

---

HOUSE COMMITTEE ON REGULATED INDUSTRIES

---



January 30, 2009

Phil King  
Chairman

P.O. Box 2910  
Austin, Texas 78768-2910

The Honorable Tom Craddick  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Regulated Industries of the Eightieth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-first Legislature.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wayne Christian", written over a horizontal line.

Wayne Christian

A handwritten signature in black ink, appearing to read "Rene Oliveira", written over a horizontal line.

Rene Oliveira

A handwritten signature in black ink, appearing to read "Will Hartnett", written over a horizontal line.

Will Hartnett

John Smithee

A handwritten signature in black ink, appearing to read "Phil King", written over a horizontal line.

Phil King

Sylvester Turner

A handwritten signature in black ink, appearing to read "Joe Crabb", written over a horizontal line.

Joe Crabb

Joe Straus

A handwritten signature in black ink, appearing to read "David Swinford", written over a horizontal line.

David Swinford

Wayne Christian  
Vice-Chairman

Members: Sylvester Turner, Rene Oliveira, Joe Crabb, Will Hartnett, Joe Straus, John Smithee, David Swinford

## **Introduction**

On November 30, 2007, The Honorable Tom Craddick, Speaker of the Texas House of Representatives, issued six interim charges to the House Committee on Regulated Industries. This report outlines the committee's examination of the issues, presents an objective view of the facts and data obtained by the committee, raises legislative concerns, and summarizes the recommendations of the committee with regard to its interim charges.

Pursuant to House Rules, the Committee has jurisdiction over all matters pertaining to:

1. The regulation and deregulation of electric utilities and the electric industry;
2. The regulation and deregulation of telecommunication utilities and the telecommunication industry;
3. The regulation of science and technology, including telecommunication, electronic technology, and automated data processing;
4. Electric utility regulation as it relates to energy production and consumption;
5. Pipelines, pipeline companies, and all others operating as common carriers in the state;
6. The regulation and deregulation of other industries not specifically assigned to another committee under these rules; and
7. The Public Utility Commission of Texas, the Office of Public Utility Counsel, and the Telecommunications Infrastructure Fund Board.

The Committee membership includes Chairman Phil King, Vice-Chairman Wayne Christian, Sylvester Turner, Rene Oliveira, Joe Crabb, Will Hartnett, Joe Straus, John Smithee, and David Swinford.

## **Public Hearings Summary**

The Committee held six public hearings wherein both invited and public testimony was taken on the interim charges. Four hearings were held in Austin, one hearing was held in Amarillo, and one hearing was held in Lake Jackson. The hearings took place on:

1. December 10, 2007, at 1:30 p.m. in the John H. Reagan Building, Room 140
  - The Committee took public testimony over the recent dispute between the NFL Network and cable providers regarding the availability of NFL games on cable networks
2. March 18, 2008, at 10:00 a.m. in the John H. Reagan Building, Room 140
  - The Committee took invited testimony on interim charge number 2
3. April 24, 2008, at 9:00 a.m. in the Region 16 Education Service Center in Amarillo
  - The Committee took invited testimony on the development of wind generation facilities and transmission planning in Texas
4. May 22, 2008, at 9:30 a.m. in the Plaza Rooms of the Lake Jackson Civic Center in Lake Jackson
  - The Committee heard invited testimony on electric generation technologies and methods
  - This was a joint hearing with the Select House Committee on Electric Generation Capacity
5. June 23, 2008, at 10:00 a.m. in the John H. Reagan Building, Room 140
  - The committee took invited testimony on Interim Charge #3
6. June 24, 2008, at 9:30 a.m. in the John H. Reagan Building, Room 140
  - The committee took invited testimony on Interim Charges #1 and #4

## **Findings and Observations**

### ***Charge #1***

***Examine the impact of broadband Internet access on economic development, focusing on potential updates that would create incentives to help spur investment by network providers across a variety of platforms. Recommend changes to Texas law that would emphasize economic development through policy formulation.***

The broadband-enabled Internet is rapidly changing the world. It has become a catalyst for innovation, economic growth, job creation, educational opportunity and global competitiveness. It enhances public safety, homeland security, health care, energy efficiency, environmental sustainability and the worldwide distribution of millions of products, processes and services. It aids in revitalizing depressed urban and rural economies and addressing the special needs of senior citizens, individuals with disabilities, and young people. It creates a vehicle for enhancing the level of civic participation and discourse so important to a functioning democracy.

