It should be noted, however, that these cable and video service providers do not necessarily offer service throughout the counties they are serving.

**Table 12 - Number of Cable and Video Providers in Texas<sup>52</sup>**

Number of Providers	Number of Counties in 2008	Number of Counties in 2010	Number of Counties in 2012
0	63	54	24
1	122	84	48
2-3	52	84	114
4-6	15	26	51
7-11	2	6	15
12-14	0	0	2

## C. Conclusion

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In sum, the broadband market showed tremendous growth in Texas over the last two years with the most notable increase in market share seen in lines served by wireless providers. Competition in the cable and video market is increasing in many Texas counties as a result of numerous providers receiving franchises to operate under PURA Chapter 66.

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<sup>52</sup> State-issued certificate of franchise authority filed with the PUCT. Available online at: <http://www.puc.state.tx.us/cable/directories/index.cfm>.

## V. SIGNIFICANT COMMISSION ACTIVITIES: 2010-2012

### A. Legislative Implementation

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#### 1. Rulemaking Activities

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In 2011, the 82nd Legislature enacted Senate Bill 980 (SB 980), which required the Commission to “initiate one or more proceedings to review and evaluate whether the universal service fund accomplishes the fund’s purposes, . . . or whether changes are necessary to accomplish those purposes” and required the Commission to complete any such proceedings no later than November 1, 2012. In response, the Commission initiated several proceedings to implement SB 980’s mandate.

a. *Amendments to Substantive Rule 26.403, relating to the Texas High Cost Universal Service Plan*

P.U.C. Project No. 39937 was initiated to review the THCUSP. The THCUSP provides assistance to the four largest telecommunications service providers, as well as eligible telecommunications providers (ETPs) serving in the territory of the largest carriers, in providing BLTS at reasonable rates in high-cost areas. This project resulted in Commission-adoption, on June 13, 2012, of a new rule governing the calculation of support provided to carriers in the large company areas. Pursuant to the new rule, the Commission initiated a contested case proceeding (Docket No. 40521) to determine a “reasonable rate” for BLTS. The difference between this reasonable rate and each ILEC’s current rate will then be calculated, and the amount of additional revenue that would result if each carrier were to charge the reasonable rate will be deducted from each carrier’s support under the THCUSP over a four-year transition period. The ILECs will be provided with the opportunity, but are not required, to increase rates for BLTS to the reasonable rate as support from the THCUSP is reduced. Annually, increases to monthly BLTS rates cannot exceed \$2.00. The new rule also provides an option for an ILEC to elect to reduce its support from the THCUSP to zero over a five-year period. Local exchange carriers electing this option still will be subject to the reductions described above, but may offset a portion of such reductions with reductions in support resulting from the deregulation of telephone exchanges that meet the criteria outlined in PURA. The contested case proceeding required under the new rule was initiated on July 9<sup>th</sup>, 2012, and the Commission approved a settlement agreement on September 28, 2012, with THCUSP support reductions beginning on January 1, 2013. The settlement agreement established a revised reasonable rate for BLTS of \$24.00 per month for AT&T Texas, Verizon and CenturyLink fka Embarq. For Windstream Communications Southwest, the new rate was determined to be \$23.50 per month. Each of these ILECs is permitted the opportunity to request to raise its monthly residential BLTS rates by up to \$2.00 per year

for a four-year period up to the applicable reasonable rates. The rate increases will be done in conjunction with a reduction in the THCUSP over the same four-year period.<sup>53</sup>

In addition, P.U.C. Project No. 40342 was initiated to establish, by rule, the requirements for ILECs to demonstrate their need for support from the THCUSP. This rule is expected to be adopted by the Commission during the first quarter of 2013. During 2013, a contested case proceeding would follow to implement the provisions of the new rule. The results of the new rule and contested case proceeding would be implemented on January 1, 2014.

*b. Amendments to Substantive Rule 26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan*

P.U.C. Project No. 39938 was initiated to review the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This program provides assistance to the small companies that serve the most rural areas of the state. A new rule was adopted by the Commission on November 16, 2012 to make changes in the SRILEC USP similar to those adopted for the THCUSP, with reductions in support offset by increases in rates for BLTS over a transitional period. A subsequent contested case proceeding will be initiated to implement the provisions of the rule in January 2013. The results of the new rule and contested case proceeding are anticipated to be implemented on January 1, 2014.

During 2013, a new rulemaking project will be initiated to provide the requirements for the larger small ILECs to demonstrate their need for support from the SRILEC USP. The new rule is expected to be adopted by the Commission during the last quarter of 2013, followed by a contested case during 2014 which would implement the provisions in the new rule. The results of the new rule and contested case proceeding are anticipated to be implemented on January 1, 2015.

