

By: Nelson

S.B. No. 408

Substitute the following for S.B. No. 408:

By: King of Parker

C.S.S.B. No. 408

A BILL TO BE ENTITLED

AN ACT

relating to the continuation, administration, and operations of the Public Utility Commission of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subtitle A, Title 2, Utilities Code, is amended to read as follows:

SUBTITLE A. GENERALLY ~~[PROVISIONS]~~ APPLICABLE PROVISIONS ~~[TO ALL UTILITIES]~~

SECTION 2. Sections 11.002(a) and (b), Utilities Code, are amended to read as follows:

(a) This title is enacted to protect the public interest inherent in the delivery of ~~[rates and]~~ services and deployment of networks by telecommunications providers ~~[public utilities]~~. The purpose of this title is to establish an appropriate ~~[a comprehensive and adequate]~~ regulatory system for communications service ~~[public utilities to assure rates, operations, and services that are just]~~ and network providers for ~~[reasonable to]~~ the benefit of consumers ~~[and to the utilities]~~.

(b) Electric ~~[Public]~~ utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

SECTION 3. Sections 11.003(1), (2), (3), (8), (10), (13), (16), (19), (20), and (21), Utilities Code, are amended to read as follows:

(1) "Affected person" means:

(A) a public utility, provider, or electric cooperative affected by an action of a regulatory authority;

(B) a person whose ~~[utility]~~ service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility or provider with respect to a service delivered ~~[performed]~~ by the utility or provider; or

(ii) wants to enter into competition with a public utility or provider.

(2) "Affiliate" means:

(A) a person who directly or indirectly owns or holds at least five percent of the voting securities of a public utility or provider;

(B) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility or provider;

(C) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by a public utility or provider;

(D) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by:

1 (i) a person who directly or indirectly
2 owns or controls at least five percent of the voting securities of a
3 public utility or provider; or

4 (ii) a person in a chain of successive
5 ownership of at least five percent of the voting securities of a
6 public utility or provider;

7 (E) a person who is an officer or director of a
8 public utility or provider or of a corporation in a chain of
9 successive ownership of at least five percent of the voting
10 securities of a public utility or provider; or

11 (F) a person determined to be an affiliate under
12 federal law or Section 11.006.

13 (3) "Allocation" means the division among
14 municipalities or among municipalities and unincorporated areas of
15 the plant, revenues, expenses, taxes, and reserves of an electric
16 ~~[a]~~ utility used to provide electric ~~[public utility]~~ service in a
17 municipality or for a municipality and unincorporated areas.

18 (8) "Counselor ~~[Counsellor]~~" means the public utility
19 counsel.

20 (10) "Facilities" means all of the plant and equipment
21 of a public utility or provider, and includes the tangible and
22 intangible property, without limitation, owned, operated, leased,
23 licensed, used, controlled, or supplied for, by, or in connection
24 with the business of the public utility or provider.

25 (13) "Order" means all or a part of a final disposition
26 by a regulatory authority in a matter other than rulemaking,
27 without regard to whether the disposition is affirmative or

negative or injunctive or declaratory. The term includes:

(A) the issuance of a certificate or registration
~~[of convenience and necessity]~~; and

(B) the setting of a rate.

(16) "Rate" includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility or provider for a service, product, or commodity described in the definition of utility in Section 31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(19) "Service" includes:

(A) basic local telecommunications service as defined by Section 51.002;

(B) interexchange telecommunications service as defined by Section 51.002;

(C) local exchange telephone service as defined by Section 51.002;

(D) transmission service as defined by Section 31.002; and

(E) a service provided by a utility or electric utility that is described in the definition of utility or electric utility in Section 31.002 or 51.002 ~~[has its broadest and most~~

~~inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in~~

1 ~~the performance of the utility's duties under this title to its~~
2 ~~patrons, employees, other public utilities, an electric~~
3 ~~cooperative, and the public. The term also includes the~~
4 ~~interchange of facilities between two or more public utilities.~~
5 ~~The term does not include the printing, distribution, or sale of~~
6 ~~advertising in a telephone directory].~~

7 (20) "Test year" means the most recent 12 months,
8 beginning on the first day of a calendar or fiscal year quarter, for
9 which operating data for a public utility or provider are
10 available.

11 (21) "Trade association" means a nonprofit,
12 cooperative, and voluntarily joined association of business or
13 professional persons who are employed by public utilities, ~~[or]~~
14 utility competitors, or providers to assist ~~[the public utility~~
15 ~~industry, a utility competitor, or the industry's or competitor's~~
16 ~~employees]~~ in dealing with mutual business or professional problems
17 and in promoting their common interest.

18 SECTION 4. Chapter 11, Utilities Code, is amended by adding
19 Sections 11.0042 and 11.0045 to read as follows:

20 Sec. 11.0042. DEFINITION OF AFFILIATE. (a) The term
21 "person" or "corporation" as used in the definition of "affiliate"
22 provided by Section 11.003(2) does not include:

23 (1) a broker or dealer registered under the Securities
24 Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

25 (2) a bank or insurance company as defined under the
26 Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as
27 amended;

1 (3) an investment adviser registered under state law
2 or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-20 et
3 seq.);

4 (4) an investment company registered under the
5 Investment Company Act of 1940 (15 U.S.C. Section 80a-51 et seq.);
6 or

7 (5) an employee benefit plan, pension fund, endowment
8 fund, or other similar entity that may, directly or indirectly,
9 own, hold, or control five percent or more but not more than 15
10 percent of the voting securities of a public utility or the parent
11 corporation of a public utility if the entity did not acquire the
12 voting securities:

13 (A) for the purpose of or with the effect of
14 changing or influencing the control of the issuer of the
15 securities; or

16 (B) in connection with or as a participant in any
17 transaction that changes or influences the control of the issuer of
18 the securities.