Thus, it is important that the Texas legislature continue to implement policies which create incentives and spur investment by network providers across a variety of broadband platforms.

### The Communications Landscape in Texas Today

In Texas, today's communications landscape is defined by:

- An unprecedented convergence of products, services, and applications;
- The erasing of traditional distinctions between services and providers;
- Consumers' adoption of new means of communicating and freely substituting one service or application for another;
- Cutting-edge wireless and broadband platforms, which flourished without regulation traditionally applied to other platforms; and
- A burgeoning home entertainment market transformed by consumer demands and recent policy changes.

The swift evolution of the communications market has also rapidly transformed consumers' expectations and experiences. No longer bound to the copper wire attached to their residence or the cord connecting their computer to the wall, consumers' embrace of largely unregulated services has grown exponentially in just a few short years.

The explosion of cutting-edge devices; the vibrant competition between providers of voice, video, and wireless services; and the march toward ever-faster and better internet connections are the results of the kind of investments that can only occur in a competitive, less-regulated market.

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

Much of this swift evolution was the result of pro-consumer legislation such as SB 5, which was passed during the 79<sup>th</sup> legislative session.

Since the passage of SB 5, communications providers have made a significant investment to provide broadband internet access to consumers across Texas.

Following are examples of tangible results of the legislature's policies (such as SB 5) which spur competition, encourage investment, and reduce regulation:

- Since the passage of SB 5, AT&T has made more than a \$1 billion investment to bring next generation video services, increased broadband availability, and faster wireless networks to Texas citizens.<sup>1</sup>
- In 2007, Suddenlink completed a 950 mile fiber ring which links Texas and New Mexico. This fiber ring provides competitive video and broadband choices for consumers in West Texas. Through this deployment, Suddenlink can now offer its West Texas customers 130 new channels, Video on Demand, HD service and faster internet speeds (up to 10 mbps).<sup>2</sup>
- Sprint/Comcast and other companies are working on a project to bring Wi-Max to Texas. Ultimately, this project seeks to bring Wi-Max access to 120 to 140 million consumers nationwide by 2010.<sup>3</sup>
- The infusion of investment in Texas since SB 5 has generated limitless opportunities for contractors, businesses and consumers alike. Specifically, competition has meant more work for many of the members of the Alliance of Minority Contractors. As more telecommunications and video providers enter the market, there is more demand for skilled labor and growth in good paying jobs.<sup>4</sup>
- One of the first success stories of competition in the video market was Watauga, Texas. Before competition (created by SB 5) came to Watauga, there were limited choices in video services. Shortly after competition began, where there had been price parity before, a 50% price differential arose between Watauga and nearby Fort Worth, which did not have competition. Due to competition, Watauga citizens can now choose between a cable company, a satellite provider, and AT&T. Additionally, Verizon has recently begun installing the

---

<sup>1</sup> Testimony of Christopher Boyer, AT&T, before the House Committee on Regulated Industries, June 24, 2008.

<sup>2</sup> Testimony of David L. Gilles, Suddenlink, before the House Committee on Regulated Industries, June 24, 2008.

<sup>3</sup> Testimony of Craig D'Agostini, Comcast, before the House Committee on Regulated Industries, June 24, 2008.

<sup>4</sup> Testimony of Gene Herrera, Alliance of Minority Contractors, House Committee on Regulated Industries, June 24, 2008.

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

infrastructure necessary to provide yet another video choice to Watauga citizens.<sup>5</sup>

- With video competition growing, many cities, such as Watauga, are seeing increases in revenue from video providers.<sup>6</sup>

As Texas moves forward, it is necessary to continue promoting the pro-consumer policies which have made these results possible. Further, with the distinction between “regulated” and “unregulated” communications services continuing to rapidly blur (consumers do not differentiate based on such distinctions – they simply see the service they want at the price they approve), it is of greater importance that the legislature pursue policies which focus on innovation and investment.

