

By: Carona

S.B. No. 1087

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. Subsection (a), Section 66.003, 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 Subsections (b-1) and (b-2) 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 October 1, 2011, a cable service provider or
4 video service provider that was not allowed to or did not terminate
5 a municipal franchise under Subsection (b) may elect to terminate
6 all unexpired municipal franchises and seek a state-issued
7 certificate of franchise authority for each area served under a
8 terminated municipal franchise by providing written notice to the
9 commission and each affected municipality before January 1, 2012.
10 A municipal franchise is terminated on the date the commission
11 issues a state-issued certificate of franchise authority to the
12 provider for the area served under that terminated franchise.

13 (b-2) Notwithstanding Subsection (b-1), a cable service
14 provider or video service provider that is subject to a municipal
15 franchise in effect on September 30, 2011, in a municipality that by
16 ordinance requires the provider to bury a new or existing component
17 or facility may not terminate the municipal franchise under
18 Subsection (b-1) unless the provider agrees to comply with the
19 terms of the ordinance until the date the municipal franchise is
20 otherwise scheduled to expire or a date agreed on by the provider
21 and the municipality. The commission may not issue a state-issued
22 certificate of franchise authority to a provider under Subsection
23 (b-1) unless the provider provides proof that the provider has
24 agreed to comply with this subsection. A person or other entity
25 holding a right reserved in this subsection may enforce that right
26 by an action brought in a court of competent jurisdiction.

27 (c) A cable service provider [~~that serves fewer than 40~~

1 ~~percent of the total cable customers in a municipal franchise area~~
2 ~~and~~] that elects under Subsection (b) or (b-1) to terminate an
3 existing municipal franchise is responsible for remitting to the
4 affected municipality before the 91st day after the date the
5 municipal franchise is terminated any accrued but unpaid franchise
6 fees due under the terminated franchise. If the cable service
7 provider has credit remaining from prepaid franchise fees, the
8 provider may deduct the amount of the remaining credit from any
9 future fees or taxes it must pay to the municipality, either
10 directly or through the comptroller.

11 (f) Except as provided in this chapter, nothing in this
12 chapter is intended to abrogate, nullify, or adversely affect in
13 any way the contractual rights, duties, and obligations existing
14 and incurred by a cable service provider or a video service provider
15 before the date a franchise expires or the date a provider
16 terminates a franchise under Subsection (b-1), as applicable,
17 ~~[enactment of this chapter,~~] and owed or owing to any private
18 person, firm, partnership, corporation, or other entity including
19 without limitation those obligations measured by and related to the
20 gross revenue hereafter received by the holder of a state-issued
21 certificate of franchise authority for services provided in the
22 geographic area to which such prior franchise or permit applies.
23 All liens, security interests, royalties, and other contracts,
24 rights, and interests in effect on September 1, 2005, or the date a
25 franchise is terminated under Subsection (b-1) shall continue in
26 full force and effect, without the necessity for renewal,
27 extension, or continuance, and shall be paid and performed by the

1 holder of a state-issued certificate of franchise authority, and
2 shall apply as though the revenue generated by the holder of a
3 state-issued certificate of franchise authority continued to be
4 generated pursuant to the permit or franchise issued by the prior
5 local franchising authority or municipality within the geographic
6 area to which the prior permit or franchise applies. It shall be a
7 condition to the issuance and continuance of a state-issued
8 certificate of franchise authority that the private contractual
9 rights and obligations herein described continue to be honored,
10 paid, or performed to the same extent as though the cable service
11 provider continued to operate under its prior franchise or permit,
12 for the duration of such state-issued certificate of franchise
13 authority and any renewals or extensions thereof, and that the
14 applicant so agrees. Any person, firm, partnership, corporation,
15 or other entity holding or claiming rights herein reserved may
16 enforce same by an action brought in a court of competent
17 jurisdiction.

18 SECTION 3. Subsections (a) and (b), Section 66.005,
19 Utilities Code, are amended to read as follows:

20 (a) The holder of a state-issued certificate of franchise
21 authority shall pay each municipality in which it provides cable
22 service or video service a franchise fee of five percent based upon
23 the definition of gross revenues as set forth in this chapter. That
24 same franchise fee structure shall apply to any unincorporated
25 areas that are annexed by a municipality after the effective date of
26 the state-issued certificate of franchise authority. The franchise
27 fee paid by the holder of a state-issued certificate of franchise

1 authority shall not be deemed a state or local tax.

