

By: Hilderbran

H.B. No. 256

A BILL TO BE ENTITLED

AN ACT

relating to state-issued certificates of franchise authority to provide cable service and video service.

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

SECTION 1. Section 66.003(a), Utilities Code, is amended to read as follows:

(a) An entity or person seeking to provide cable service or video service in this state [~~after September 1, 2005,~~] shall file an application for a state-issued certificate of franchise authority with the commission as required by this section. 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[~~, except as provided by Section 66.004~~].

SECTION 2. Section 66.004, Utilities Code, is amended by amending Subsections (a), (c), and (f) and adding Subsection (b-1) to read as follows:

(a) 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 a municipality may [~~such municipalities is not eligible to~~] seek a state-issued certificate of franchise authority to provide service to the municipality under this section [~~chapter as to those~~]

1 ~~municipalities until the expiration date of the existing franchise~~
2 ~~agreement, except as provided by Subsections (b) and (c)].~~

3 (b-1) Beginning September 1, 2011, a cable service provider
4 or video service provider that was not allowed to or did not
5 terminate a municipal franchise under Subsection (b) may elect to
6 terminate that franchise and seek a state-issued certificate of
7 franchise authority for the area served under the municipal
8 franchise by providing written notice to the commission and the
9 affected municipality before January 1, 2012. The municipal
10 franchise is terminated on the date the commission issues the
11 state-issued certificate of franchise authority.

12 (c) A cable service provider [~~that serves fewer than 40~~
13 ~~percent of the total cable customers in a municipal franchise area~~
14 ~~and~~] that elects under Subsection (b) or (b-1) to terminate an
15 existing municipal franchise is responsible for remitting to the
16 affected municipality before the 91st day after the date the
17 municipal franchise is terminated any accrued but unpaid franchise
18 fees due under the terminated franchise. If the cable service
19 provider has credit remaining from prepaid franchise fees, the
20 provider may deduct the amount of the remaining credit from any
21 future fees or taxes it must pay to the municipality, either
22 directly or through the comptroller.

23 (f) Except as provided in this chapter, nothing in this
24 chapter is intended to abrogate, nullify, or adversely affect in
25 any way the contractual rights, duties, and obligations existing
26 and incurred by a cable service provider or a video service provider
27 before the enactment of this chapter, or before the date the

1 provider terminates a franchise under Subsection (b-1), as
2 applicable, and owed or owing to any private person, firm,
3 partnership, corporation, or other entity including without
4 limitation those obligations measured by and related to the gross
5 revenue hereafter received by the holder of a state-issued
6 certificate of franchise authority for services provided in the
7 geographic area to which such prior franchise or permit applies.
8 All liens, security interests, royalties, and other contracts,
9 rights, and interests in effect on September 1, 2005, or the date a
10 franchise is terminated under Subsection (b-1) shall continue in
11 full force and effect, without the necessity for renewal,
12 extension, or continuance, and shall be paid and performed by the
13 holder of a state-issued certificate of franchise authority, and
14 shall apply as though the revenue generated by the holder of a
15 state-issued certificate of franchise authority continued to be
16 generated pursuant to the permit or franchise issued by the prior
17 local franchising authority or municipality within the geographic
18 area to which the prior permit or franchise applies. It shall be a
19 condition to the issuance and continuance of a state-issued
20 certificate of franchise authority that the private contractual
21 rights and obligations herein described continue to be honored,
22 paid, or performed to the same extent as though the cable service
23 provider continued to operate under its prior franchise or permit,
24 for the duration of such state-issued certificate of franchise
25 authority and any renewals or extensions thereof, and that the
26 applicant so agrees. Any person, firm, partnership, corporation,
27 or other entity holding or claiming rights herein reserved may

1 enforce same by an action brought in a court of competent
2 jurisdiction.

3 SECTION 3. Section 66.005(b), Utilities Code, is amended to
4 read as follows:

5 (b) The franchise fee payable under this section is to be
6 paid quarterly, within 45 days after the end of the quarter for the
7 preceding calendar quarter. Each payment shall be accompanied by a
8 summary explaining the basis for the calculation of the fee. A
9 municipality may review the business records of the cable service
10 provider or video service provider to the extent necessary to
11 ensure compensation in accordance with Subsection (a), provided
12 that the municipality may only review records that relate to the
13 48-month period preceding the date of the last franchise fee
14 payment. Each party shall bear the party's own costs of the
15 examination. A municipality may, in the event of a dispute
16 concerning compensation under this section, bring an action in a
17 court of competent jurisdiction.