In furtherance of such policies, this Committee recommends that, during the 81<sup>st</sup> legislative session and beyond, the legislature consider legislation providing tax incentives for communication providers willing to make a significant investment in the future of Texas consumers (discussed in more detail under Charge # 4) and legislation removing unnecessary regulatory requirements (discussed in more detail under Charge #6).

Such continued progressive leadership from the Texas legislature will permit competition to flourish as the communications market continues its rapid evolution.

### A National Broadband Strategy

Continuing to promote public policies which spur competition, encourage investment and reduce regulation in Texas is but one piece of the bigger puzzle.

In early December of 2008, 57 companies and organizations - including network operators such as AT&T, Inc., Verizon Communications, Inc., and the National Cable & Telecommunications Association and content and service providers such Google, Inc.– issued a “Call to Action for a National Broadband Strategy,” which lays out a framework for a “comprehensive national broadband strategy.”

This “Call to Action” makes several recommendations which dovetail with the legislative recommendations discussed above, some of which are summarized below:

- In the 21st century, it is time to adopt a National Broadband Strategy that sets out several clear, forward-looking, and attainable goals that take into account the ability of broadband to generate huge benefits in education, environmental

---

<sup>5</sup> Testimony of Harry Jefferies, Mayor of Watauga, Texas, House Committee on Regulated Industries, June 24, 2008.

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

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

protection, scientific research, medicine, health care, energy efficiency, transportation, and overall economic vitality.

- The state and local governments, in collaboration with the federal government and the private sector, should play an active role in stimulating broadband deployment, particularly in unserved areas. Such support might include tax incentives, grants, low cost loans, loan guarantees, universal service subsidies, efficient use of spectrum, and other approaches.
- The state and local governments, in collaboration with the federal government and the private sector, must play an active role in stimulating adoption and use of advanced broadband connections. All Americans must have access to computers and the knowledge to use broadband technology effectively.

A national broadband policy as laid out in the “Call for Action” is important because, if the United States is to remain a leader in the global economy, our broadband networks must be robust enough to enable our people, businesses, and public and private institutions to take full advantage of emerging and future bandwidth-intensive and quality-sensitive applications.

Extending broadband services nationally, through federal/state/local/private collaboration, will create more jobs, lead to the development of new products, and fuel economic growth in Texas, and throughout the United States. It will connect more Americans to educational and employment opportunities, and open the door to better, less expensive health care. It will allow the government to become more efficient and cost effective, thus benefiting the public at large. And it will cut energy consumption and reduce environmental damage.

A national broadband strategy stimulating broadband deployment, through tax incentives, grants, low cost loans, loan guarantees, universal service subsidies, efficient use of spectrum, and other approaches, will thus benefit all areas of American life – from private industry, to the government, to everyday aspects of average American citizen.

This Committee recommends that the Texas legislature pursue policies consistent with the “national broadband strategy” proposed in the “Call to Action”.

### ***Charge #2***

***Study and assess the ability of entities regulated by the Public Utility Commission of Texas to meet the communication needs of the Texas military forces during declared emergencies, including an assessment of current capabilities and technological compatibility among service providers throughout the state.***

In Texas, civil support services play a vital role in helping to provide critical assistance to Texas military forces during times of declared emergencies and natural disasters. Civil support services are partnerships between state military operations and private

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

communications providers designed to enhance the capability of state forces to respond in times of natural disaster by providing enhanced digital communications, reliable electronic messaging, and global positioning assistance for field based operations.

Joint Interim Satellite Communications Packages have recently been established by the Texas military forces to help support many mission critical functions of the Texas State Guard in times of natural disaster and state declared emergencies. Moreover, the Public Utility Commission of Texas is working to establish enhancements to communication protocol during times of natural disaster which may include greater partnership with private communications providers across the State of Texas.

