

Amend CSHB 1779 by adding the following appropriately numbered sections to read as follows and renumbering subsequent sections accordingly:

SECTION _____. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 65 to read as follows:

CHAPTER 65. STATEWIDE CABLE AND VIDEO FRANCHISE

Sec. 65.001. DEFINITIONS. In this chapter:

(1) "Cable service" is defined as set forth in 47 U.S.C. Section 522(6).

(2) "Cable service provider" means a person who provides cable service.

(3) "Certificated provider" means a person who has been issued a certificate under Chapter 54.

(4) "Communications facility" means the equipment and components of a communications network provider, and includes the property owned, operated, or controlled in connection with the provider's business operations.

(5) "Communications network" means a component or facility that is, in whole or in part, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

(6) "Communications service" means the transmission, conveyance, or routing of a cable service or video programming as defined in this chapter, voice service, or data service by or through any communications network regardless of the protocol used for such transmission or conveyance.

(7) "Communications service provider" means a person or group of persons engaged in the provision of communications services, without regard to ownership of a communications network.

(8) "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a communications network in the public rights-of-way.

(9) "Franchise fee" means the amount of compensation paid to a franchising authority by a franchisee under the terms of

the franchise.

(10) "Franchisee" means a communications service provider that has been granted a franchise.

(11) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

(12) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(13) "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d).

(14) "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public right-of-way without regard to delivery technology. This term does not include a cable service provider.

(15) "Voice service" means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology.

Sec. 65.002. STATE AUTHORIZATION TO PROVIDE CABLE OR VIDEO SERVICE. (a) Any entity or person seeking to provide cable or video service in this state shall file an application for a state franchise with the commission as required by this section.

(b) The commission shall issue a certificate of franchise authority to offer cable or video service within this state upon receiving from the applicant an affidavit signed by an officer or general partner of the applicant entity affirming the following representations and information:

(1) that, if applicable, the applicant has filed or will timely file with the Federal Communications Commission all

forms required by that agency in advance of offering cable service;

(2) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(3) a description of the geographic areas to be served by the applicant, which may include unincorporated areas, which description shall be promptly updated by the applicant if service is expanded to a previously undesignated geographic area; and

(4) the location of the principal place of business and the names of the principal executive officers of the applicant.

(c) The certificate of franchise authority issued by the commission shall contain the following:

(1) a grant of authority to provide cable or video service as requested in the application;

(2) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered; and

(3) a statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.

(d) The certificate of franchise authority issued by the commission is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be promptly filed with the commission upon the completion of such transfer.

Sec. 65.003. TERMINATION OF MUNICIPAL FRANCHISE BY CABLE SERVICE PROVIDER. (a) Beginning September 1, 2005, a cable service provider may elect to terminate any municipal franchise existing on the date this chapter takes effect by providing written notice to the affected municipality. The termination shall be effective as of the date the municipality receives the notice.

(b) A cable service provider electing to terminate an existing municipal franchise shall be responsible for remitting to the affected municipality within 90 days of the effective date of termination any accrued but unpaid franchise fees due under the franchise being terminated. If the cable service provider has credit remaining from prepaid franchise fees, the provider may

deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller. Any municipality receiving notice of a terminated franchise under this chapter shall retain for one year following termination the right to audit the accuracy of any payments that were made to the municipality under the terminated franchise during a period not to exceed four years prior to the termination.

Sec. 65.004. REQUIREMENTS APPLICABLE TO CABLE SERVICE PROVIDERS AND VIDEO SERVICE PROVIDERS. (a) Pursuant to 47 U.S.C. Section 531, a cable or video service provider that owns a communications network or that leases or otherwise uses a third-party communications network, including that of an affiliate, to deliver cable or video service within the municipality shall, not later than 120 days after a request by a municipality served by the cable or video service provider as specified in the certificate, provide where technically capable the municipality with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming as follows. If a municipality did not have any public, educational, and governmental access channels as of September 1, 2005, then the cable or video service provider shall furnish:

(1) up to three PEG channels for a municipality with a population of at least 50,000; and

(2) up to two PEG channels for a municipality with a population of less than 50,000.

