

A BILL TO BE ENTITLED

AN ACT

relating to an assessment on subscription video service providers.

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

SECTION 1. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 67 to read as follows:

CHAPTER 67. SUBSCRIPTION VIDEO SERVICES

Sec. 67.001. DEFINITIONS. In this chapter:

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

(2) "Direct broadcast satellite service" means the distribution or broadcasting of video programming or services by satellite directly to a subscriber's or paying customer's receiving equipment. The term includes:

(A) the rental of receiving equipment used by the subscriber or paying customer to obtain the service;

(B) the provision of premium channels; and

(C) the installation or repair of receiving equipment used by the subscriber or paying customer to obtain the service.

(3) "Provider" means a provider of subscription video services.

(4) "Subscription video services" means cable service, direct broadcast satellite service, or video service.

(5) "Video service" means multichannel video

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

7 Sec. 67.002. SUBSCRIPTION VIDEO ASSESSMENT. (a) There is  
8 imposed on each provider an assessment of 6-1/4 percent of gross  
9 revenues derived from the provision of subscription video services  
10 in this state.

11 (b) The assessment imposed by Subsection (a) shall not apply  
12 to Internet access services as defined in Section 151.00394(a), Tax  
13 Code, including such services purchased, used, or sold to provide  
14 subscription video services.

15 (c) To the extent such amounts are included by a provider in  
16 the calculation of gross revenues in Subsection (a), a provider of  
17 subscription video services is entitled to deduct the following  
18 amounts from gross revenues subject to the assessment imposed by  
19 Subsection (a):

20 (1) bad debts to the extent provided for in Section  
21 151.426, Tax Code, in the same manner set forth therein;

22 (2) gross revenue derived from a contract to sell or  
23 transfer subscription video services for further commercial  
24 broadcast, rebroadcast, transmission, retransmission, licensing,  
25 relicensing, distribution, redistribution or exhibition of the  
26 product, in whole or in part, to another person or persons;

27 (3) gross revenue received by an affiliate or any

1 other person in exchange for supplying goods and services used by a  
2 provider;

3 (4) refunds, rebates, or discounts made to a  
4 subscriber, advertiser, or other person;

5 (5) a fee, tax, or other assessment levied by the  
6 United States or any state or local government that is permitted or  
7 required to be added to the sales price of subscription video  
8 services, if the fee, tax, or other assessment is stated separately  
9 on a subscriber's bill;

10 (6) revenue from the sale of capital assets or surplus  
11 equipment not used by the purchaser to receive subscription video  
12 service from the provider;

13 (7) late payment fees collected from subscribers of  
14 subscription video services; and

15 (8) revenue from advertising services.

16 Sec. 67.003. CREDIT FOR FEES PAID TO MUNICIPALITIES. (a)  
17 Each provider is entitled to a credit against the assessment  
18 imposed under this chapter for fees paid to municipalities, as  
19 provided by this section.

20 (b) The amount of the credit is the sum of fees paid during  
21 the reporting period by the provider to municipalities, pursuant to  
22 a franchise governed by Chapter 66 or 47 U.S.C. Sections 541 and  
23 542.

24 (c) The total credit claimed on an assessment report may not  
25 exceed the amount of the assessment due for the report.

26 (d) If a provider is eligible for a credit that exceeds the  
27 limitation under Subsection (c), the provider may not carry the

1 credit forward or back.

2 Sec. 67.004. INFORMATION SHOWN ON SUBSCRIBER BILL. A  
3 provider may show, as a separate line item on each regular bill of  
4 each subscriber, the amount of the total bill resulting from any  
5 assessment imposed under this chapter, net of any credit claimed  
6 under Section 67.003. For each subscriber, the amount of any credit  
7 for fees paid to a municipality and applied against the assessment  
8 imposed under this chapter shall be based on the rate of the fees  
9 paid to the municipality and assessed on that subscriber's bill.

10 Sec. 67.005. ASSESSMENT DUE DATES. The assessment imposed  
11 by this chapter is due and payable to the comptroller on or before  
12 the last day of the first month following the end of each calendar  
13 quarter.

14 Sec. 67.006. ASSESSMENT REPORT. (a) A provider required to  
15 pay an assessment under this chapter shall file an assessment  
16 report with the comptroller on a form prescribed by the  
17 comptroller. The assessment report is due on the date the  
18 assessment is due under Section 67.005.

19 (b) The assessment report must include a statement of the  
20 gross revenues received from the provision of subscription video  
21 services and fees described by Section 67.003(b) paid to  
22 municipalities during the preceding quarterly period and any other  
23 information required by the comptroller.

