

## **BILL ANALYSIS**

Senate Research Center

S.B. 1087  
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Business & Commerce  
8/8/2011  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 5, 79th Legislature, Regular Session, 2005, made Texas the first state in the nation to adopt a new regulatory framework for providers of video services. More specifically, Incumbent Local Exchange Companies (ILEC) like Verizon and AT&T were granted the ability to provide video/cable services; however, some cable providers were required to operate under different rules than their competitors, thus providing new market entrants certain advantages over incumbent video providers. S.B. 1087 helps equalize video provider treatment in Texas by allowing video providers the ability to opt-in to a State Issued Certificate of Franchise Authority (SICFA). The bill also ends certain outdated institutional network capacity (I-NET) obligations, creates streamlined audit periods, and ensures accountability for the one percent Public, Education, and Government (PEG) fee paid by Texas video customers.

Currently, Chapter 66 (State-Issued Cable and Video Franchise), Utilities Code, allows cable and video service providers entering the market after 2005, to forgo municipal franchise agreements and apply to the Public Utility Commission (PUC) for SICFAs when entering the video franchise market. A SICFA allows municipalities to assess a fee of five percent of gross revenues to cable/video providers. However, cable providers cannot apply for SICFAs until the existing municipal franchise agreements expire. In addition, municipalities can review the business records of a video service provider to ensure proper payments of franchise fees. However, under current law, there are no limits as to how far back municipalities can audit video providers' franchise fee payments. Furthermore, Chapter 66 allows assessment of a one percent fee that video service providers in the state franchising regime are required to pay to municipalities to assist in funding PEG channels. This fee was intended to help municipalities pay for PEG capital costs, or to be spent by municipalities as otherwise allowed by federal law. Although there are clear state and federal statutory limitations as to what the one percent PEG fee can be spent on, there is not a system in place to ensure that those PEG funds are being spent only for their intended purpose. Lastly, incumbent cable providers are required to continue providing I-NET and cable services to community public buildings after transitioning to a SCIFA.

S.B. 1087 amends current law relating to state-issued certificates of franchise authority to provide cable service and video service.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 66.003(a), Utilities Code, as follows:

- (a) Deletes existing text requiring an entity or person seeking to provide cable service or video service in this state after September 1, 2005, to file an application for a state-issued certificate of franchise authority with the commission as required by this section. Provides that an entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement is terminated under Section 66.004 or until the

franchise agreement expires, rather than until the franchise agreement expires, except as provided by Section 66.004.

SECTION 2. Amends Section 66.004, Utilities Code, by amending Subsections (a), (c), and (f) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(a) Provides that a cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter as to those municipalities until the expiration date of the existing franchise agreement, except as provided by Subsections (b), (b-1), (b-2), (b-3), and (c).

(b-1) Authorizes a cable service provider or video service provider in a municipality with a population of less than 215,000 that was not allowed to or did not terminate a municipal franchise under Subsection (b), beginning September 1, 2011, to elect to terminate not less than all unexpired franchises in municipalities with a population of less than 215,000 and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to the Public Utility Commission of Texas (PUC) and each affected municipality before January 1, 2012. Provides that a municipal franchise is terminated on the date PUC issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

(b-2) Authorizes a cable service provider or video service provider in a municipality with a population of at least 215,000 to terminate a municipal franchise in that municipality in the manner described by Subsection (b-1) if:

(1) the cable service provider or video service provider is not the incumbent cable service provider in that municipality; and

(2) the incumbent cable service provider received a state-issued certificate of franchise authority from PUC before September 1, 2011.

(b-3) Authorizes a municipality with a population of at least 215,000 to enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. Provides that to the extent that the mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this chapter, the agreed on terms and conditions control.

(c) Provides that a cable service provider that elects under Subsection (b), (b-1), or (b-2) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise. Deletes existing text providing that a cable service provider that serves fewer than 40 percent of the total cable customers in a municipal franchise area and that elects under Subsection (b) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise.