(b) Notwithstanding Subsection (a), the number of PEG channels required to be provided by each cable or video service provider shall not be less than the number of PEG channels a municipality has activated under the terms of any franchise, contract, or other agreement, including any channels received as of September 1, 2005, in lieu of public, educational, or governmental channels, regardless of whether the municipal franchise is terminated under this chapter. The following conditions shall apply to the provision of any PEG channels carried in accordance with this subsection or Subsection (a):

(1) the cable or video service provider may, at its

sole discretion, place any channel utilized by a municipality on any tier of service following September 1, 2005, except that the municipality may, at its sole discretion, designate up to three PEG channels (or, in the case of a municipality with a population of less than 50,000, up to two PEG channels) utilized by the municipality, which shall remain on the lowest service tier for which no equipment is required to receive the channel; provided, however, if service is provided only in digital format, the PEG channels shall be made available in that format;

(2) after a cable or video service provider has commenced commercial delivery of cable or video services in a municipality and no later than 120 days after a written request from a municipality, a cable or video service provider shall, as applicable, either provide the initial access channel allowed in Subsection (a) if a municipality did not have any PEG channels as of September 1, 2005, or shall continue to provide the channels in service as of September 1, 2005, subject to the terms of this section. In the event a municipality has not utilized the minimum number of access channels as permitted in Subsection (a), access to the additional channel capacity allowed in Subsection (a) shall be provided upon 90 days' written notice if the municipality meets the following standard. If a municipality has one active PEG channel and wishes to activate an additional PEG channel, the initial channel shall be considered to be substantially utilized when 12 hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three video-castings of a program. If a municipality is entitled to three PEG channels under Subsection (a) and has in service two active PEG channels, each of the two active channels shall be considered to be substantially utilized when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters;

(3) a municipality shall bear the cost of any

construction required to establish a connection between a municipality's origination point and the cable or video service provider's communication network;

(4) the operation of any PEG channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the cable or video service provider shall have no obligation to operate such channel other than the transmission of such channel; and

(5) any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day shall no longer be made available to the municipality, but may be programmed at the cable or video service provider's discretion. At such time as the municipality can certify to the cable or video service provider a schedule for at least eight hours of daily programming, the cable or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(c) The requirements of Subsections (a) and (b) shall apply equally to all cable or video service providers that own a communications network or lease or otherwise use a third-party communications network, including that of an affiliate, to deliver cable or video service within a municipality.

(d) Only a municipality may seek enforcement of the requirements of Subsections (a), (b), and (c) by initiating a proceeding with a court of competent jurisdiction.

(e) It is the sole responsibility of the municipality to ensure that any and all transmissions, content, or programming to be transmitted over a channel or facility are provided or submitted to the cable or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in content by the provider, over the particular network of the cable or video service provider, which is compatible with the technology or protocol utilized by the cable or video service provider to deliver services.

(f) Consistent with 47 U.S.C. Section 541(a)(3), a cable or video service provider may not deny access to service to any group

of potential residential subscribers because of the income of the residents of the local area in which such group resides. A provider may satisfy the requirements of this subsection through the use of an alternative technology notwithstanding differences in the specific content or functionality provided.

(g) An affected person may seek enforcement of the requirement described in Subsection (f) by initiating a proceeding with a court of competent jurisdiction. A municipality within which the potential residential video subscribers referenced in Subsection (f) reside shall be an affected person for purposes of this section.

(h) A cable or video service provider shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) until there are more than two providers offering service including direct-to-home satellite service in the affected area.

(i) This state or a political subdivision shall not require a mandatory build out on either a cable or video service provider except as specifically required by federal law.

(j) Should a cable or video service provider be found by a court of competent jurisdiction to be in noncompliance with the requirements of this section, the court shall order such provider, within a reasonable period of time, to cure such noncompliance. Failure to comply shall subject the provider to such penalties as the court shall reasonably impose, up to and including revocation of any state franchise granted under this chapter. A municipality within which the provider offers video service shall be an appropriate party in any such litigation.

(k) A municipality may not prefer or give advantage to any cable or video service provider operating under a state franchise or discriminate against any cable or video service provider operating under a state franchise in any manner in the requirements provided in this subsection. Any requirements shall be uniformly applied, by ordinance, to all cable or video service providers operating under a state franchise within the municipality. A municipality's authority to regulate the activities of a cable or video service provider is limited to the requirements imposed on a cable or video service provider operating under a state franchise

by this subsection. Specifically, a municipality is authorized to impose by ordinance a requirement:

(1) to require that a communications service provider that is providing cable or video service within the municipality register with the municipality and maintain a point of contact;

(2) to establish reasonable guidelines regarding the use of the public, educational, and governmental access channels; and

(3) to submit reports within 30 days on the customer service standards referenced in Subsection (h) if the provider is subject to those standards and has continued and unresolved customer service complaints indicating a clear failure on the part of the provider to comply with the standards. If the reports are not provided or are incomplete, or if they verify noncompliance, then the municipality, after providing appropriate due process and a right to be heard, may file an appropriate proceeding in the municipal court.