18 SECTION 4. Section 66.006, Utilities Code, is amended by
19 amending Subsections (a), (b), (c), and (d) to read as follows:

20 (a) Until the expiration or termination of the incumbent
21 cable service provider's agreement, the holder of a state-issued
22 certificate of franchise authority shall pay a municipality in
23 which it is offering cable service or video service the same cash
24 payments on a per subscriber basis as required by the incumbent
25 cable service provider's franchise agreement. All cable service
26 providers and all video service providers shall report quarterly to
27 the municipality the total number of subscribers served within the

1 municipality. The amount paid by the holder of a state-issued
2 certificate of franchise authority shall be calculated quarterly by
3 the municipality by multiplying the amount of cash payment under
4 the incumbent cable service provider's franchise agreement by a
5 number derived by dividing the number of subscribers served by a
6 video service provider or cable service provider by the total
7 number of video or cable service subscribers in the municipality.
8 Such pro rata payments are to be paid quarterly to the municipality
9 within 45 days after the end of the quarter for the preceding
10 calendar quarter.

11 (b) On the expiration or termination of the incumbent cable
12 service provider's agreement, the holder of a state-issued
13 certificate of franchise authority shall pay a municipality in
14 which it is offering cable service or video service one percent of
15 the provider's gross revenues, as defined by this chapter, or at the
16 municipality's election, the per subscriber fee that was paid to
17 the municipality under the expired or terminated incumbent cable
18 service provider's agreement, in lieu of in-kind compensation and
19 grants. Payments under this subsection shall be paid in the same
20 manner as outlined in Section 66.005(b).

21 (c) All fees paid to municipalities under this section are
22 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
23 may be used by the municipality as allowed by federal law. These [~~+~~
24 ~~further, these~~] payments are not chargeable as a credit against the
25 franchise fee payments authorized under this chapter, unless the
26 fees are not used by a municipality for the purposes described in 47
27 U.S.C. Section 542(g)(2)(C). A municipality that receives fees

1 under this section must maintain revenue from those fees in a
2 separate account established for that purpose and may not commingle
3 that revenue with any other money. A municipality that receives
4 fees under this section must maintain detailed records of deposits
5 to and disbursements from the account established under this
6 subsection. Records of disbursements from the account must include
7 the payee and purpose of this disbursement. No later than January 31
8 of each year, a municipality shall provide each cable service or
9 video service provider that pays fees to a municipality under this
10 section a detailed accounting of the deposits to and disbursement
11 from the account established under this subsection for the previous
12 calendar year.

13 (d) Cable services to community public buildings, such as
14 municipal buildings and public schools, [The following services]
15 shall continue to be provided by the cable provider that was
16 furnishing services pursuant to its municipal cable franchise
17 [until January 1, 2008, or] until the expiration or termination
18 [term] of the franchise [was to expire, whichever is later, and
19 thereafter as provided in Subdivisions (1) and (2) below:

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

1 ~~[(2) cable services to community public buildings,~~
2 ~~such as municipal buildings and public schools, shall continue to~~
3 ~~be provided to the same extent provided immediately prior to the~~
4 ~~date of the termination].~~ Upon ~~[Beginning on January 1, 2008, or]~~
5 the expiration or termination of the franchise agreement,
6 ~~[whichever is later,]~~ a provider that provides the services may
7 deduct from the franchise fee to be paid to the municipality an
8 amount equal to the actual incremental cost of the services if the
9 municipality requires the services after that date. Such cable
10 service generally refers to the existing cable drop connections to
11 such facilities and the tier of cable service provided pursuant to
12 the franchise at the time of the expiration or termination.

13 SECTION 5. Section 66.009(h), Utilities Code, is amended to
14 read as follows:

15 (h) Where technically feasible, the holder of a
16 state-issued certificate of franchise authority that is not an
17 incumbent cable service provider and an incumbent cable service
18 provider, including an incumbent cable service provider that holds
19 a state-issued certificate of franchise authority issued under
20 Section 66.004(b-1), shall use reasonable efforts to interconnect
21 their cable or video systems for the purpose of providing PEG
22 programming. Interconnection may be accomplished by direct cable,
23 microwave link, satellite, or other reasonable method of
24 connection. The holder ~~[Holders]~~ of a state-issued certificate of
25 franchise authority and the incumbent cable service provider
26 ~~[providers]~~ shall negotiate in good faith, and the incumbent cable
27 service provider ~~[providers]~~ may not withhold interconnection of

1 PEG channels.

2 SECTION 6. On September 1, 2011, a municipality that has
3 received fees under section 66.006, Utilities Code, as it existed
4 before the effective date of this Act, and has not maintained
5 revenue from those fees in a separate account shall transfer to a
6 separate account the amount of revenue from fees collected under
7 Section 66.006, Utilities Code, that have not yet been expended for
8 purposes authorized under Section 66.006, Utilities Code.

9 SECTION 7. This Act takes effect September 1, 2011.