*c. Amendments to Substantive Rule 26.420, regarding accountability and transparency of administration of the Texas Universal Service Plan*

P.U.C Project No. 39939 was opened to implement the portion of Senate Bill 980 that ordered the Commission to undertake a proceeding to improve transparency and accountability in the administration of the TUSF. This rulemaking amended Chapter 26, Subchapter P (Relating to Administration of the TUSF) by the addition of § 26.402, which requires carriers receiving both TUSF and FUSF subsidies to provide a five-year plan of upgrades to supported areas and annual updates to the plan. The new rule, which was adopted by the Commission on October 17, 2012, also requires the Commission to publish quarterly cash flow reports on the TUSF.

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<sup>53</sup> *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. Subst. R. 26.403*, Docket No. 40521, Order (September 28, 2012).

d. *Amendments to Substantive Rules relating to Telecommunications Service to conform to 2011 Legislation.*

During the 82nd Legislature, the Texas Legislature passed Senate Bills (S.B.) 773, 980, and 983, and House Bills (H.B.) 2295 and 2680. Project No. 39585 was opened to amend Commission substantive rules relating to telecommunications service to conform to the pertinent language of these bills as described below:

**S.B. 980** relating to communications services and markets: (1) prohibited the Commission from ordering additional Extended Area Service (EAS) areas or expanding existing toll-free local calling areas; (2) prohibited the Commission from imposing requirements or standards on a telecommunications utility that are more burdensome than those on a public utility; and (3) stated that ILECs may not receive support from the universal service fund for deregulated markets except in certain limited circumstances.

Additionally, S.B. 980 had provisions that allowed for more flexibility for deregulated and transitioning companies with respect to pricing flexibility, notice of tariff changes; quality of service standards, and filing of earnings monitoring reports with the Commission under certain conditions. Additionally, the bill prohibited the Commission from reregulating markets or companies that have been deregulated and changed the standards for determining if a market should be deregulated.

**S.B. 773** relating to telecommunications service discounts for educational institutions, libraries, hospitals, and telemedicine services added hospitals to the list as an institution for which private network services shall be provided.

**S.B. 983** relating to the elimination of certain requirements for certain customer-specific communication contracts removed the requirement that these contracts be approved and filed with the Commission.

**H.B. 2295** relating to the administration of the universal service fund separated the TUSF high cost fund into two plans: (1) the Texas High Cost Universal Service Plan (16 T.A.C. Section 26.403) and (2) the Small and Rural Incumbent Local Exchange Company Universal Service Plan (16 T.A.C. Section 26.404).

**H.B. 2680** relating to the procedure for certain small local exchange companies to propose to offer certain services or to make a minor change in a rate or tariff provided that a cooperative corporation or a company that has, together with all affiliated ILECs, fewer than 31,000 access lines in service in this state when offering certain services or making minor rate changes is required to only provide the notice required in Section 53.304 Subsection B, not later than the 10th day before the effective date of the proposed change.

## 2. Other Legislative Implementation Projects:

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### *Adjustments to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan pursuant to PURA§56.032*

In 2011, the 82<sup>nd</sup> Legislature, Regular Session enacted new PURA section 56.032 which established two options for eligible small and rural incumbent local exchange carriers (Small ILECs) to elect to modify the methodology for calculating their disbursements from the SRILEC USP. An eligible Small ILEC was required to file a written request with the Commission to avail itself of either option. Under the first option, a Small ILEC could submit only one request on or before December 31, 2011 to elect to receive monthly per line support amounts based on the company's annualized support amount for the calendar year 2010. Under the second option which was available only to a Small ILEC that is not an electing Chapter 58 or 59 company, the Small ILEC could elect to receive, for the first 12-month period beginning September 1, 2011, a monthly per line support amount that was calculated by adjusting its support amount established in Docket No. 18516 by the annual cumulative Consumer Price Index (CPI) change since 1999. Also, under the second option, for the subsequent 12-month period, an eligible Small ILEC could elect to receive a monthly support amount that was calculated by adjusting its 2011 annual support amount by the most recent annual consumer price index change.