(1) Nothing in this section prohibits a municipality from exercising its nondiscriminatory police power under Section 66.003 with respect to a communications service provider's use of the public rights-of-way. A court of competent jurisdiction shall have jurisdiction to enforce and determine the lawfulness of any ordinance adopted by a municipality under this section.

(m) Except as provided in this chapter, a municipality may not require any monetary compensation, nonmonetary compensation, facilities, value, in-kind support, free service, or other thing of value for the right or privilege of a cable provider or video service provider to provide service or to occupy or use a public right-of-way.

(n) A cable or video service provider electing to terminate an existing municipal franchise or initiating service after September 1, 2005, shall pay each municipality in which it provides service a fee equal to five percent of the provider's gross revenues.

(o) For purposes of this section, "gross revenues" means:

(1) all consideration of any kind or nature, including without limitation cash, credits, property, and in-kind

contributions (services or goods) derived by the provider from the operation of the provider's system to provide cable or video service within the municipality;

(2) all fees charged to subscribers for any and all cable or video service provided by the provider, and compensation received by the provider or its affiliates that is derived from the operation of the provider's system to provide cable or video service with respect to commissions that are paid to the provider as compensation for promotion or exhibition of any products or services on its system, such as a "home shopping" or a similar channel, subject to Subsection (p)(5); and

(3) a pro rata portion of all revenue derived by the cable or video provider or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the provider's system to provide cable or video service within the municipality, subject to Subsection (p)(3). The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(p) For purposes of this section, "gross revenues" does not include:

(1) revenues not actually received, even if billed, such as bad debt;

(2) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide cable or video service;

(3) refunds, rebates, or discounts made to subscribers, leased access providers, advertisers, or the municipality;

(4) any revenues from services classified as non-cable or non-video service under federal or state law, including without limitation revenue received from telecommunications services, revenue received from information services, and any other revenues attributed by the provider to non-cable or non-video service in accordance with commission or Federal Communications Commission rules, regulations, standards, or orders;

(5) any revenue paid by subscribers to home shopping

programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable or video service;

(6) the sale of cable or video service for resale in which the purchaser is required to collect the five percent fee from the purchaser's customer;

(7) any tax of general applicability imposed upon the provider or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the provider and remitted to the taxing entity, including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes;

(8) the provision of cable service to customers at no charge as required or allowed by a municipality, including without limitation the provision of cable service to public institutions, public schools, or governmental entities;

(9) any foregone revenue from the provider's provision of free or reduced-cost cable service to any person, including without limitation the municipality and other public institutions or other institutions;

(10) sales of capital assets or sales of surplus equipment;

(11) reimbursement by programmers of marketing costs incurred by the provider for the introduction of new programming;
or

(12) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing.

(g) The fee payable under this section is to be paid to the municipality quarterly, 45 days after the end of the quarter. Each payment shall be accompanied by a summary as to the basis for the calculation of the fee. A municipality may review the business records of the cable provider or video service provider to the extent necessary to ensure compensation in accordance with this chapter. Each party shall bear the party's own costs of the examination. The municipality may, in the event of a dispute as to proper compensation under this chapter, bring an action in a court of competent jurisdiction.

(r) For purposes of this section, a provider's system shall consist solely of the optical spectrum wavelength(s), bandwidth, or other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the municipality as designated by the provider in its franchise.

(s) A municipality may not require a cable service provider or video service provider to pay the municipality any fee or assessment, including any application, permit, excavation, or inspection fee or any fee for the support of public, educational, or governmental access channels. This subsection does not preclude the assessment of generally applicable taxes or fees.

(t) A cable service provider or a video service provider may recover from the provider's customers the fee imposed by this chapter.