### ***Charge #3***

***Research the effects of both wholesale and retail competition in the Texas electric market.***

The Texas electric market was restructured in 1999 to provide for free market competitive electric services. Some areas, served by municipal utilities and cooperatives, were left out of competition and some customers were given the right to choose their own electric provider beginning in 2002. Since that time, the price of retail electric power to customers in most areas of Texas has been increasingly determined by competitive forces rather than regulatory action.

Today, in the parts of Texas where customers are free to choose their retail electric provider, there are no longer expensive, complex and heavily contested regulatory rate cases to determine the price of electricity. Consumer prices are now determined by free market forces which has been historically tied to the rise and fall of natural gas prices. Natural gas, which accounts for the majority of Texas electric generation, sold for as little as \$2 per British Thermal Unit (MMBtu) when deregulation began however over the last five years the price of this volatile commodity has risen sharply, climbing as high as \$13 per MMBtu during 2008.

Since 2002, the Legislature also abolished "automatic" fuel pass-throughs to customers as a part of deregulation. In fact, in those areas where customers can choose their electric providers, there is no longer a fuel charge - just a price for the electricity they use. What the Legislature has said is that customers can no longer be expected to underwrite the cost over-runs and poor decisions of electric companies. The price of electricity is now set by the free market and not by state government.

### **Wholesale Market**

Texas is overly dependent on natural gas as a fuel source for electric generation. To lessen our dependence on this fuel source we must diversify the fuel mix by which electricity is generated. To diversify and to meet the growing demand for electricity from population and industry growth, Texas needs to build coal, nuclear, wind, and other

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

alternative energy generation plants as well as implement advanced metering and smart grid technologies.

Thanks to the deregulation of the wholesale market and a savvy regulatory body at the Public Utility Commission of Texas, we've had exceptional participation in the wholesale market. In the last thirteen years there has been over 37,000 MW brought onto the grid. Currently, there are several generation plants in various stages of construction or planning:

Nuclear Generation: 11,700 MW Planned

- Amarillo Power: 2 new units, 2,700 MW
- Exelon: 2 new units, 3,040 MW
- Luminant: 2 new units, 3,400 MW
- NRG: 2 new units, 2,660 MW

Coal-Fired Generation: 4,766 MW Planned

- CPS Energy: 1 new unit, 750 MW
- LS Power: 1 new unit, 925 MW
- Luminant: 3 new units, 2,291 MW
- NRG Energy: 1 new unit, 800 MW

### Retail Market

Thanks to good policy, the average retail electric price for consumers in Texas has increased far less (25%) than other energy commodities -- including natural gas which tends to push electric prices upward.

A quick look at retail prices shows how quickly the retail market responds to the fluctuation of natural gas prices. In July, 2008 when natural gas prices were around \$11 per MMBtu, the average 1-year locked price retail plan in Texas was 17.4 cents per Kilowatt Hour (KwH). Today, natural gas prices are a little over \$5 per MMBtu, and the average 1-year locked price retail plan is 12.1 cents per KwH.

This correlation between the natural gas price and the retail price for electricity paid by consumers is a good illustration of why it seemed like a good idea to index the price of electricity to the price of natural gas when the market was deregulated. During that period, natural gas prices were around \$2.50 per MMBtu. This is also why it is important for the legislature to look at repealing the statute requiring that 50% of electric generation capacity in Texas come from natural gas (Section 39.9044, Utilities Code).

The retail market in Texas is functioning the way it was crafted to function. With continued close monitoring, and light-handed involvement in the market by the

---

HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

legislature and the PUC, this industry will continue to provide reliable, affordable electricity.

***Charge #4***

***Study and review information on the Internet and other communications services, and how Texas can best prepare for potential changes to Internet and communications services, and infrastructure demands. Recommend policy changes to encourage greater infrastructure investment while ensuring the continued growth and development of the Internet. Study the current state and local communications tax structure, including an analysis of the tax burdens imposed on consumers and providers of communications services.***

A sound telecommunications infrastructure is critical to the future economic success of Texas. However, state policies are tied to an outmoded tax framework that simply does not work fairly and efficiently in today's competitive telecom marketplace. It is long since time to reform the tax treatment of telecommunications in Texas.