19 (b) For the purpose of determining whether a person is an
20 affiliate under Section 11.006(a)(3), the term "person" does not
21 include an entity that may, directly or indirectly, own, hold, or
22 control five percent or more but not more than 15 percent of the
23 voting securities of a public utility or the parent corporation of a
24 public utility if the entity did not acquire the voting securities:

25 (1) for the purpose of or with the effect of changing
26 or influencing the control of the issuer of the securities; or

27 (2) in connection with or as a participant in any

1 transaction that changes or influences the control of the issuer of
2 the securities.

3 (c) A report filed by an entity described by Subsection
4 (a)(5) or (b) with the Securities and Exchange Commission is
5 conclusive evidence of the entity's intent if the report confirms
6 that the voting securities were not acquired:

7 (1) for the purpose of or with the effect of changing
8 or influencing the control of the issuer of the securities; or

9 (2) in connection with or as a participant in any
10 transaction that changes or influences the control of the issuer of
11 the securities.

12 Sec. 11.0045. DEFINITION OF PROVIDER. In Subtitle A
13 "provider" means:

14 (1) a service provider; and

15 (2) a network provider.

16 SECTION 5. Section 11.006, Utilities Code, is amended to
17 read as follows:

18 Sec. 11.006. PERSON DETERMINED TO BE AFFILIATE. (a) The
19 commission may determine that a person is an affiliate for purposes
20 of this title if the commission after notice and hearing finds that
21 the person:

22 (1) actually exercises substantial influence or
23 control over the policies and actions of a public utility or
24 provider;

25 (2) is a person over which a public utility or provider
26 exercises the control described by Subdivision (1);

27 (3) is under common control with a public utility or

1 provider; or

2 (4) together with one or more persons with whom the
3 person is related by ownership or blood relationship, or by action
4 in concert, actually exercises substantial influence over the
5 policies and actions of a public utility or provider even though
6 neither person may qualify as an affiliate individually.

7 (b) For purposes of Subsection (a)(3), "common control with
8 a public utility or provider" means the direct or indirect
9 possession of the power to direct or cause the direction of the
10 management and policies of another, without regard to whether that
11 power is established through ownership or voting of securities or
12 by any other direct or indirect means.

13 SECTION 6. Chapter 11, Utilities Code, is amended by adding
14 Section 11.010 to read as follows:

15 Sec. 11.010. REPRESENTATION. (a) Except as provided by
16 Subsection (b), an individual who represents an entity in a
17 contested proceeding before the commission must be an attorney
18 licensed to practice law in this state or in another state.

19 (b) The commission may make an exception to Subsection (a)
20 based on the circumstances of a particular proceeding.

21 SECTION 7. Section 12.004, Utilities Code, is amended to
22 read as follows:

23 Sec. 12.004. REPRESENTATION BY [~~THE~~] ATTORNEY GENERAL. The
24 attorney general shall represent the commission in a matter before
25 a state court, a court of the United States, or a federal public
26 utility or service regulatory commission.

27 SECTION 8. Section 12.005, Utilities Code, is amended to

read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 [~~2005~~].

SECTION 9. Section 12.051(a), Utilities Code, is amended to read as follows:

(a) The commission is composed of five [~~three~~] commissioners appointed by the governor with the advice and consent of the senate.

SECTION 10. Section 12.053(b), Utilities Code, is amended to read as follows:

(b) A person is not eligible for appointment as a commissioner if the person:

(1) at any time during the two years preceding appointment[+]

[~~(A)~~] personally served as an officer, director, owner, employee, partner, or legal representative of a [~~public~~] utility, provider, affiliate, or direct competitor of a [~~public~~] utility or provider; [~~or~~]

(2) owns [~~(B) — owned~~] or controls [~~controlled~~], directly or indirectly, stocks or bonds of any class with a value of \$10,000 or more in a [~~public~~] utility, provider, affiliate, or direct competitor of a [~~public~~] utility or provider; or

(3) [~~(2)~~] is not qualified to serve under Section 12.151, 12.152, or 12.153.

1 SECTION 11. Section 12.054(a), Utilities Code, is amended
2 to read as follows:

3 (a) It is a ground for removal from the commission if a
4 commissioner:

5 (1) does not have at the time of appointment or
6 maintain during service on the commission the qualifications
7 required by Section 12.053;

8 (2) violates a prohibition provided by Section 12.053
9 or by Subchapter D;

10 (3) cannot discharge the commissioner's duties for a
11 substantial part of the term for which the commissioner is
12 appointed because of illness or disability; ~~[or]~~

13 (4) is absent from more than half of the regularly
14 scheduled commission meetings that the commissioner is eligible to
15 attend during a calendar year unless the absence is excused by
16 majority vote of the commission; or

17 (5) personally serves as an officer, director, owner,
18 employee, partner, or legal representative of a utility, provider,
19 affiliate, or direct competitor of a utility or provider.

20 SECTION 12. Section 12.059, Utilities Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) A person who is appointed to the commission is entitled
23 to reimbursement, as provided by the General Appropriations Act,
24 for the travel expenses incurred in attending the training program
25 regardless of whether the attendance at the program occurs before
26 or after the person qualifies for office.

27 SECTION 13. Section 12.102, Utilities Code, is amended to

read as follows:

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the commission and the management responsibilities of the commission employees.

SECTION 14. Section 12.152(a), Utilities Code, is amended to read as follows:

(a) A person is not eligible for appointment as a commissioner or executive director of the commission if:

(1) the person serves on the board of directors of a company that supplies fuel, utility-related services, or utility-related products to a utility or provider ~~[regulated or unregulated electric or telecommunications utilities]~~; or

(2) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the commission;

(B) directly or indirectly owns or controls more than a 10 percent interest or a pecuniary interest with a value exceeding \$10,000 in:

(i) a business entity or other organization that is regulated by or receives funds from the commission; or

(ii) a utility, provider, affiliate, or direct competitor of a ~~[7]~~ utility ~~[supplier,]~~ or provider ~~[other entity affected by a commission decision in a manner other than by the setting of rates for that class of customer]~~;

(C) uses or receives a substantial amount of

1 tangible goods, services, or funds from the commission, other than
2 compensation or reimbursement authorized by law for commission
3 membership, attendance, or expenses; or

4 (D) notwithstanding Paragraph (B), has an
5 interest in a mutual fund or retirement fund in which more than 10
6 percent of the fund's holdings at the time of appointment is in a
7 single utility, provider, affiliate, or direct [utility]
8 competitor of a [~~or~~] utility or provider [~~supplier~~] in this state
9 and the person does not disclose this information to the governor,
10 senate, commission, or other entity, as appropriate.