(u) Notwithstanding that a municipal cable franchise may be terminated pursuant to Section 65.003, the following services shall continue to be provided by the cable provider that was furnishing services pursuant to its terminated franchise until 2008 or until the term of the franchise was to expire, whichever is sooner:

(1) institutional network capacity, however defined or referred to in the municipal cable franchise, but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of the termination, provided that the municipality will compensate the provider at its actual incremental cost for such capacity. For purposes of this section, "actual incremental cost" shall mean only current out-of-pocket expenses for labor, equipment repair or replacement, or any tax expenses directly associated with such labor or equipment of the video service provider necessarily and directly used for the provision of what, under a superseded franchise, were in-kind services, exclusive of any profit or overhead such as, without limitation, any depreciation, amortization, or administrative expenses; and

(2) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be

provided to the same extent provided immediately prior to the date of the termination. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the termination.

Sec. 65.005. APPLICABILITY OF OTHER LAWS. Nothing herein shall be interpreted to prevent a voice provider, cable service provider or video service provider, or municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

SECTION _____. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 66 to read as follows:

CHAPTER 66. MUNICIPAL POWERS AND DUTIES

Sec. 66.001. DEFINITIONS. The definitions contained in Chapter 65 apply to this chapter.

Sec. 66.002. NONDISCRIMINATION BY MUNICIPALITY. (a) A municipality shall allow a communications service provider to install, construct, and maintain a communications network within a public right-of-way and shall provide the communications service provider with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. All use of a public right-of-way by the communications service provider is nonexclusive and subject to Section 66.003.

(b) A municipality may not discriminate against a communications service provider regarding:

(1) the authorization or placement of a communications network in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment term.

(c) A municipally owned utility may not charge a pole attachment rate or underground conduit rate that exceeds the fee the utility would be permitted to charge if the utility's rates were regulated under 47 U.S.C. Section 224(e) and the rules of the Federal Communications Commission adopted thereunder; provided, further, that such municipally owned utility shall charge a single, uniform pole attachment fee to all attaching entities not owned by the municipality or municipally owned utility regardless of the

services carried over the networks attached to the poles or underground conduit.

Sec. 66.003. MUNICIPAL POLICE POWER; OTHER AUTHORITY. (a)
A municipality may enforce police power-based regulations in the management of a public right-of-way that apply to all persons within the municipality. A municipality may enforce police power-based regulations in the management of the activities of a communications service provider to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of a communications service provider's use of the public right-of-way must be competitively neutral and may not be unreasonable or discriminatory. A municipality may not impose the following regulations on activities of a communications service provider, including:

(1) requirements that particular business offices be located in the municipality;

(2) requirements for the filing of reports and documents with the municipality that are not required by state or federal law and that are not related to the use of the public right-of-way; provided, however, that a municipality may request maps and records maintained in the ordinary course of business for purposes of locating the portions of a communications network that occupy public rights-of-way. Any maps or records of the location of a communications network received by a municipality shall be confidential and exempt from disclosure under Chapter 552, Government Code, and may be used by a municipality only for the purpose of planning and managing construction activity in the public right-of-way; however, in no event shall a municipality request information as to the capacity or technical configuration of the provider's facilities;

(3) the inspection of a communications service provider's business records;

(4) the approval of transfers of ownership or control of a communications service provider's business, except that a municipality may require that a communications service provider maintain a current point of contact and provide notice of a transfer

within a reasonable time; or

(5) requirements that a provider that is self-insured under the provisions of state law obtain insurance or bonding for any activities within the municipality, except that such providers are required to provide substantially the same defense and claims processing as an insured provider; further, no bond shall be required from a provider for any work consisting of aerial construction; however, reasonable bonds may be required of providers that cannot demonstrate a record of at least four years' performance of work in any municipal public right-of-way free of currently unsatisfied claims by a municipality for damage to the right-of-way.

(b) Notwithstanding any other law, a municipality may require the issuance of a construction permit, without cost, to a communications service provider that is locating facilities in or on a public right-of-way within the municipality. The terms of the permit shall be consistent with construction permits issued to other persons excavating in a public right-of-way.

(c) In the exercise of its lawful regulatory authority, a municipality shall promptly process all valid and administratively complete applications of a communications service provider for a permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or obtain zoning or subdivision regulation approvals or other similar approvals and shall make every reasonable effort to not delay or unduly burden the provider in the timely conduct of its business.

(d) If there is an emergency necessitating response work or repair, a communications service provider may begin the repair or emergency response work or take any action required under the circumstances without prior approval from the affected municipality, if the communications service provider notifies the municipality as promptly as possible after beginning the work and later obtains any approval required by a municipal ordinance applicable to emergency response work.