Local telephone taxes average about 11.32 percent of a consumer's phone bill. The three largest taxes on bills are the 9-1-1 tax, the local sales tax and the franchise fee. (Bill Peacock, *Cities Profit from Excess Fees, Go San Angelo*, June 17, 2008)

The Texas Municipal Franchise Fee, authorized by Chapter 283 of the Local Government Code, requires that companies count access lines and remit a per line fee for those access lines to municipalities quarterly. There are three categories of fees, switched residential, switched business and point-to-point circuits (transport circuits.) While the fee for residential lines is generally low, ranging from less than a dollar to almost three dollars per access line, depending on the services the customer orders, it can be a significant percentage of the bill. This particularly impacts lifeline customers, who are not exempt from the fee and have a regulated low cost of service.

For business voice service, the Texas Municipal Fee can represent a large percentage of the bill, again because there is no correlation to the cost of the service. For business voice lines, the fee ranges from less than a dollar to almost seven dollars per line. It is assessed on each line of a business and for a business that buys a circuit-switched product that can service many lines on one circuit, it is assessed up to 24 times per circuit. In that instance, the fee can exceed \$100 per month. The percentage of the bill related to the Texas Municipal Fee varies because of the price of the service purchased but it can exceed 25% of the bill.

All of these franchise costs are passed directly on to the consumer. The Texas Municipal Fee compensation scheme should be examined for ways in which the fee could be more closely aligned with the actual cost to manage the ROW. This would produce an instant savings to all Texas telephone consumers.

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

Specifically, this committee recommends that the legislature consider the following basic reforms:

1. Amend state law to provide for the equitable treatment of all telecommunications providers using the same appraisal methods used for other commercial property.
2. Amend state law to allow certain taxpayers affected by the state Property Value Study to appeal to district court after other remedies are exhausted.
3. Under the Texas sales and use tax, investments made by telecommunications service providers in telecommunications equipment is treated as a taxable purchase of tangible personal property. This treatment differs from the treatment of production machinery and equipment used in manufacturing processes. Machinery and equipment used in manufacturing is exempted on the theory that it is intended to be used in the creation of products that will be subject to final consumption and taxation. In this regard, telecommunication equipment is used to create telecommunications services, which are themselves subject to a wide range of state and local taxes. To put the industry on an equal footing with other businesses who make investments in machinery and equipment to manufacture tangible personal property that will be taxed, telecommunication equipment should be included in the definition of property used in manufacturing—and therefore exempted from tax.

These are straightforward, yet important, reforms. They could make a significant difference in the state's future treatment of this vital industry. That matters for reasons that go beyond simple tax equity. As the National Governors' Association report concludes: "As part of their economic development strategy for the new economy, state policymakers should thoroughly review their current telecommunications tax structure, using the fundamental tax principles of equity, efficiency and simplicity to guide their work. . . . Telecommunications tax policies should promote, not stifle, economic growth in the digital age."

### ***Charge #5***

***Study and examine whether Generally Accepted Accounting Principles (GAAP) should be adhered to under Chapter 66 of the Public Utility Regulatory Act (PURA), and review procedures for revenue audits.***

Chapter 66 of the Public Utility Regulatory Act (PURA) sets out the process by which cable service and video service providers shall pay certain fees to municipalities. Specifically, Section 66.005 requires that a holder of a state-issued certificate of franchise authority pay each municipality in which it provides cable service or video service a franchise fee of 5% of gross revenues.

---

HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

Furthermore, Section 66.006 requires incumbent cable operators (upon the expiration of their service provider's agreement) to pay a 1% fee of gross revenues (defined under Section 66.002(6) (A) and (B) of the Public Utility Regulatory Act "PURA") to a municipality in which it is providing cable or video (or, in the alternative, a per subscriber based-fee at the municipality's election) in lieu of in-kind compensation and grants. These sections explain what types of revenues will be subject to the fees, and also outline specific types of revenues that are expressly exempted from the fees.