11 SECTION 15. Section 12.153, Utilities Code, is amended to
12 read as follows:

13 Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person
14 may not serve as a commissioner or be a commission employee who is
15 employed in a "bona fide executive, administrative, or professional
16 capacity," as that phrase is used for purposes of establishing an
17 exemption to the overtime provisions of the federal Fair Labor
18 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), [~~exempt from~~
19 ~~the state's position classification plan or is compensated at or~~
20 ~~above the amount prescribed by the General Appropriations Act for~~
21 ~~step 1, salary group 17, of the position classification salary~~
22 ~~schedule]~~ if the person is:

23 (1) an officer, employee, or paid consultant of a
24 trade association; or

25 (2) the spouse of an officer, manager, or paid
26 consultant of a trade association.

27 SECTION 16. Sections 12.154(a), (b), (c), (d), (f), and

(h), Utilities Code, are amended to read as follows:

(a) During the period of service with the commission, a commissioner or commission employee may not:

(1) have a pecuniary interest, including an interest as an officer, director, partner, owner, employee, attorney, or consultant, in:

(A) a ~~[public]~~ utility, provider, ~~[or]~~ affiliate, or direct competitor of a utility or provider; or

(B) a person a significant portion of whose business consists of furnishing goods or services to a utility, provider, affiliate, or direct competitor of a utility or provider ~~[public utilities or affiliates]~~;

(2) directly or indirectly own or control securities in a ~~[public]~~ utility, provider, affiliate, or direct competitor of a ~~[public]~~ utility or provider; or

(3) accept a gift, gratuity, or entertainment from:

(A) a ~~[public]~~ utility, provider, affiliate, or direct competitor of a ~~[public]~~ utility or provider;

(B) a person a significant portion of whose business consists of furnishing goods or services to ~~[public]~~ utilities, providers, affiliates, or direct competitors of ~~[public]~~ utilities or providers; or

(C) an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Paragraph (A) or (B).

(b) A commissioner or a commission employee may not directly or indirectly solicit, request from, or suggest or recommend to a

1 ~~[public]~~ utility, provider, affiliate, or direct competitor of a
2 utility or provider or an agent, representative, attorney,
3 employee, officer, owner, director, or partner of a ~~[public]~~
4 utility, provider, affiliate, or direct competitor of a utility or
5 provider the appointment to a position or the employment of a person
6 by the ~~[public]~~ utility, provider, ~~or~~ affiliate, or direct
7 competitor of a utility or provider.

8 (c) A person may not give or offer to give a gift, gratuity,
9 employment, or entertainment to a commissioner or commission
10 employee if that person is:

11 (1) a ~~[public]~~ utility, provider, affiliate, or direct
12 competitor of a ~~[public]~~ utility or provider;

13 (2) a person who furnishes goods or services to a
14 ~~[public]~~ utility, provider, affiliate, or direct competitor of a
15 ~~[public]~~ utility or provider; or

16 (3) an agent, representative, attorney, employee,
17 officer, owner, director, or partner of a person described by
18 Subdivision (1) or (2).

19 (d) A ~~[public]~~ utility, provider, affiliate, or direct
20 competitor of a ~~[public]~~ utility or provider or a person furnishing
21 goods or services to a ~~[public]~~ utility, provider, affiliate, or
22 direct competitor of a ~~[public]~~ utility or provider may not aid,
23 abet, or participate with a commissioner, commission employee, or
24 former commission employee in conduct that violates Subsection
25 (a)(3) or (c).

26 (f) It is not a violation of this section if a commissioner
27 or commission employee, on becoming the owner of stocks, bonds, or

1 another pecuniary interest in a ~~[public]~~ utility, provider,
2 affiliate, or direct competitor of a ~~[public]~~ utility or provider
3 otherwise than voluntarily, informs the commission and the attorney
4 general of the ownership and divests the ownership or interest
5 within a reasonable time.

6 (h) This section does not apply to a contract for a ~~[public~~
7 ~~utility]~~ product or service from ~~[or equipment for use of]~~ a
8 ~~[public]~~ utility, provider, affiliate, or direct competitor of a
9 utility or provider ~~[product]~~ when a commissioner or commission
10 employee is acting as a consumer.

11 SECTION 17. Sections 12.155(a) and (c), Utilities Code, are
12 amended to read as follows:

13 (a) A commissioner, a commission employee, or an employee of
14 the State Office of Administrative Hearings involved in hearing
15 utility or provider cases may not:

16 (1) be employed by a ~~[public]~~ utility or provider that
17 was in the scope of the commissioner's or employee's official
18 responsibility while the commissioner or employee was associated
19 with the commission or the State Office of Administrative Hearings;
20 or

21 (2) represent a person before the commission or State
22 Office of Administrative Hearings or a court in a matter:

23 (A) in which the commissioner or employee was
24 personally involved while associated with the commission or State
25 Office of Administrative Hearings; or

26 (B) that was within the commissioner's or
27 employee's official responsibility while the commissioner or

1 employee was associated with the commission or State Office of
2 Administrative Hearings.

3 (c) The prohibition of Subsection (a)(2) applies while a
4 commissioner, commission employee, or employee of the State Office
5 of Administrative Hearings involved in hearing utility or provider
6 cases is associated with the commission or State Office of
7 Administrative Hearings and at any time after.