In October 2011, nine small ILECs elected to receive, for the 12-month period starting September 2011, support amounts equal to their calendar year 2010 support amounts.<sup>54</sup> Similarly, 45 Small ILECs elected to receive, for the 12-month period starting September 2011, their support amounts established in Docket No. 18516 adjusted by a cumulative CPI change of 33.61%.<sup>55</sup> In September 2012, these same 45 small ILECs that had elected the second option in the previous year received the support amounts established in October 2011, adjusted by a CPI change of 3.2%.<sup>56</sup>

## B. Other Significant Commission Actions

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### 1. Deregulation of ILEC markets

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The Commission regulates the ILECs that serve in Texas under one of five different regulatory regimes. The 62 ILECs operating in Texas are listed in Appendix B.<sup>57</sup> Of those 62 companies, ten are regulated under Chapter 58<sup>58</sup> "incentive

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<sup>54</sup> *Adjustments to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.032*, Docket No. 39643 (October 3, 2011).

<sup>55</sup> *Id.*

<sup>56</sup> *Adjustments to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.032*, Docket No. 40447 (September 14, 2012)

<sup>57</sup> *Affidavits of Incumbent Local Exchange Carriers*, Project No. 31869, (October 2005) and *Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831 (October 4, 2005). In these two proceedings, the Commission determined that 59 of these companies would be classified as a "regulated" company.

regulation” and three are regulated under Chapter 59<sup>59</sup> “incentive regulation.” Five cooperatives are partially deregulated under Chapter 53.<sup>60</sup> Three Chapter 58 ILECs are also classified as “transitioning companies” as defined in Chapter 65.<sup>61</sup> The remaining 44 ILECs are regulated under Chapter 52<sup>62</sup> and are subject to the rate of return regulation authority of the Commission.

PURA Chapter 65, enacted in 2005, provided for deregulation of certain ILEC markets. In 2011, SB 980 streamlined the criteria for deregulation of these markets so that markets with a population of less than 100,000 satisfy the test of deregulation if the ILEC can demonstrate that there are at least two unaffiliated competitors providing voice communications without regard to the delivery technology including through Internet Protocol, satellite, or wireless technology. A total of 195 markets have been deregulated since 2005: 36 markets with a population greater than 100,000; 159 markets with a population less than 100,000.<sup>63</sup> Of the 195 markets, 125 markets were deregulated after

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<sup>58</sup> Chapter 58 ILECs are companies that elect to be subject to incentive regulation and agree to make extensive infrastructure commitments under Chapter 58 of PURA. Chapter 58 companies cannot increase rates for basic network services (i.e. flat rate basic residential local service), but can increase rates for non-basic services (i.e. caller ID). Chapter 58 also provides the framework for a transition from the traditional rate-of-return on invested capital to a fully competitive telecommunications market place.

<sup>59</sup> Chapter 59 ILECs are companies that have elected to make an infrastructure commitment under the condition that the company would not be subjected to rate-of-return regulatory review. Chapter 59 companies cannot increase rates for the services it offers.

<sup>60</sup> Chapter 53 regulation is available only to certain cooperative corporations and allows the electing cooperative to become partially deregulated. Chapter 53 provides electing cooperatives the ability to raise its rate for any service as long as the cooperative follows certain requirements outlined in Chapter 53.

<sup>61</sup> Chapter 65 ILECs are companies whose markets or a portion of their markets are fully competitive. Unlike Chapter 58 companies, these companies are allowed to increase rates for basic network services through an informational notice filing.

<sup>62</sup> Chapter 52 ILECs are companies that have elected not to be regulated pursuant to PURA Chapters 58, 59, or 65. Chapter 52 companies may only increase rates if done so: 1) under another chapter of PURA such as Chapter 53; 2) through a rate case; or 3) as authorized by a change-of-law.

<sup>63</sup> *Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831 (December 28, 2005). Effective January 1, 2006 fifty-three markets (exchanges) were declared deregulated, thirty-nine SBC markets, eleven Verizon markets and three Sprint-Centel markets; *AT&T Texas' Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) with Populations Less than 30,000 Should Remain Regulated*, Docket No. 32977. On October 17, 2006, an Order was issued by the Commission deregulating seventeen additional SBC and Centel markets; *Petition for Review of Monthly Per-Line Support Amounts from the Texas High-Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. SUBST. R. 26.403*, Docket No. 34723, Final Order (April 25, 2008). In Docket No. 34723, the Hutto Exchange served by CenturyLink (Central Telephone of Texas) was removed from PURA Chapter 65 deregulation and re-regulated under PURA Chapter 58 in April 2008 as part of the settlement reached by the parties; *Petition of AT&T Texas to Determine Whether Certain Markets with Population Less Than 100,000 Should Remain Regulated*, Docket No. 39962. On February 24, 2012, an Order was issued by the Commission deregulating forty-one additional AT&T Texas markets; *Petition of Verizon Southwest to Deregulate Certain Markets*, Docket No. 40398. On July 30, 2012, an Order was issued by the Commission deregulating fifty-seven additional Verizon markets; *Petition of Verizon Southwest to Deregulate Certain Markets*, Docket No. 40646. On