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

15 SECTION 4. Section 66.006, Utilities Code, is amended to
16 read as follows:

17 Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY.
18 (a) Until the expiration or termination of the incumbent cable
19 service provider's agreement, the holder of a state-issued
20 certificate of franchise authority shall pay a municipality in
21 which it is offering cable service or video service the same cash
22 payments on a per subscriber basis as required by the incumbent
23 cable service provider's franchise agreement. All cable service
24 providers and all video service providers shall report quarterly to
25 the municipality the total number of subscribers served within the
26 municipality. The amount paid by the holder of a state-issued
27 certificate of franchise authority shall be calculated quarterly by

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

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

19 (c) All fees paid to municipalities under this section are
20 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
21 may be used by the municipality as allowed by federal law.

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

25 (c-2) If a municipality uses fees paid to the municipality
26 under this section for a purpose described by 47 U.S.C. Section
27 542(g)(2)(C), the fees [~~, further, these payments~~] are not

1 chargeable as a credit against the franchise fee payments
2 authorized under this chapter. If the municipality uses the fees
3 for another purpose, the fees are chargeable as a credit against the
4 franchise fee payments authorized under this chapter.

5 (c-3) A municipality that receives fees under this section:

6 (1) shall maintain revenue from the fees in a separate
7 account established for that purpose;

8 (2) may not commingle revenue from the fees with any
9 other money;

10 (3) shall maintain a record of each deposit to and
11 disbursement from the separate account, including a record of the
12 payee and purpose of each disbursement; and

13 (4) not later than January 31 of each year, shall
14 provide to each certificate holder that pays a fee to the
15 municipality under this section a detailed accounting of the
16 deposits to and disbursements from the separate account made in the
17 preceding calendar year.

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

25 [~~(1)~~] institutional network capacity, however defined
26 or referred to in the municipal cable franchise but generally
27 referring to a private line data network capacity for use by the

1 municipality for noncommercial purposes, shall continue to be
2 provided at the same capacity by the cable provider that was
3 furnishing services pursuant to its municipal cable franchise until
4 the date of expiration or termination of the franchise, whichever
5 is later, for municipalities with a population greater than one
6 million as of January 1, 2012 [~~as was provided to the municipality~~
7 ~~prior to the date of the termination, provided that the~~
8 ~~municipality will compensate the provider for the actual~~
9 ~~incremental cost of the capacity; and~~

10 ~~[(2) cable services to community public buildings,~~
11 ~~such as municipal buildings and public schools, shall continue to~~
12 ~~be provided to the same extent provided immediately prior to the~~
13 ~~date of the termination]. On~~ [Beginning on January 1, 2008, ~~or~~] the
14 expiration or termination of the franchise agreement, [~~whichever is~~
15 ~~later,~~] a provider that provides the cable services as described by
16 this section may deduct from the franchise fee to be paid to the
17 municipality an amount equal to the actual incremental cost of the
18 cable services if the municipality requires the cable services
19 after that date. Such cable service generally refers to the
20 existing cable drop connections to such facilities and the tier of
21 cable service provided pursuant to the franchise at the time of the
22 expiration or termination.

23 SECTION 5. Subsections (c) and (h), Section 66.009,
24 Utilities Code, are amended to read as follows:

25 (c) If a municipality did not have the maximum number of PEG
26 access channels as of September 1, 2005, as set out in Subdivisions
27 (1) and (2) based on its population as of that date, the cable

1 service provider or video service provider shall furnish at the
2 request of the municipality:

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

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

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

21 SECTION 6. (a) A municipality that received fees described
22 by Subsection (c), Section 66.006, Utilities Code, as amended by
23 this Act, before October 1, 2011, shall, on October 1, 2011,
24 transfer any fees that have not been disbursed to a separate account
25 as required by Subsection (c-3), Section 66.006, Utilities Code, as
26 added by this Act.

27 (b) The change in law made by this Act in adding

1 Subdivisions (3) and (4), Subsection (c-3), Section 66.006,
2 Utilities Code, applies only to transfers, deposits, and
3 disbursements made on or after the effective date of this Act. A
4 transfer, deposit, or disbursement made before the effective date
5 of this Act is governed by the law in effect on the date the
6 transfer, deposit, or disbursement was made, and the former law is
7 continued in effect for that purpose.

8 SECTION 7. This Act takes effect only if House Bill No. 259
9 or House Bill No. 3675 or similar legislation by the 82nd
10 Legislature, Regular Session, 2011, is enacted and becomes law that
11 imposes an assessment on providers of subscription video services
12 and allows subscription video service providers to claim a credit
13 against the assessment for fees paid to municipalities pursuant to
14 a municipal franchise or state-issued certificate of franchise
15 authority and provides that at least 25 percent of the revenue
16 generated by the state assessment on providers of subscription
17 video services be distributed to municipalities and counties. If
18 legislation described by this section is not enacted by the 82nd
19 Legislature, Regular Session, 2011, or does not become law, this
20 Act has no effect.

21 SECTION 8. Except as provided by Section 7 of this Act, this
22 Act takes effect October 1, 2011.