8 SECTION 18. Section 12.252, Utilities Code, is amended to
9 read as follows:

10 Sec. 12.252. COMMISSION AUTHORITY. The commission, after
11 notice and hearing, may require each utility or provider subject to
12 regulation under this title to make an effort to overcome the
13 underuse of historically underutilized businesses.

14 SECTION 19. Section 12.253, Utilities Code, is amended to
15 read as follows:

16 Sec. 12.253. REPORT REQUIRED. The commission shall require
17 each utility or provider subject to regulation under this title to
18 prepare and submit to the commission a comprehensive annual report
19 detailing its use of historically underutilized businesses.

20 SECTION 20. Section 14.001, Utilities Code, is amended to
21 read as follows:

22 Sec. 14.001. POWER TO REGULATE AND SUPERVISE. The
23 commission has the general power to regulate and supervise the
24 business of each [~~public~~] utility and provider within its
25 jurisdiction and to do anything specifically designated or implied
26 by this title that is necessary and convenient to the exercise of
27 that power and jurisdiction.

SECTION 21. Subchapter A, Chapter 14, Utilities Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

SECTION 22. Section 14.008(a), Utilities Code, is amended to read as follows:

(a) Except as otherwise provided by this title, this ~~[This]~~

1 title does not restrict the rights and powers of a municipality to
2 grant or refuse a franchise to use the streets and alleys in the
3 municipality or to make a statutory charge for that use.

4 SECTION 23. Section 14.058, Utilities Code, is amended to
5 read as follows:

6 Sec. 14.058. FEES FOR ELECTRONIC ACCESS TO INFORMATION.
7 The fees charged by the commission for electronic access to
8 information that is stored in the system established by the
9 commission using funds from the Texas Public Finance Authority and
10 approved by the Department of Information Resources shall be
11 established:

12 (1) by the commission in consultation with the Texas
13 Building and Procurement [~~General Services~~] Commission; and

14 (2) in an amount reasonable and necessary to retire
15 the debt to the Texas Public Finance Authority associated with
16 establishing the electronic access system.

17 SECTION 24. Subchapter B, Chapter 14, Utilities Code, is
18 amended by adding Section 14.059 to read as follows:

19 Sec. 14.059. TECHNOLOGY POLICY. The commission shall
20 implement a policy requiring the commission to use appropriate
21 technological solutions to improve the commission's ability to
22 perform its functions. The policy must ensure that the public is
23 able to interact with the commission on the Internet.

24 SECTION 25. Section 14.101(d), Utilities Code, is amended
25 to read as follows:

26 (d) This section does not apply to:

27 (1) the purchase of a unit of property for

1 replacement;

2 (2) an addition to the facilities of a public utility
3 by construction; ~~[or]~~

4 (3) transactions that facilitate unbundling, asset
5 valuation, minimization of ownership or control of generation
6 assets, or other purposes consistent with Chapter 39;

7 (4) transactions of or relating to:

8 (A) an electing company under Chapter 58 or 59;

9 or

10 (B) a company holding a certificate of operating
11 authority or a service provider certificate of operating authority
12 on August 31, 2005; or

13 (5) transactions that are reported to or reviewed by a
14 federal agency, another state, or another state agency.

15 SECTION 26. Subchapter B, Chapter 15, Utilities Code, is
16 amended by adding Section 15.0205 to read as follows:

17 Sec. 15.0205. DEFINITION. In this subchapter, "person"
18 includes a municipally owned utility and an electric cooperative
19 for the purposes of enforcing compliance with and providing
20 penalties for violations of Sections 39.151(j) and 39.157(a).

21 SECTION 27. Section 15.023, Utilities Code, is amended by
22 amending Subsections (b) and (c) and adding Subsections (d), (e),
23 and (f) to read as follows:

24 (b) Except as otherwise provided by this title, the ~~[The]~~
25 penalty for a violation may be in an amount not to exceed \$10,000
26 ~~[\$5,000].~~ Each day a violation continues or occurs is not a
27 separate violation for purposes of imposing a penalty, except as

1 otherwise provided by this title. Each settlement interval in the
2 wholesale electric market during which a violation continues or
3 occurs is not a separate violation for purposes of imposing a
4 penalty.

5 (c) The commission by rule shall establish a classification
6 system for violations that includes a range [The amount] of [an]
7 administrative penalties that may be assessed for each class of
8 violation [penalty shall be] based on:

9 (1) the seriousness of the violation, including:

10 (A) the nature, circumstances, extent, and
11 gravity of a prohibited act; and

12 (B) the hazard or potential hazard created to the
13 health, safety, or economic welfare of the public;

14 (2) the economic harm to property or the environment
15 caused by the violation;

16 (3) the history of previous violations;

17 (4) the amount necessary to deter future violations;

18 (5) efforts to correct the violation; and

19 (6) any other matter that justice may require,
20 including the amount of a penalty imposed on a similarly situated
21 person.

22 (d) The classification system established under Subsection
23 (c) shall provide that the penalty for a violation may exceed
24 \$10,000 only if the violation is included in the highest class of
25 violations in the classification system.

26 (e) Notwithstanding the classification system established
27 under Subsection (c), a person regulated under this title who

1 wilfully and knowingly violates this title or a rule or order
2 adopted under this title may be assessed a penalty included in the
3 range of penalties that may be assessed for the highest class of
4 violations in the classification system.

5 (f) The commission may not initiate the process for
6 assessing an administrative penalty after the second anniversary of
7 the later of:

8 (1) the date on which the violation occurred; or

9 (2) the date on which the commission knew that the
10 violation occurred.

11 SECTION 28. Section 15.024, Utilities Code, as amended by
12 Chapters 1212 and 1579, Acts of the 76th Legislature, Regular
13 Session, 1999, is reenacted and amended to read as follows:

14 Sec. 15.024. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

15 (a) If the executive director contends [~~determines~~] that a
16 violation has occurred, the executive director shall [~~may~~] issue to
17 the commission a report that states the facts on which the
18 contention [~~determination~~] is based, including whether service to
19 an end-user consumer is the basis of the contention, and the
20 executive director's recommendation on the imposition of an
21 administrative penalty, including a recommendation on the amount of
22 the penalty.