the enactment of SB 980. These markets are served by three ILECs: AT&T Texas, Verizon, and Central Telephone Company of Texas, Inc. d/b/a Century Link. These companies are classified as “transitioning companies” because at least one, but not all the company’s markets have been deregulated.<sup>64</sup> The vast majority of the markets that were deregulated after the enactment of SB 980 have a population of less than 30,000. In August 2012, AT&T Texas requested deregulation of sixty-three additional markets for which Commission decision is pending.<sup>65</sup> At present, if the sixty-three AT&T Texas’s exchanges that are pending commission decision are included, more than half of AT&T Texas’s exchanges would be deregulated.

## 2. Rates for Pole Attachments

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PURA § 54.204 imposes non-discrimination requirements on municipalities or municipally owned utilities with respect to the rates, terms, and conditions for pole attachments, as well as a rate cap for pole attachment charges. On January 23, 2009, CPS Energy filed a petition against Southwestern Bell Telephone Company, d/b/a AT&T Texas (“AT&T”) and Time Warner Cable San Antonio, L.P. (“TWC”) concerning the collection of pole attachment charges by CPS Energy for attachment of facilities on CPS Energy’s electricity poles. Over the course of three and a half years, the case has evolved significantly from an enforcement action to a declaratory judgment matter regarding three central issues: 1) Do CPS Energy’s pole-attachment rates and terms comply with the non-discrimination provisions of PURA §54.204? 2) Do CPS Energy’s pole-attachment rates comply with the rate cap set forth in PURA§54.204? 3) What methodology should be applied to the calculation of pole-attachment rates on a going-forward basis? Regarding the first issue, the Commission determined that at times between January 1, 2005 and the end of billing year 2010, CPS Energy’s rates and terms had not complied with the non-discrimination provisions of PURA § 54.204. On the second issue, the Commission found that there were years during this time period when CPS Energy’s pole attachment rates exceeded the rate cap set forth in PURA § 54.204. As to the third issue, which pertained to the methodology going forward, the Commission determined that the maximum allowable pole-attachment rate for a given year must be based on the cost data specifically applicable to that year, and that after June 8, 2011, the rate charged by CPS Energy may not exceed 66% of the calculated maximum allowable pole-attachment rate.<sup>66</sup>

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October 26, 2012, an Order was issued by the Commission deregulating twenty-seven additional Verizon markets;

<sup>64</sup> *Staff’s Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*, Docket No. 31831, Final Order (December 28, 2005). In this project AT&T, Verizon and CenturyLink (Central Telephone of Texas) were classified as “transitioning” companies.

<sup>65</sup> *Petition of AT&T Texas to Determine Whether Certain Markets with Population Less Than 100,000 Should Remain Regulated*, Docket No. 40631 (August 3, 2012);

<sup>66</sup> *Petition of CPS Energy for Enforcement Against AT&T Texas and Time Warner Cable Regarding Pole Attachments*, Docket No. 36633 (December 13, 2012).

### 3. New Area Code Implementation

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The 512 area code is forecasted to run out of phone numbers by the fourth quarter of 2013 according to the Number Resource Utilization Forecast (NRUF). The North American Number Planning Administration (NANPA), the national administrator for area codes, filed a petition with the Commission recommending the implementation of an all-services overlay of a new area code, 737, for all new phone numbers in the current 512 area code territory. This will require the phased-in implementation of ten-digit dialing for local calls in this territory. On June 28, 2012, the Commission adopted a 13-month implementation schedule leading to an all-services 737 overlay area code with mandatory 10-digit dialing for the 512 area code.<sup>67</sup>

The 13-month implementation schedule complies with standard industry guidelines for area code changes established by the Industry Numbering Committee (INC) and it was supported by a consensus of participating Texas telecommunications carriers. Due to the recently accelerated forecast for number exhaust, the 13-month implementation schedule will complete implementation only three months prior to exhaust. If exhaust were to occur, there would be denial or delay of telecommunications services to the residents and businesses in the 512 area code territory.

Under this schedule, the date to begin mandatory 10-digit dialing for local calls in the 512 area code territory would be June 1, 2013. This schedule would allow six months of network preparation and customer education, as well as six months of permissive dialing, meaning that a customer dialing 7 or 10 digits for a local call would temporarily be able to continue to have their calls completed during this time.

All affected telecommunication providers are required to coordinate the implementation of the all-services overlay area code subject to oversight by NANPA.