Sec. 66.004. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY; NOTICE OF LIABILITY. (a) A communications service provider shall indemnify and hold a municipality and its officers and employees

harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought, that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the communications service provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the communications service provider, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality or its officers, employees, contractors, or subcontractors. If a communications service provider and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This subsection is solely for the benefit of the municipality and the communications service provider and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

(b) A communications service provider and a municipality shall promptly advise the other in writing of any known claim or demand against the communications service provider or the municipality related to or arising out of the communications service provider's activities in a public right-of-way.

SECTION _____. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. PLACEMENT AND MOVEMENT OF COMMUNICATIONS FACILITIES
AND COMPENSATION FOR USE OF THE PUBLIC RIGHT-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. POLICY. (a) Convergence of technologies in the communications industry requires that existing compensation

structures be conformed to ensure that communication providers and municipalities are treated fairly with respect to placing and maintaining facilities in the right-of-way.

(b) It is the policy of this state to:

(1) ensure that communication providers have reasonable access to the public rights-of-way;

(2) ensure that improvements in municipal infrastructure are made in a timely and efficient manner;

(3) provide a funding mechanism for facility relocations that is cost-based, uniform, consistent, and efficient; and

(4) ensure that municipalities are fairly compensated for use of public rights-of-way.

SUBCHAPTER B. LOCAL AUTHORITY TO ENSURE TIMELY INFRASTRUCTURE

IMPROVEMENT AND RELOCATION OF FACILITIES

Sec. 68.101. RELOCATION OF COMMUNICATIONS FACILITY LOCATED IN PUBLIC RIGHT-OF-WAY. (a) In this chapter:

(1) "Communications facility" means the equipment and components of a communications network provider and includes the property owned, operated, or controlled in connection with the provider's business operations.

(2) "Communications network provider" means any entity that provides voice, video, telephone, telegraph, communications, cable, information, broadband, or another form of advanced telecommunications services using communications facilities in the public right-of-way.

(3) "Public improvement project" means a construction or improvement activity in a public right-of-way undertaken by or on behalf of a municipality or in conjunction with another entity for any public purpose, other than a construction or improvement activity undertaken solely for beautification purposes.

(4) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest.

(b) A municipality must consider in its design of public improvement projects a design that minimizes the relocation of any

communications facility. If a municipality determines during the design of a public improvement project that, based on available information, the relocation of any portion of a communications facility may be necessary, the municipality shall provide the communications network provider:

(1) written notice of the planned public improvement project at a point in the design stage that allows the communications network provider sufficient time to offer planning and design alternatives; and

(2) plans and drawings of the project that are sufficient to enable the communications network provider to develop plans for and determine the cost of the necessary relocation.

(c) After providing information pursuant to Sections (b)(1) and (2), a municipality may request a communications network provider to provide the municipality information concerning the provider's facility location. The communications network provider shall provide the information requested within a reasonable time, not to exceed 15 business days. After the municipality and the provider have exchanged information regarding the design and facility location, the municipality shall convene a meeting to give the provider an opportunity to discuss potential design alternatives that may avoid facility relocation or minimize relocation costs. This meeting shall be held in person unless both parties mutually agree to conduct the meeting telephonically. A municipality shall consider all reasonable and economically feasible alternatives and shall provide, in writing, reasons for a decision to reject such alternatives.

(d)(1) Notwithstanding any other provision of law, the governing body of a municipality may require a communications network provider to relocate the provider's facility that is located in a public right-of-way to accommodate a public improvement project. Costs related to such relocation, including the cost of installing the facilities in a new location, or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights acquired to accomplish the relocation or removal, shall be at the municipality's sole expense, except that a communications network provider shall bear the cost and

expense of relocating its communications facilities when the relocation is caused by the widening or straightening of a public roadway.

(2) A municipality may recover the costs of all relocations not paid by the communications network provider in accordance with Section 68.205.

(e) If a municipality has complied with Subsections (b) through (d), a communications network provider shall relocate its facility as required by the municipality if the municipality:

(1) gives the provider 30 days' written notice of the municipality's determination that the facility must be relocated;

(2) specifies the new suitable location for the facility along another area of the public right-of-way; and

(3) reaches an agreement with the communications network provider for a reasonable time for relocating the facility, based on information presented by the affected providers regarding the length of time that is necessary to complete the relocation, that is at a minimum and not earlier than the 90th day after the date the provider receives the information required by Subdivisions (1) and (2), provided that the 90 days shall be calculated only after the 30-day notice period in Subdivision (1) has expired. The provider and the municipality shall negotiate the agreement in good faith.