23 (b) Not later than the 14th day after the date the report is
24 issued, the executive director shall give written notice of the
25 report to the person against whom the penalty may be assessed. The
26 notice shall be given by certified mail, return receipt requested.

27 The notice must:

1 (1) include a brief summary of the alleged violation;

2 (2) state whether service to an end-user consumer is
3 the basis of the alleged violation, including instruction or
4 information on how to contact the end-user consumer;

5 (3) state the amount of the recommended penalty,
6 including the reasons why that penalty is recommended, considering
7 the classification system created under Section 15.023; and

8 (4) ~~[(3)]~~ inform the person that the person has a
9 right to a hearing on the occurrence of the violation, the amount of
10 the penalty, or both the occurrence of the violation and the amount
11 of the penalty.

12 (c) A penalty may not be assessed under this section if the
13 person against whom the penalty may be assessed remedies the
14 violation before the 31st day after the date the person receives the
15 notice under Subsection (b). A person who claims to have remedied
16 an alleged violation has the burden of proving to the commission
17 that the alleged violation was remedied and was accidental or
18 inadvertent. This subsection does not apply to a violation of
19 Chapter ~~[17]~~ 55~~[7]~~ or 64.

20 (d) Not later than the 60th ~~[20th]~~ day after the date the
21 person receives the notice, the person may accept or agree not to
22 contest the contention ~~[determination]~~ and recommended penalty of
23 the executive director in writing or may make a written request for
24 a hearing on the occurrence of the violation, the amount of the
25 penalty, or both the occurrence of the violation and the amount of
26 the penalty.

27 (e) If the person accepts, agrees not to contest, or fails

1 to timely respond to the notice of the executive director's
 2 contention [~~determination~~] and recommended penalty, the commission
 3 by order shall approve the contention [~~determination~~] and impose
 4 the recommended penalty.

5 (f) If the person requests a hearing [~~or fails to timely~~
 6 ~~respond to the notice~~], the executive director shall set a hearing
 7 and give notice of the hearing to the person. The hearing shall be
 8 held in accordance with Subchapter B, Chapter 14. If a hearing is
 9 conducted by [~~an administrative law judge of~~] the State Office of
 10 Administrative Hearings, the [~~.—The~~] administrative law judge
 11 shall make findings of fact and conclusions of law and promptly
 12 issue to the commission a proposal for a decision about the
 13 occurrence of the violation and the amount of a proposed penalty.
 14 Based on the findings of fact, conclusions of law, and proposal for
 15 a decision, the commission by order may find that a violation has
 16 occurred and impose a penalty or may find that no violation
 17 occurred.

18 (g) The notice of the commission's order shall be given to
 19 the person as provided by Chapter 2001, Government Code, and must
 20 include a statement of the right of the person to judicial review of
 21 the order.

22 SECTION 29. Section 15.027(c), Utilities Code, is amended
 23 to read as follows:

24 (c) The executive director may delegate any power or duty
 25 relating to an administrative penalty given the executive director
 26 by this subchapter to the deputy [~~a person designated by the~~]
 27 executive director.

SECTION 30. Section 15.032, Utilities Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c), a [A] suit for the recovery of a penalty does not:

(1) bar or affect the recovery of any other penalty; or
(2) bar a criminal prosecution or an action for civil damages against any person.

(c) An action for civil damages may not be brought against a person if the commission has acted under Section 39.151(j) or 39.157(a) to address the conduct that is the subject of the proposed action for civil damages.

SECTION 31. Section 15.033, Utilities Code, is amended to read as follows:

Sec. 15.033. DISPOSITION OF CERTAIN AMOUNTS ~~[FINES AND PENALTIES]~~. (a) A fine or penalty collected under this title, other than a ~~[fine or penalty collected in a criminal proceeding or a]~~ penalty collected under Section 15.027(a), shall be paid to the commission.

(b) Notwithstanding any other law, a disgorgement or refund amount collected under Section 39.151(j) or 39.157(a) shall be paid to the independent organization certified by the commission under Section 39.151 for distribution according to commission order.

SECTION 32. Sections 15.051(a) and (b), Utilities Code, are amended to read as follows:

(a) An affected person may complain to the regulatory authority in writing setting forth an act or omission by a ~~[public]~~

1 utility or provider in violation or claimed violation of a law that
2 the regulatory authority has jurisdiction to administer or of an
3 order, ordinance, or rule of the regulatory authority.

4 (b) The commission shall keep for a reasonable period
5 information about each complaint filed with the commission that the
6 commission has authority to resolve. The information shall
7 include:

- 8 (1) the date the complaint is received;
- 9 (2) the name of the complainant;
- 10 (3) the subject matter of the complaint;
- 11 (4) a record of each person contacted in relation to
12 the complaint;
- 13 (5) a summary of the results of the review or
14 investigation of the complaint; and
- 15 (6) if the commission took no action on the complaint,
16 an explanation of the reason the complaint was closed without
17 action.

18 SECTION 33. The heading to Subchapter A, Chapter 16,
19 Utilities Code, is amended to read as follows:

20 SUBCHAPTER A. ASSESSMENT ON [~~PUBLIC~~] UTILITIES, RETAIL ELECTRIC
21 PROVIDERS, ELECTRIC COOPERATIVES, AND PROVIDERS

22 SECTION 34. Section 16.001, Utilities Code, is amended to
23 read as follows:

24 Sec. 16.001. ASSESSMENT ON [~~PUBLIC~~] UTILITIES, RETAIL
25 ELECTRIC PROVIDERS, ELECTRIC COOPERATIVES, AND PROVIDERS. (a) To
26 defray the expenses incurred in the administration of this title,
27 an assessment is imposed on each [~~public~~] utility, retail electric

1 provider, provider, and electric cooperative within the
2 jurisdiction of the commission that serves the ultimate consumer[~~7~~
3 ~~including each interexchange telecommunications carrier~~].