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<sup>67</sup> *Numbering Plan Area Code Relief Planning for 512 Area Code*, Project No. 36899, Implementation Order (June 28, 2012).

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## **VI. LEGISLATIVE RECOMMENDATIONS**

### **A. TUSF Cap**

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The Texas Universal Service Fund (TUSF) is funded by assessments on certain receipts of telecommunications providers and a telecommunications provider may recover its TUSF assessments by applying a surcharge to their retail customers' bills. The current surcharge (or assessment rate) is 4.3% of customers' taxable intrastate telecommunications service receipts. In November 2011, the Commission determined that the TUSF assessment rate had to be increased from 3.4% to the current level of 4.3% effective January 1, 2012 in order to meet the current obligations of the fund. The need to increase the assessment rate to meet the fund's obligation was driven by a decline in taxable intrastate telecommunications service receipts, the base amount to which the assessment rate is applied. This decline in telecommunications revenues was largely caused by a decrease in the number of wireline lines, together with decreases in rates for wireline and wireless telephone services.

A recent Commission rulemaking and settled contested case have led to forthcoming reductions in funding to the Texas High Cost Universal Service Plan (THCUSP), but changes to the base amount on which assessments are made cannot be accurately predicted, so it is impossible to determine to what extent the reductions to the THCUSP will offset the decline in assessable telecommunications receipts.

As it is the Commission's preference not to simply continue increasing the assessment on customers' bills, it has considered the need, legality and feasibility of capping the level of the assessment rate or the amount of disbursements from the fund. At a minimum, pertinent sections of PURA that might require modification to allow for such capping include §§56.021, 56.023, 56.031, and 56.026(b). The Commission requests direction from the legislature on this issue.

### **B. Assessment of TUSF Fees on VoIP-based Services**

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PURA§52.002(d) (3) does not require or prohibit assessment of universal service fund fees on VoIP service. PURA §56.022(a) establishes that the TUSF is to be funded by telecommunications providers that have access to the customer base. A VoIP provider is not explicitly listed as a telecommunications provider in the definition of telecommunications provider under PURA §51.002(10). The FCC has yet to rule as to whether VoIP-based services are properly classified as telecommunications service or information service. However, the FCC has ruled that providers using VoIP technology are required to pay into the Federal Universal Service Fund (FUSF) and has issued a Declaratory Ruling which explicitly allows states to assess USF fees on the intrastate portion of VoIP services. It should be noted that if VoIP providers are not required to contribute to the TUSF, it could ultimately have a material adverse impact on the solvency of the fund. However, as discussed above in the section titled "TUSF Cap", a cap on the level of the

assessment rate or the amount of disbursements from the fund would address concerns regarding the solvency of the fund although the Commission would have to limit and prioritize disbursements from the fund. The Commission recommends that the Legislature clarify whether providers should contribute to the TUSF on receipts from voice services provided using VoIP technology and if so, amend PURA §56.022 to require such contributions to the TUSF. Conversely, if the Legislature believes that providers should not contribute to the TUSF on their VoIP-based voice services, the Commission recommends that the Legislature amend §56.022 to expressly prohibit such contribution.

### **C. Transfer of STAP program entirely to DARS with sum specific appropriation from TUSF**

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The Specialized Telecommunications Assistance Program (STAP) is a legislatively mandated, state-wide program that provides financial assistance for the purchase of specialized assistive equipment or services for Texans having disabilities that interfere with their ability to access the telephone network. Currently, the STAP Process is bifurcated between the Department of Assistive and Rehabilitative Services/Office of Deaf and Hard of Hearing Services (DARS/DHHS) and the Commission. Applications for specialized equipment or services are reviewed by DARS/DHHS to determine if the applicant meets the criteria as defined by rule or statute, and qualifying applicants are sent a voucher that may be used to purchase beneficial telecommunication equipment or services. The Commission is responsible for STAP vendor registration and reimbursement and also assists in resolving problems between a STAP voucher recipient and a vendor. The Commission is the administrator of the Texas Universal Service Fund (TUSF), which is the funding source for vendor reimbursements.

The bifurcated process between DARS/DHHS and the Commission causes certain program inefficiencies that result from the program being administered under two sets of agency rules and procedures that may not be entirely congruent. The process would benefit from increased efficiency and effectiveness for the implementing agency, STAP vendors, and program participants if the entire program and process were monitored and overseen by a single agency. Therefore, the Commission would recommend that PURA be amended to transfer all STAP program duties to DARS/DHHS beginning fiscal year 2013. However, as the Commission is the administrator of the TUSF, the Commission would request specific statutory authority to audit vendor reimbursements and transactions and STAP expenditures. Furthermore, the Commission recommends that any Commission rule, policy, or procedure addressing the transferred program continue in effect until amended by DARS/DHHS.