24 Sec. 67.007. SUBSCRIPTION REPORT. (a) A provider subject  
25 to the assessment imposed under this chapter shall file a  
26 subscription report with the comptroller on a form prescribed by  
27 the comptroller. The subscription report is due annually on or

1 before December 31.

2 (b) The subscription report must include a statement of the  
3 number of subscribers the provider had on December 1 of the calendar  
4 year in which the report is due:

5 (1) in the incorporated area of each municipality in  
6 which the provider provides subscription video services; and

7 (2) in the unincorporated area of each county in which  
8 the provider provides subscription video services.

9 (c) A provider shall base the number of subscribers  
10 reported in Subsection (b)(1) or (2) on the service address of the  
11 subscriber. For purposes of this section, "service address" means  
12 the location where the subscriber receives subscription video  
13 services.

14 Sec. 67.008. RECORDS. (a) A provider on whom the  
15 assessment is imposed by this chapter shall maintain the necessary  
16 records, and any other information required by the comptroller, to  
17 determine:

18 (1) the amount of the assessment that the provider is  
19 required to remit and any credit that the provider is entitled to  
20 claim under this chapter; and

21 (2) the number of subscription video service  
22 subscribers in each incorporated area and in the unincorporated  
23 area of each county.

24 (b) The records shall be open at all times to inspection by  
25 the comptroller.

26 Sec. 67.009. PENALTY FOR FAILURE TO FILE REPORT OR PAY  
27 ASSESSMENT. (a) A person who fails to file an assessment report as

1 required by Section 67.006 or who fails to pay an assessment imposed  
2 by this chapter when due forfeits five percent of the amount of the  
3 assessment due as a penalty, and if the person fails to file the  
4 assessment report or pay the assessment within 30 days after the day  
5 on which the assessment or assessment report is due, the person  
6 forfeits an additional five percent.

7 (b) A person who fails to file a subscription report as  
8 required by Section 67.007 forfeits five percent of the amount of  
9 the most recent assessment due as a penalty, and if the person fails  
10 to file the subscription report within 30 days after the day on  
11 which the subscription report is due, the person forfeits an  
12 additional five percent.

13 (c) The minimum penalty imposed by this section is \$1.

14 Sec. 67.010. ALLOCATION OF REVENUE. (a) Three-fourths of  
15 the revenue collected from the assessment imposed by this chapter  
16 shall be deposited to the credit of the general revenue fund.

17 (b) One-fourth of the revenue collected from the assessment  
18 imposed by this chapter shall be deposited to the credit of the  
19 subscription video assessment clearance fund created under this  
20 chapter.

21 Sec. 67.011. SUBSCRIPTION VIDEO ASSESSMENT CLEARANCE FUND.

22 (a) The subscription video assessment clearance fund is a special  
23 fund in the state treasury outside the general revenue fund. The  
24 fund is exempt from the application of Section 403.095.

25 (b) The fund consists of revenue deposited pursuant to  
26 Section 67.010(b).

27 (c) Effective on January 1, 2012, not later than the last

1 day of the second month following a calendar quarter, the  
2 comptroller shall:

3 (1) calculate the pro rata share of total subscription  
4 video service subscribers for each municipality and the  
5 unincorporated area of each county according to the most recent  
6 subscription report filed by each provider pursuant to Section  
7 67.007; and

8 (2) issue warrants as provided in Subsection (d).

9 (d) The comptroller shall distribute the balance of the  
10 amount in the subscription video assessment clearance fund, less  
11 any retention authorized by Subsection (e), by issuing a warrant  
12 drawn on the fund to:

13 (1) each municipality with subscription video service  
14 subscribers in an amount equal to the municipality's pro rata share  
15 of the amount in the fund as of the date the warrant is issued, less  
16 any retention authorized by Subsection (e); and

17 (2) each county with subscription video service  
18 subscribers outside of an incorporated area in an amount equal to  
19 the county's pro rata share of the amount in the fund as of the date  
20 the warrant is issued, less any retention authorized by Subsection  
21 (e).

22 (e) The comptroller may retain up to five percent of the  
23 balance of the fund to process:

24 (1) a refund of an overpayment of the assessment  
25 imposed under this chapter; or

26 (2) a correction in the allocation of revenue received  
27 under this chapter.

1        Sec. 67.012. RULES. The comptroller may adopt rules  
2 necessary to enforce this chapter.

3        SECTION 2. This Act takes effect October 1, 2011, and  
4 applies to the provision of subscription video services, as defined  
5 by this Act, on or after that date.