4 (b) An assessment under this section may not exceed [~~is~~
5 ~~equal to~~] one-sixth of one percent of the [~~public utility's, retail~~
6 ~~electric provider's, or electric cooperative's~~] gross receipts from
7 services over which the commission has jurisdiction, including a
8 service for which a provider receives interconnection under Chapter
9 60 [~~rates charged to the ultimate consumer in this state~~].

10 (c) Each utility and provider [~~An interexchange~~
11 ~~telecommunications carrier that does not provide local exchange~~
12 ~~telephone service~~] may collect the fee imposed under this section
13 as an additional item separately stated on the customer bill as
14 "public utility commission gross receipts assessment."

15 SECTION 35. Section 16.002(b), Utilities Code, is amended
16 to read as follows:

17 (b) A [~~public~~] utility, retail electric provider, provider,
18 or electric cooperative may instead make quarterly payments due
19 August 15, November 15, February 15, and May 15.

20 SECTION 36. Section 39.262(c), Utilities Code, is amended
21 to read as follows:

22 (c) After January 10, 2004, at a schedule and under
23 procedures to be determined by the commission, each transmission
24 and distribution utility, its affiliated retail electric provider,
25 and its affiliated power generation company shall jointly file to
26 finalize stranded costs under Subsections (h) and (i) and reconcile
27 those costs with the estimated stranded costs used to develop the

1 competition transition charge in the proceeding held under Section
 2 39.201. Any resulting difference shall be applied to the
 3 nonbypassable delivery rates of the transmission and distribution
 4 utility, except that at the utility's option, any or all of the
 5 amounts recovered under this section [~~remaining stranded costs~~] may
 6 be securitized under Subchapter G.

7 SECTION 37. Section 39.301, Utilities Code, is amended to
 8 read as follows:

9 Sec. 39.301. PURPOSE. The purpose of this subchapter is to
 10 enable utilities to use securitization financing to recover
 11 regulatory assets, all other amounts determined under Section
 12 39.262, and any amounts being recovered under a competition
 13 transition charge determined as a result of a proceeding under
 14 Section 39.201 or 39.262. It is the policy of this state to
 15 encourage electric utilities and transmission and distribution
 16 utilities to use securitization financing [~~stranded costs,~~]
 17 because this type of debt will lower the carrying costs of the
 18 assets relative to the costs that would be incurred using
 19 conventional utility financing methods. The proceeds of the
 20 transition bonds shall be used solely for the purposes of reducing
 21 the amount of recoverable regulatory assets and other amounts
 22 [~~stranded costs~~], as determined by the commission in accordance
 23 with this chapter, through the refinancing or retirement of utility
 24 debt or equity. The commission shall ensure that securitization
 25 provides tangible and quantifiable benefits to ratepayers, greater
 26 than would have been achieved absent the issuance of transition
 27 bonds. The commission shall ensure that the structuring and

1 pricing of the transition bonds result in the lowest transition
2 bond charges consistent with market conditions and the terms of the
3 financing order. The amount securitized may not exceed the present
4 value of the revenue requirement over the life of the proposed
5 transition bond associated with the regulatory assets or stranded
6 costs sought to be securitized. The present value calculation
7 shall use a discount rate equal to the proposed interest rate on the
8 transition bonds.

9 SECTION 38. Section 39.302(4), Utilities Code, is amended
10 to read as follows:

11 (4) "Qualified costs" means 100 percent of an electric
12 utility's regulatory assets and 75 percent of its recoverable costs
13 determined by the commission under Section 39.201 and any remaining
14 amounts [~~stranded costs~~] determined under Section 39.262 together
15 with the costs of issuing, supporting, and servicing transition
16 bonds and any costs of retiring and refunding the electric
17 utility's existing debt and equity securities in connection with
18 the issuance of transition bonds. The term includes the costs to
19 the commission of acquiring professional services for the purpose
20 of evaluating proposed transactions under Section 39.201 and this
21 subchapter.

22 SECTION 39. Sections 39.303(a) and (b), Utilities Code, are
23 amended to read as follows:

24 (a) The commission shall adopt a financing order, on
25 application of a utility to recover the utility's regulatory assets
26 and other amounts determined [~~eligible stranded costs~~] under
27 Section 39.201 or 39.262, on making a finding that the total amount

1 of revenues to be collected under the financing order is less than
2 the revenue requirement that would be recovered over the remaining
3 life of the stranded costs using conventional financing methods and
4 that the financing order is consistent with the standards in
5 Section 39.301.

6 (b) The financing order shall detail the amount of
7 regulatory assets and other amounts [~~stranded costs~~] to be
8 recovered and the period over which the nonbypassable transition
9 charges shall be recovered, which period may not exceed 15 years.

10 SECTION 40. Subtitle C, Title 2, Utilities Code, is amended
11 by adding Chapter 65 to read as follows:

12 CHAPTER 65. STATEWIDE CABLE AND VIDEO FRANCHISE

13 Sec. 65.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

24 (12) "Video programming" means programming provided
25 by, or generally considered comparable to programming provided by,
26 a television broadcast station, as set forth in 47 U.S.C. Section
27 522(20).

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

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

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

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

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

25 (1) that, if applicable, the applicant has filed or
26 will timely file with the Federal Communications Commission all
27 forms required by that agency in advance of offering cable service;

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

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

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

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

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

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

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

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

25 Sec. 65.003. TERMINATION OF MUNICIPAL FRANCHISE BY CABLE
26 SERVICE PROVIDER. (a) Beginning September 1, 2005, a cable service
27 provider may elect to terminate any municipal franchise by

1 providing written notice to the commission and the affected
2 municipality. The termination shall be effective as of the date the
3 commission receives the notice.