The determination of whether certain revenues will be subject to the fees will have an impact on the amount of the fee paid by customers. During the next biennium, the committee should monitor whether the current definition of gross revenue under Section 66.002 provides an adequate framework to avoid disputes between video providers and municipalities in determining the amount of franchise fees to be paid under PURA.

***Charge #6***

***Monitor agencies and programs under the committee's jurisdiction, including identifying possible ways to merge or streamline agency functions to produce long-term financial benefit to the state and better efficiency of the agencies.***

The 64th Legislature enacted the Public Utility Regulatory Act (PURA) and created the Public Utility Commission of Texas (PUC or Commission) to regulate the rates and services of electric and telephone utilities statewide, radio-telephone statewide, and water and sewer utilities in unincorporated areas.

The PUC has evolved to be much different today than it was 30 years ago. However, the PUC still maintains a vital oversight role with regard to certain parts of Texas' most critical utility infrastructure, particularly with regard to its oversight of the electric industry.

In the Texas House of Representatives, the House Committee on Regulated Industries retains primary jurisdiction and oversight of the Public Utility Commission of Texas as well as the Office of Public Utility Counsel (OPUC). The enactment of SB 408, following the 2005 legislative session, provided for the extension of both agencies through 2011. Since that time, the PUC has been charged with meeting many of the legislatures' goals relative to the continued deregulation of Texas' communications market, establishing a statewide video franchising process, studying the Texas Universal Service Fund (TUSF), as well as continuing to move Texas' electric market towards full competition.

The Commission requirements outlined above serve as a direct reflection of the much broader policy focus which Texas has adopted in relation to the regulation of its major

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

statewide utilities. Over the past decade Texas has made tremendous strides towards fully deregulating both its communications and electrical markets and during that time, the Commission has had the oversight and responsibility for managing the processes, procedures and methods used to restructure Texas' major utilities.

Today, the structure of Texas' major electric and communications utilities looks much different than it did just 10 years ago. We must ensure that the utility regulatory practices and policies of the state reflect the realities of these new markets. Perhaps it is time to renew our focus on what Texas' policy should be with respect to agency regulation of our major utilities.

Both the electric and communications markets in Texas are widely viewed as national models for other states, and when it comes to deregulation and increased competition, no other state can claim the successes Texans have seen over the past decade.

For example, the communications market in Texas has experienced revolutionary changes and is now merging voice, video, wireless and high-speed data together in one package, while the electric market has seen widespread development in Texas' generation capacity and renewable fuel sources as a result of the transition to a fully competitive electric market.

With such evolving and advanced markets, Texas regulatory agencies, such as the PUC, must provide regulatory oversight which focuses on encouraging innovation and investment. The PUC must provide the predictability and stability necessary to allow utilities in Texas to make the investment necessary to support the further development of both the communications and electric markets.

Outlined below are several key factors that this Committee views as being the necessary regulatory components to the continued success and advancement of these markets.

### Stable, Predictable Regulation

For those companies that remain subject to rate regulation in Texas, the cornerstone of the Texas regulatory regime must be stable, predictable regulation. The financial institutions and companies which choose to invest in Texas utility infrastructure must be assured of a consistent pattern of regulatory decision making, resulting in a predictable regulatory environment. Part of the challenge in attaining such an environment is allowing the appointed PUC Commissioners flexibility in communicating and discussing their positions concerning rulemakings and rate case decisions relevant to major utilities. Under the current scheme, the quorum rule prohibits Commissioners from discussing PUC business outside of a formal hearing. This makes the most basic of business communications difficult, if not impossible. As a solution, some modification of the statute to alleviate quorum restrictions and allow for a broader forum of discussion among members would provide improved handling of proceedings before the

---

## HOUSE COMMITTEE ON REGULATED INDUSTRIES

---

Commission. One possibility would be to place Commissioners under rules applicable to Texas' Appellate Courts. There, justices are allowed to discuss cases under well established and well accepted rules of propriety.

### Cost Driven Regulation

The regulated portions of the electric and communications markets in Texas are much smaller than was the case in the past.