(f) Provides that except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under Subsection (b-1) or (b-2), as applicable, rather than before the enactment of this chapter, and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit

applies. Requires that all liens, security interests, royalties, and other contracts, rights, and interests in effect on September 1, 2005, or the date a franchise is terminated under Subsection (b-1) or (b-2) continue in full force and effect, without the necessity for renewal, extension, or continuance, and be paid and performed by the holder of a state-issued certificate of franchise authority, and apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies.

SECTION 3. Amends Section 66.005(b), Utilities Code, to authorize a municipality to review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a), provided that the municipality may only review records that relate to the 48-month period preceding the date of the last franchise fee payment.

SECTION 4. Amends Section 66.006, Utilities Code, as follows:

Sec. 66.006. **IN-KIND CONTRIBUTIONS TO MUNICIPALITY.** (a) Requires the holder of a state-issued certificate of franchise authority, until the expiration or termination of the incumbent cable service provider's agreement, to pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement.

(b) Requires the holder of a state-issued certificate of franchise authority, on the expiration or termination of the incumbent cable service provider's agreement, to pay a municipality in which it is offering cable service or video service one percent of the provider's gross revenues, as defined by this chapter, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired or terminated incumbent cable service provider's agreement, in lieu of in-kind compensation and grants.

(c) Makes no changes to this subsection.

(c-1) Requires the holder of a state-issued certificate of franchise authority to include with a fee paid to a municipality under this section a statement identifying the fee.

(c-2) Provides that a municipality that receives fees under this section:

(1) is required to maintain revenue from the fees in a separate account established for that purpose;

(2) is prohibited from commingling revenue from the fees with any other money;

(3) is required to maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and

(4) is prohibited from spending revenue from the fees except directly from the separate account.

(d) Requires the following services to continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until the expiration or termination of the franchise and thereafter as provided in Subdivisions (1) and (2) below:

(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, to continue to be provided at the same capacity as was provided to the municipality prior to the date of expiration or termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; 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. Authorizes a provider that provides the services, on the expiration or termination of the franchise agreement, to deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the services if the municipality requires the services after that date. Provides that 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 expiration or termination.

Deletes existing text requiring the following services to continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until January 1, 2008, or until the term of the franchise was to expire, whichever is later, and thereafter as provided in Subdivisions (1) and (2): 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, to 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 for the actual incremental cost of the capacity; and 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. Deletes existing text authorizing that beginning on January 1, 2008, or the expiration of the franchise agreement, whichever is later, a provider that provides the services may deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the services if the municipality requires the services after that date. Deletes existing text providing that 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

SECTION 5. Amends Sections 66.009(c) and (h), Utilities Code, as follows:

(c) Requires the cable service provider or video service provider, if a municipality did not have the maximum number of PEG access channels as of September 1, 2005, as provided by Subdivisions (1) and (2) based on the municipality's population on that date, to furnish at the request of the municipality:

(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.

(h) Requires, where technically feasible, the holder of a state-issued certificate of franchise authority that is not an incumbent cable service provider and an incumbent cable service provider, including an incumbent cable service provider that holds a state-issued certificate of franchise authority issued under Section 66.004(b-1), to use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Requires the holder, rather than holders, of a state-issued certificate of franchise authority and the incumbent cable service provider, rather than providers, to negotiate in good faith, and the incumbent cable service provider is prohibited from withholding interconnection of PEG channels.

SECTION 6. (a) Requires a municipality that received fees described by Subsection (c), Section 66.006, Utilities Code, before September 1, 2011, to, on September 1, 2011, transfer any fees that have not been disbursed to a separate account as required by Subsection (c-2), Section 66.006, Utilities Code, as added by this Act.

(b) Provides that the change in law made by this Act in adding Subdivision (3), Subsection (c-2), Section 66.006, Utilities Code, applies only to transfers, deposits, and disbursements made on or after the effective date of this Act. Provides that a transfer, deposit, or disbursement made before the effective date of this Act is governed by the law in effect on the date the transfer, deposit, or disbursement was made, and the former law is continued in effect for that purpose.

SECTION 7. Effective date: September 1, 2011.