4 (b) A cable service provider electing to terminate an
5 existing municipal franchise shall be responsible for remitting to
6 the affected municipality within 90 days of the effective date of
7 termination any accrued but unpaid franchise fees due under the
8 franchise being terminated. If the cable service provider has
9 credit remaining from prepaid franchise fees, the provider may
10 deduct the amount of the remaining credit from any future fees or
11 taxes it must pay to the municipality, either directly or through
12 the comptroller.

13 Sec. 65.004. REQUIREMENTS APPLICABLE TO CABLE SERVICE
14 PROVIDERS AND VIDEO SERVICE PROVIDERS. (a) Not later than 120 days
15 after a request by a municipality served by the cable or video
16 service provider as specified in the certificate issued by the
17 commission, entities, to extent required by 47 U.S.C. Section 531,
18 shall provide the municipality, where technically capable, with
19 capacity in its communications network to allow public,
20 educational, and governmental (PEG) access channels for
21 noncommercial programming as follows. If a municipality did not
22 have any public, educational, and governmental access channels as
23 of September 1, 2005, then the cable or video service provider shall
24 furnish:

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

27 (2) up to two PEG channels for a municipality with a

1 population of less than 50,000.

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

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

22 (2) after a cable or video service provider has
23 commenced commercial delivery of cable or video services in a
24 municipality and no later than 120 days after a written request from
25 a municipality, a cable or video service provider shall, as
26 applicable, either provide the initial access channel allowed in
27 Subsection (a) if a municipality did not have any PEG channels as of

1 September 1, 2005, or shall continue to provide the channels in
2 service as of September 1, 2005, subject to the terms of this
3 section. In the event a municipality has not utilized the minimum
4 number of access channels as permitted in Subsection (a), access to
5 the additional channel capacity allowed in Subsection (a) shall be
6 provided upon 90 days' written notice if the municipality meets the
7 following standard: if a municipality has one active PEG channel
8 and wishes to activate an additional PEG channel, the initial
9 channel shall be considered to be substantially utilized when 12
10 hours are programmed on that channel each calendar day. In
11 addition, at least 40 percent of the 12 hours of programming for
12 each business day on average over each calendar quarter must be
13 nonrepeat programming. Nonrepeat programming shall include the
14 first three video-castings of a program. If a municipality is
15 entitled to three PEG channels under Subsection (a) and has in
16 service two active PEG channels, each of the two active channels
17 shall be considered to be substantially utilized when 12 hours are
18 programmed on each channel each calendar day and at least 50 percent
19 of the 12 hours of programming for each business day on average over
20 each calendar quarter is nonrepeat programming for three
21 consecutive calendar quarters;

22 (3) a municipality shall bear the cost of any
23 construction required to establish a connection between a
24 municipality's origination point and the cable or video service
25 provider's communication network;

26 (4) the operation of any PEG channel provided pursuant
27 to this section shall be the responsibility of the municipality

1 receiving the benefit of such channel, and the cable or video
2 service provider shall have no obligation to operate such channel
3 other than the transmission of such channel; and

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

13 (6) The commission shall oversee the requirements of
14 this Section to ensure compliance with federal law.

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

21 (d) Only a municipality may seek enforcement of the
22 requirements of Subsections (a), (b), and (c) by initiating a
23 proceeding with the commission.

24 (e) It is the sole responsibility of the municipality to
25 ensure that any and all transmissions, content, or programming to
26 be transmitted over a channel or facility are provided or submitted
27 to the cable or video service provider in a manner or form that is

1 capable of being accepted and transmitted by a provider, without
2 requirement for additional alteration or change in content by the
3 provider, over the particular network of the cable or video service
4 provider, which is compatible with the technology or protocol
5 utilized by the cable or video service provider to deliver
6 services.

7 (f) Pursuant to a franchise issued by the Commission, and to
8 the extent required by 47 U.S.C. Section 541(a)(3), a cable or video
9 service provider may not deny access to service to any group of
10 potential residential subscribers because of the income of the
11 residents of the local area in which such group resides. A provider
12 may satisfy the requirements of this subsection through the use of
13 an alternative technology notwithstanding differences in the
14 specific content or functionality provided.

15 (g) An affected person may seek enforcement of the
16 requirement described in Subsection (f) by initiating a proceeding
17 with the commission. A municipality within which the potential
18 residential cable or video subscribers referenced in Subsection (f)
19 reside shall be an affected person for purposes of this section.

20 (h) Pursuant to a franchise issued by the commission, a
21 cable or video service provider shall comply with customer service
22 requirements consistent with 47 C.F.R. Section 76.309(c) until
23 there are more than two providers offering service including
24 direct-to-home satellite service in the affected area.

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

(j) Should a cable or video service provider be found by the commission to be in noncompliance with the requirements of this section, the commission 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 commission shall reasonably impose, up to and including revocation of any state franchise granted under this chapter. A municipality within which the provider offers cable or video service shall be an appropriate party in any such litigation.

(k) The commission 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 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, the commission shall allow a municipality the authority to:

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

(3) submit reports within 30 days on the customer

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

9 (l) The commission shall adopt a policy whereby it receives
10 service quality complaints from customers of franchised cable and
11 video providers. The commission shall post on its internet website
12 each calendar quarter the number of complaints lodged against each
13 franchise holder.

14 (m) Nothing in this section prohibits a municipality from
15 exercising its nondiscriminatory police power with respect to a
16 communications service provider's use of the public rights-of-way.
17 The commission shall have jurisdiction to enforce and determine the
18 lawfulness of any ordinance adopted by a municipality under this
19 section.

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

26 (o) Upon written notice to the Commission, a cable or video
27 service provider electing to terminate an existing municipal

1 franchise or initiating service after September 1, 2005, shall pay
2 each municipality in which it provides service a fee equal to five
3 percent of the provider's gross revenues.