With regard to the electric industry, the state's regulatory practices and policies must reflect the reduced scope of the activities of the regulated ERCOT utilities and the somewhat smaller size of the non-ERCOT investor-owned utilities. Texas must strive to lower the cost of regulation while carrying out its regulatory obligations. In the past, utility companies were much larger fully integrated utilities and operated under traditional rate of return practices. Rate proceedings served as a mechanism for resolving high impact questions such as approval of power plant construction and fuel costs. Today, the ERCOT market is competitive and the remaining regulated utility companies are much smaller. ERCOT utilities now account for a significantly smaller portion of a consumer's electric bill and the dollar impact of potentially controversial issues is relatively modest. Thus, the protracted and expensive rate proceedings of the type that was common in the past may produce little or no benefit to the ultimate consumer. However, the legal and support costs associated with managing such a process detract from investment and positive growth in our state utility sector. Regulation should be tailored to the times and ultimately inure to the benefit of the competitive market. This can be accomplished, in part, by having an agency focus on reducing the administrative cost and burden of doing business at the PUC, either through improved administrative rules, more efficient rate setting or adjustment mechanisms that do not require lengthy staff and intervenor involvement, or other mechanisms which use benchmarks or provide incentives to invest in technological advances. Such changes would allow utilities to focus less effort on the administrative burden of the regulatory process and more on initiatives which enhance the market, such as nodal pricing, competitive renewable energy zones and other ERCOT-wide collaborative improvement projects.

The state's communications regulatory practices and policies must reflect the realities of today's communications landscape. Consumers' use of non-regulated communications technology (such as wireless and broadband) is rapidly growing, while the use of traditionally regulated services (such as landlines) is decreasing. For example, from 2001 to 2007, the number of Texas wireless subscribers increased 127% and the number of Texas residential broadband users increased 1,015%, while the number of Texas landline access lines decreased 14%.

The non-regulated wireless and broadband segments of the communications market have made quantum leaps in the last 10 years, primarily due to public policies which have spurred competition and encouraged investment by discouraging regulation. Given the

continued blurring of the lines between regulated and non-regulated services (consumers simply see the service they want at the price they approve, without such distinctions), regulation should be tailored to the times and ultimately inure to the benefit of the competitive market. Significant changes to the PUC's regulatory authority over the communications industry, by reducing regulation to spur competition and encourage innovation and investment, must therefore be considered as part of the sunset review of the agency in 2011. As stated in the Governor's Competitiveness Council's July 2008 Report to the Governor (at p. 23): "Texas should continue to explore opportunities to deregulate industries further, including undertaking a review of whether current laws and regulations promote competition and expansion of communications offerings."

#### Returns Must Attract Investment

The ability to continue to attract new business to our great state is the primary reason that the Texas economy has continued to flourish in recent years despite a national decline in job market growth. In large part, Texas has avoided a decline in job growth by its ability to convince companies that locating or investing in Texas will earn them an attractive return on their investment. Texas has accomplished this goal by various means including economic incentives to investors, tax credits, and reduced labor costs. The same sort of investment strategy must be utilized for Texas to attract and retain top quality utility investment, whether it be transmission or distribution system expansion, advanced fiber technologies or broadband over power lines. Companies who are regulated under Texas utility laws must also be assured of an attractive rate of return. For example, as a result of SB 5, advanced infrastructure is now being deployed to enable broadband over power line technology, making Texas a national leader in the BPL movement. This investment could be made in Texas electric infrastructure only because our state laws now allow regulated utilities who invest in such technology to reap the benefits of their economic rewards, rather than being burdened with lengthy and expensive earnings reviews. In order to realize the potential of new technologies and advanced infrastructure improvements, Texas must be willing to look beyond the traditional forms of regulation and explore more efficient kinds of cost of service regulation. Improving the attractiveness of Texas regulated utility companies to investors requires that regulation be tailored to the times to establish growth opportunities for our remaining regulated utilities, spurring innovation and investment and providing a predictable and stable process for rate assessment and reducing the costs associated with the regulatory process.