(f) If the provider fails to comply with the requirements in Subsection (e), the municipality may relocate the facility at the sole cost and expense of the provider. A relocation by the municipality under this section shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the provider's existing facilities, and in a manner that minimizes disruption of provider service.

(g) The time for relocation established under Subsection (e)(3) shall be extended:

(1) by mutual agreement of the municipality and the communications network provider; or

(2) for any reasonable period of time that is warranted based upon generally acceptable industry standards or

practices.

(h) The notification requirements and time limitations provided by this chapter do not apply to the relocation of a communications facility the necessity of which is discovered during the construction process of a public improvement project if the relocation is directly caused by inaccurate or insufficient information provided to a municipality by a communications network provider and if the requirements of this section were met initially. In such instance, the communications network provider and the municipality shall reach an agreement to relocate such facility within a reasonable period of time based upon generally accepted industry standards or practices.

(i) A municipality shall make a good faith effort to obtain available third-party funding for a communications facility relocation. If any part of the public improvement project is financed with federal funds, the funds specifically allocated for communications facility relocations shall be used to pay for the relocation of the communications facility.

(j) If a relocation of a portion of a communications facility is necessary before the third anniversary of the certified completion date, the municipality shall pay the cost of the relocation, regardless of whether the relocation is caused by widening or straightening of a public roadway. The cost of a relocation addressed in this section shall be collected by the municipality in accordance with Section 68.205.

(k) This section does not limit the authority of a municipality and a communications network provider to enter into an agreement that establishes the terms for relocating a communications facility, including terms that preempt a provision of this section.

(l) For purposes of this section, a requirement to bury an existing aerial communications facility owned by a communications network provider may not be considered to be a municipal public improvement project.

(m) A municipality's exercise of authority under this section must be competitively neutral, reasonable, and nondiscriminatory.

(n) This section supersedes any inconsistent local ordinances but does not affect a municipality's authority under an agreement, ordinance, or statute to require the relocation of another type of facility not subject to this chapter located in a public right-of-way.

(o) Upon completion of a project addressed by this section, the provider may submit an invoice of its costs for the relocation to the municipality. A municipality shall tender payment to the provider not later than 60 days after receiving an invoice for a project addressed by this section. The foregoing notwithstanding, the provider shall not be entitled to reimbursement for relocations caused by the widening or straightening of public roadways.

(p) To the extent a conflict exists between this chapter and another law relating to the relocation of a communications network provider, this chapter controls. A communications network provider operating under a municipal franchise shall be subject to the provisions of this chapter.

SUBCHAPTER C. ASSESSMENTS FOR RELOCATION OF FACILITIES

Sec. 68.201. DEFINITION. In this chapter, "linear foot" means the entire width of the right-of-way regardless of the number of aerial or underground ducts, subducts, conduits, cables, wires, cabinets, pedestals, appurtenances, or other communications facilities included within the entire width of the public right-of-way, except public utility easements not adjacent to a public roadway.

Sec. 68.202. REQUIRED MUNICIPAL PROCEEDINGS. Within 90 days of the effective date of this section and thereafter on or before September 1 of each year, each municipality that has a public improvement project planned for the next calendar year for which a communications network provider may be entitled to compensation for relocation of its facilities shall initiate a planning proceeding, in order to meet the requirements of this chapter. As part of such proceeding, the municipality shall require each communications network provider to submit the following information supported by an affidavit:

(1) calculations for the total amount of linear feet of public right-of-way within the municipality in which a

communications facility owned or controlled by the communications network provider exists;

(2) forecasts for the communications network provider's costs associated with relocation, which may be based on historical data, of its communications facilities, including overhead allocation, within the municipality for the next calendar year; and

(3) route maps showing the general location of the communications network provider's communications facilities, provided that such information is not required to detail the exact placement of facilities, including depth, breadth, or location within the right-of-way of its communications facilities.