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

5 (1) all consideration of any kind or nature, including
6 without limitation cash, credits, property, and in-kind
7 contributions (services or goods) derived by the provider from the
8 operation of the provider's system to provide cable or video
9 service within the municipality;

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

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

26 (q) For purposes of this section, "gross revenues" does not
27 include:

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

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

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

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

16 (5) any revenue paid by subscribers to home shopping
17 programmers directly from the sale of merchandise through any home
18 shopping channel offered as part of the cable or video service;

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

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

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

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

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

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

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

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

27 (s) For purposes of this section, a provider's system shall

1 consist solely of the optical spectrum wavelength(s), bandwidth, or
2 other current or future technological capacity used for the
3 transmission of video programming over wireline directly to
4 subscribers within the geographic area within the municipality as
5 designated by the provider in its franchise.

6 (t) The commission shall not permit a municipality to
7 require a cable service provider or video service provider to pay
8 the municipality any fee or assessment, including any application,
9 permit, excavation, or inspection fee or any fee for the support of
10 public, educational, or governmental access channels. This
11 subsection does not preclude the assessment of generally applicable
12 taxes or fees.

13 (u) The commission shall permit a cable service provider or
14 a video service provider may recover from the provider's customers
15 the fee imposed by this chapter.

16 (v) Notwithstanding that a municipal cable franchise may be
17 terminated pursuant to Section 65.003, the following services shall
18 continue to be provided by the cable provider that was furnishing
19 services pursuant to its terminated franchise until 2015 or until
20 the term of the franchise was to expire, whichever is sooner:

21 (1) institutional network capacity, however defined
22 or referred to in the municipal cable franchise, but generally
23 referring to a private line data network capacity for use by the
24 municipality for noncommercial purposes, shall continue to be
25 provided at the same capacity as was provided to the municipality
26 prior to the date of the termination; and

27 (2) cable services to community public buildings, such

1 as municipal buildings and public schools, shall continue to be
2 provided to the same extent provided immediately prior to the date
3 of the termination. Such cable service generally refers to the
4 existing cable drop connections to such facilities and the tier of
5 cable service provided pursuant to the franchise at the time of the
6 termination.

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

12 SECTION 41. The Public Utility Commission of Texas shall
13 conduct a study and shall file a report with the legislature not
14 later than September 1, 2006, containing the commission's
15 revenue-neutral, technology-neutral, and competitive-neutral
16 recommendations concerning compensation flowing to the cities from
17 voice, video, and cable providers. The report shall identify the
18 following:

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

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

25 (3) alternative funding mechanisms, including an
26 additional municipal sales tax or any other additional municipally
27 imposed alternatives, which would be revenue-neutral to the

1 municipalities, and technology-neutral and competitive-neutral in
2 application to providers, their services, and their customers; and

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

5 SECTION 42. (a) Promptly after this Act takes effect, the
6 Public Utility Commission of Texas shall conduct a comprehensive
7 review of the reporting requirements relating to
8 telecommunications providers that are prescribed by statute or
9 commission rules to determine the necessity for the required
10 reports.

11 (b) In conducting the review, the Public Utility Commission
12 of Texas shall:

13 (1) solicit input and assistance from interested
14 parties;

15 (2) establish criteria for when and in what manner the
16 information included in a report will be used;

17 (3) ensure that information included in a report is
18 not duplicative of information included in a different report;

19 (4) eliminate a report required by rule that the
20 commission determines is unnecessary; and

21 (5) change the requirements relating to a report the
22 commission determines is necessary to make the reporting process
23 more efficient.

24 (c) The Public Utility Commission of Texas shall conclude
25 the review required by this section not later than September 1,
26 2006, and shall report to the legislature in the biennial report
27 required by Section 52.006, Utilities Code, on the results of the

1 review. The report must include:

2 (1) the results of the review and the actions the
3 commission has taken to amend commission rules to reflect the
4 results of the review; and

5 (2) recommendations on any legislation the commission
6 determines is necessary or appropriate to eliminate or change
7 reporting requirements prescribed by statute.

8 SECTION 43. The following provisions of the Utilities Code
9 are repealed on the effective date of this Act:

- 10 (1) Section 11.008;
11 (2) Section 15.003(c);
12 (3) Section 15.028;
13 (4) Section 15.030;
14 (5) Section 15.052;
15 (6) Chapter 17; and
16 (7) Chapter 62.

17 SECTION 44. Promptly after this Act takes effect, the
18 governor shall appoint two additional members to the Public Utility
19 Commission of Texas. Of those members, the governor shall
20 designate one to serve a term expiring September 1, 2009, and one to
21 serve a term expiring January 1, 2011. Until all appointees have
22 taken office, a quorum of the commission is a majority of the number
23 of members who are qualified.

24 SECTION 45. The repeal by this Act of Section 15.003(c),
25 Utilities Code, does not apply to a suit commenced before the
26 effective date of the repeal. A suit commenced before the effective
27 date of the repeal is governed by the law as it existed immediately

1 before the effective date of the repeal, and that law is continued
2 in effect for that purpose.

3 SECTION 46. The repeal by this Act of Sections 15.028 and
4 15.030, Utilities Code, does not apply to a violation of those
5 sections that occurs before the effective date of the repeal. A
6 violation that occurs before the effective date of the repeal is
7 governed by the law as it existed immediately before the effective
8 date of the repeal, and that law is continued in effect for that
9 purpose.

10 SECTION 47. The change in law made by this Act relating to
11 qualifications and eligibility to serve as a commissioner or to be
12 employed with the Public Utility Commission of Texas applies only
13 to a commissioner or employee appointed or employed after the
14 effective date of this Act. A commissioner or employee of the
15 Public Utility Commission of Texas who is serving or employed on the
16 effective date of this Act is governed by the law as it existed
17 immediately before the effective date of this Act, and the former
18 law is continued in effect for that purpose.

19 SECTION 48. The changes in law made by this Act to Sections
20 15.023 and 15.024, Utilities Code, apply only to a violation
21 committed on or after the effective date of this Act. A violation
22 committed before the effective date of this Act is governed by the
23 law in effect when the violation was committed, and the former law
24 is continued in effect for that purpose.

25 SECTION 49. This Act takes effect September 1, 2005.