### **D. Elimination of the stand-alone Texas No-Call List Report**

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Currently, §304.201 of the Texas Business and Commerce Code requires the Commission to provide a report to the lieutenant governor and speaker of the house of

representatives on the Texas No-Call List on or before December 31 of each even-numbered year to report the following information for the two-year period ending on August 31 of that year: 1) a statement of the number of telephone numbers included on the Texas No-Call List, the number of lists distributed to telemarketers, and the amount collected from consumers for requests to place telephone numbers and renew entries on the list and from telemarketers for distribution of the list; 2) a list of complaints received by the Commission concerning activities regulated by Chapter 304 of the Texas Business and Commerce Code itemized by type; 3) a summary of any enforcement efforts made by the Commission; and 4) the Commission's recommendations for any changes in the enabling legislation. In the interests of promoting administrative efficiency and streamlining the process, the Commission recommends that the statutory language in §304.201 of the Texas Business and Commerce Code for a stand-alone report on the Texas No Call List be repealed and instead, the Commission be permitted to include all necessary information pertinent to the Texas No-Call List in the Report on the Scope of Competition in Telecommunications Markets of Texas which the Commission is required to submit to the Legislature, pursuant to PURA §52.006, before January 15 of each odd-numbered year.

### **E. Elimination of review of the 911 fees and allocation established by CSEC**

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Health and Safety Code §771.0725 requires the Commission to monitor the establishment of the emergency service fee imposed under Health and Safety Code 771.071 and the equalization surcharge imposed under Health and Safety Code 771.072, including the allocation of equalization surcharge revenue under §771.072(d) and (e). The Commission on State Emergency Communications (CSEC) uses formulas adopted in the Health and Safety Codes to determine the allocations. CSEC is required to file information each year about the fees and allocations. If the Commission determines that a recommended rate or allocation is not appropriate, the Commission is required to provide comments to CSEC, the governor and the Legislative Budget Board regarding appropriate rates and the basis for that determination. Based on the reviews conducted since the adoption of Health and Safety Code §771.0725, the Commission has found the rates and allocations proposed by CSEC to be appropriate and, therefore, has not recommended any adjustments to the fees and allocations to CSEC, the governor and the Legislative Budget Board.

With respect to the 9-1-1 service fee, the 9-1-1 fee for wireless lines was set at \$0.50 in 1997. The Commission's review of the 911 fee is, therefore, limited to the review of CSEC's proposal for 9-1-1 service fee assessed on wireline lines. Currently, the 9-1-1 service fee for wireline fees is set at the same level as the statutorily mandated fee of \$0.50 for wireless lines. Health and Safety Code §771.071(a) authorizes CSEC to impose a 9-1-1 service fee of up to \$.50 on each local exchange access line and equivalent local exchange access line within the state 9-1-1 program area. To date, the Commission has not recommended any reductions to the 9-1-1 fee for wireline lines for three reasons. Any reductions to the 9-1-1 fees for wireline lines will not have a meaningful impact in light of the fact that the share

of wireline lines as compared to wireless lines in Texas is not significant and gradually declining (as of June 2011, there were approximately 9.6 million wireline lines as compared to approximately 23.5 million wireless lines). Secondly, in the interests of ensuring that all telephone subscribers (wireline and wireless) are treated at parity, it is reasonable to assess the same 9-1-1 fees on wireline and wireless lines. Lastly, any reduction in the 9-1-1 fee could result in a reduction in CSEC's 9-1-1 appropriation in the next year and potentially impact the level of 9-1-1 service in the state program.

The Commission has not adjusted the equalization surcharge established by CSEC because the current surcharge of \$.06 conforms to the statute which changed the equalization surcharge from 1% of the charges for intrastate long-distance service to a fixed rate of \$.06. In addition, the Commission has determined the allocation of the equalization surcharge proposed by CSEC to be appropriate because the allocations comply with Health and Safety Code 771.072, Legislative appropriation riders, and follow CSEC rules and policies.

The Commission believes that it is not administratively efficient for the Commission to review CSEC's proposed rates and allocations because such rates are either statutorily mandated or the allocation complies with statutory requirements or the reduction in 9-1-1 fees for wireline fees do not have a meaningful positive impact on revenues and may, instead, discriminate against wireless subscribers and negatively impact CSEC. Therefore, the Commission recommends that the Legislature repeal the language in Health and Safety Code §771.0725 requiring the Commission to monitor and review the establishment of the emergency service fee and the equalization surcharge including the allocation of revenues from such surcharge.