Sec. 68.203. FINDINGS OF THE MUNICIPALITY. (a) After holding the initial proceedings under Section 68.202, within a reasonable period of time, the municipality shall issue its findings detailing the following:

(1) the total amount of linear feet currently occupied or maintained by all communications network providers operating in the municipality;

(2) the total amount of linear feet currently occupied or maintained by each communications network provider operating in the municipality;

(3) the total average amount of relocation costs projected for all communications network providers operating in the municipality for the next calendar year based on the forecasts provided by each provider, excluding widening or straightening projects;

(4) the per linear foot cost of facility relocation for the municipality, calculated as the total projected costs for all reimbursable facility relocations of all communications network providers for the next calendar year, divided by the total amount of linear feet occupied by all communications network providers; and

(5) certify the amount of actual costs expended and the variance from the fees collected for purposes of setting a fee in the next fiscal year.

(b) Information received by a municipality under this

subchapter may only be used for the purpose set forth in this subchapter and shall be exempt from public disclosure requirements under Chapter 552, Government Code.

Sec. 68.204. APPEAL OF MUNICIPALITY'S FINDINGS. Any communications network provider which alleges that a municipality has not followed the requirements of this chapter shall be entitled to seek enforcement in a court of competent jurisdiction.

Sec. 68.205. ASSESSMENTS FOR RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY. (a) After January 1, 2006, a municipality is authorized to enact an ordinance for the collection of facility relocation fees consistent with Section 68.101(d) from each communications network provider operating in the municipality.

(b) A communications network provider that utilizes the public right-of-way shall pay an annual relocation fee if set by the municipality consistent with Subsection (a), based on the amount of linear feet of public right-of-way occupied by the provider's communications facilities within the municipality.

(c) The fee required under this chapter is based on the linear feet occupied or maintained by the provider regardless of the quantity or type of the provider's communications facilities utilizing the public right-of-way, whether the communications facilities are leased to another provider or whether the communications facilities are underground or aboveground.

(d) On or before September 1 of each year, a municipality shall determine its per linear foot fee for the next fiscal year by updating its calculations by dividing the total forecasted costs of all communications network providers, by the total amount of linear feet occupied by all communications network providers.

(e) A municipality may only assess a fee under this chapter if it has one or more public improvement projects budgeted for the next fiscal year, excluding those related to widening or straightening of public roadways.

Sec. 68.206. PUBLIC RIGHT-OF-WAY COMPENSATION AND MANAGEMENT. (a) A municipality may elect to adopt an ordinance under this section.

(b) Pursuant to its adoption of an ordinance under this section, a municipality may set an annual rate not to exceed \$100

for each communications network provider entity possessing, owning, or controlling communications network facilities located within the municipality's public right-of-way.

(c) Money collected under this section shall compensate municipalities for their use and management of public right-of-way.

Sec. 68.207. REMITTANCE OF FEES. (a) A communications network provider shall remit quarterly to the municipality the fees assessed by the municipality under this chapter. The provider shall remit such fee no later than 45 days after the end of a quarter.

(b) Notwithstanding any other provision of this title, a communications network provider may recover from the provider's retail and wholesale customers an assessment imposed on the provider under this chapter. This may be accomplished by either a separate or existing line item on a customer bill or through contract.

(c) A provider may apportion the recovery of such costs in a reasonable manner between business and residential customers, with business customers receiving a higher pro rata apportionment.

(d) The sales price of services provided by a communications network provider shall not include any charge to recover the assessment to the extent imposed under Subsection (c).

Sec. 68.208. PENALTIES. If after notice and hearing the municipality finds that a person has violated this subchapter, the municipality may assess the following penalties:

(1) for failure to pay an undisputed fee assessed by the municipality under this title, order the provider to pay a fine of not more than two times the amount of the fee owed; and

(2) for failure to submit information or for material underreporting of the amount of linear feet to the municipality, order a fine of not more than two times the amount of the fee that would have been paid if the information was properly provided.

SECTION ____. The Public Utility Commission of Texas shall conduct a study and shall file a report with the legislature not later than September 1, 2006, containing the commission's revenue-neutral, technology-neutral, and competitive-neutral recommendations concerning compensation flowing to the cities from

voice, video, and cable providers. The report shall identify the following:

(1) all sources of compensation that have been received by the cities historically from providers of voice, video, and cable;

(2) the providers of voice, video, and cable services available to consumers within municipalities without regard to the technology used to deliver such services;

(3) alternative funding mechanisms, including an additional municipal sales tax or any other additional municipally imposed alternatives, which would be revenue-neutral to the municipalities, and technology-neutral and competitive-neutral in application to providers, their services, and their customers; and

(4) the payment mechanism of the fees, including all municipal fees and franchise fees.

SECTION _____. Chapter 62, Utilities Code, is repealed.