## **F. Pole Attachment Rates**

PURA §54.204 imposes non-discrimination requirements on municipalities or municipally owned utilities with respect to the rates, terms, and conditions for pole attachments, as well as a rate cap for pole attachment charges.

Currently, if the Commission found that a municipality was discriminating between telecommunications providers attaching to the municipality's utility poles, for example, charging one telecommunications provider less than another provider to attach to the same pole, the only remedy the Commission has is to order the discrimination to cease. The Commission cannot order financial remedies to correct for such discrimination. Furthermore, the maximum rates that a municipality could charge to attach to the poles could be significantly higher than the rates that non-municipally owned utilities are charging in Texas. The amount that a telecommunications provider must pay to attach to a utility's poles can have a direct impact on competition in Texas for telecommunications service.

The Commission recommends the Legislature consider 1) establishing the maximum rate that a municipality may charge for attaching to municipally owned or operated utility poles in Texas, and 2) giving the Commission the authority to rectify discrimination between telecommunications providers attaching to municipally owned or operated poles with financial remedies.

## Appendix A. Research Methodology

This appendix discusses the methodology used by the Commission for compiling data for the 2013 Scope of Competition Report. This year the Commission did not collect data from incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) operating in Texas. Instead, the Commission gathered data from reports published by the Federal Communications Commission in *Local Telephone Competition* report and the *Internet Access Services* report. Data from the *Local Telephone Service* Report was used to develop the market share of the switched access lines and VOIP subscriptions of ILECs and Non-ILEC providers operating in the state of Texas for 2010 and 2011. Data from the *Internet Access Services* report 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). Data from this report has enabled the Commission to develop time-series charts on broadband use in Texas.

The Commission relied on the *Wireless Substitution: Early Release of Estimates from the National Health Interview Study Survey, July-December 2011, National Center for Health Statistics, June 2012*,<sup>68</sup> to determine an approximate percentage of wireless-only households for 2010 and 2011. The Commission used the national percentage of wireless-only households as a proxy because specific information regarding percentage of wireless-only households in Texas has not been updated since 2007. The Commission finds the use of the national percentage of wireless-only households to be a reasonable proxy for percentage of wireless-only households in Texas because the nationwide percentage selected appears to underestimate the percentage of wireless-only households in Texas when considered in the context of published data on the percentage of adults in Texas that live in wireless-only households. The national percentage of wireless-only households in 2010 and 2011 were then factored into a calculation with the data from the FCC reports on ILEC/Non-ILEC switched access and interconnected VoIP lines to determine the proportion of mobile wireless service users who had moved from using traditional wireline access to using only wireless service.

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<sup>68</sup> Available from: <http://www.cdc.gov/nchs/nhis.htm>.

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**Appendix B - Incumbent Local Exchange Carriers**

<b>ILECs</b>	<b>Chapter 65 Status</b>	<b>Incentive Regulation Election/PURA Chapter</b>
AT&T Texas (formerly Southwestern Bell)	Transitioning	Chapter 58
CenturyLink – Central Telephone Co. of Texas, Inc.	Transitioning	Chapter 58
Verizon Southwest	Transitioning	Chapter 58
Alenco Communications (d/b/a A.C.I.)	Regulated	Chapter 52
Big Bend Telephone Company, Inc.	Regulated	Chapter 52
Blossom Telephone Company, Inc.	Regulated	Chapter 52
Border to Border	Regulated	Chapter 52
Brazoria Telephone Company	Regulated	Chapter 52
Brazos Telecommunications, Inc.	Regulated	Chapter 52
Brazos Telephone Cooperative, Inc.	Regulated	Chapter 52
Cameron Telephone Company	Regulated	Chapter 52
Cap Rock Telephone Cooperative, Inc.	Regulated	Chapter 52
Central Texas Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
CenturyTel of Lake Dallas, Inc.	Regulated	Chapter 59
CenturyTel of Northwest Louisiana, Inc.	Regulated	Chapter 52
CenturyTel of Port Aransas, Inc.	Regulated	Chapter 59
CenturyTel of San Marcos, Inc.	Regulated	Chapter 59
Coleman County Telephone Cooperative, Inc.	Regulated	Chapter 52
Colorado Valley Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Comanche County Telephone Company, Inc.	Regulated	Chapter 52
Community Telephone Company, Inc.	Regulated	Chapter 52
Consolidated Communications of Texas, Company	Regulated	Chapter 58
Consolidated Communications of Fort Bend County	Regulated	Chapter 58
Cumby Telephone Cooperative, Inc.	Regulated	Chapter 52
Dell Telephone Cooperative, Inc.	Regulated	Chapter 52
Eastex Telephone Cooperative, Inc.	Regulated	Chapter 52
Electra Telephone Company, Inc.	Regulated	Chapter 52
CenturyLink – United Telephone Co.	Regulated	Chapter 58
ENMR Telephone Cooperative, Inc.	Regulated	Chapter 52
Etex Telephone Cooperative, Inc.	Regulated	Chapter 52
Five Area Telephone Cooperative, Inc.	Regulated	Chapter 52
Ganado Telephone Company, Inc.	Regulated	Chapter 52
Guadalupe Valley Telephone Cooperative,	Regulated	Chapter 53 (Partially

ILECs	Chapter 65 Status	Incentive Regulation Election/PURA Chapter
Inc.		Deregulated)
Hill Country Telephone Cooperative, Inc.	Regulated	Chapter 52
Industry Telephone Company	Regulated	Chapter 52
Windstream Communications Kerrville (d/b/a Kerrville Telephone Co.)	Regulated	Chapter 58
La Ward Telephone Exchange, Inc.	Regulated	Chapter 52
Lake Livingston Telephone Company	Regulated	Chapter 52
Leaco Rural Telephone Cooperative, Inc.	Regulated	Chapter 52
Lipan Telephone Company	Regulated	Chapter 52
Livingston Telephone Company	Regulated	Chapter 52
Mid-Plains Rural Telephone Cooperative, Inc.	Regulated	Chapter 52
Nortex Communications	Regulated	Chapter 52
North Texas Telephone Company	Regulated	Chapter 52
Panhandle Telephone Cooperative, Inc.	Regulated	Chapter 52
Peoples Telephone Cooperative, Inc.	Regulated	Chapter 52
Poka-Lambro Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Riviera Telephone Company, Inc.	Regulated	Chapter 52
Santa Rosa Telephone Cooperative, Inc.	Regulated	Chapter 52
South Plains Telephone Cooperative, Inc.	Regulated	Chapter 52
Southwest Arkansas Telephone Cooperative, Inc.	Regulated	Chapter 52
Southwest Texas Telephone Company	Regulated	Chapter 52
Windstream Sugarland (d/b/a Sugar Land Telephone Company)	Regulated	Chapter 58
Tatum Telephone Company	Regulated	Chapter 52
Taylor Telephone Cooperative, Inc.	Regulated	Chapter 52
Texas Windstream (d/b/a Texas Alltel, Inc.)	Regulated	Chapter 58
Valley Telephone Cooperative, Inc.	Regulated	Chapter 53 (Partially Deregulated)
Windstream Communications Southwest (d/b/a Valor Telecommunications of Texas, L.P.)	Regulated	Chapter 58
West Plains Telecommunications	Regulated	Chapter 52
West Texas Rural Telephone Cooperative, Inc.	Regulated	Chapter 52
Wes-Tex Telephone Cooperative, Inc.	Regulated	Chapter 52
XIT Rural Telephone Cooperative, Inc.	Regulated	Chapter 52

**Appendix C - State-Issued Certificates of Franchise Authority (SICFAs) Issued:  
September 2010-August 2012**

<b>Company Name</b>	<b>Date Granted</b>	<b>Type</b>
SPTC Telecom, Ltd.	8/27/2012	Cable & Video Service
Strategic Cable Technologies, LP	11/30/2011	Cable Service
Plateau Telecommunications, Inc. d/b/a Plateau	11/18/2011	Cable and Video Service
Sendero Networks, LLC	10/4/2011	Cable and Video Service
Mid-Plains Rural Telephone Cooperative, Inc. d/b/a Mid-Plains Communications	10/3/2011	Cable and Video Service
US Cable of Coastal - Texas, LP	9/27/2011	Cable Service
Nortex Communications	7/8/2011	Cable and Video Service
Zoom Media, LLC.	6/1/2011	Cable Service
Bay City Cablevision, LP	12/28/2010	Cable & Video Service
Bay City Cablevision, LP	1/7/2001	Cable & Video Service
Texas Mid-Gulf Cablevision, LP	12/21/2010	Cable & Video Service
Texas Mid-Gulf Cablevision, LP	1/5/2011	Cable & Video Service
Pride Network, Inc. d/b/a NTS Communications	12/16/2010	Video Service
Allegiance Communications, LLC	12/9/2010	Cable & Video Service

Source: *State-Issued Certificate of Franchise Authority Directory*, available at <http://www.puc.state.tx.us/industry/communications/directories/Default.aspx>