

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), (b-2), and (b-3) 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 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

1 agreement, except as provided by Subsections (b), (b-1), (b-2),
2 (b-3), and (c).

3 (b-1) Beginning September 1, 2011, a cable service provider
4 or video service provider in a municipality with a population of
5 less than 215,000 that was not allowed to or did not terminate a
6 municipal franchise under Subsection (b) may elect to terminate not
7 less than all unexpired franchises in municipalities with a
8 population of less than 215,000 and seek a state-issued certificate
9 of franchise authority for each area served under a terminated
10 municipal franchise by providing written notice to the commission
11 and each affected municipality before January 1, 2012. A municipal
12 franchise is terminated on the date the commission issues a
13 state-issued certificate of franchise authority to the provider for
14 the area served under that terminated franchise.

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

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

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

25 (b-3) A municipality with a population of at least 215,000
26 may enter into an agreement with any cable service provider in the
27 municipality to terminate a municipal cable franchise before the

1 expiration of the franchise. To the extent that the mutually agreed
2 on terms and conditions for early termination of the unexpired
3 municipal cable franchise conflict with a provision of this
4 chapter, the agreed on terms and conditions control.

5 (c) A cable service provider [~~that serves fewer than 40~~
6 ~~percent of the total cable customers in a municipal franchise area~~
7 ~~and~~] that elects under Subsection (b), (b-1), or (b-2) to terminate
8 an existing municipal franchise is responsible for remitting to the
9 affected municipality before the 91st day after the date the
10 municipal franchise is terminated any accrued but unpaid franchise
11 fees due under the terminated franchise. If the cable service
12 provider has credit remaining from prepaid franchise fees, the
13 provider may deduct the amount of the remaining credit from any
14 future fees or taxes it must pay to the municipality, either
15 directly or through the comptroller.

16 (f) Except as provided in this chapter, nothing in this
17 chapter is intended to abrogate, nullify, or adversely affect in
18 any way the contractual rights, duties, and obligations existing
19 and incurred by a cable service provider or a video service provider
20 before the date a franchise expires or the date a provider
21 terminates a franchise under Subsection (b-1) or (b-2), as
22 applicable, [~~enactment of this chapter,~~] and owed or owing to any
23 private person, firm, partnership, corporation, or other entity
24 including without limitation those obligations measured by and
25 related to the gross revenue hereafter received by the holder of a
26 state-issued certificate of franchise authority for services
27 provided in the geographic area to which such prior franchise or

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

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

25 (b) The franchise fee payable under this section is to be
26 paid quarterly, within 45 days after the end of the quarter for the
27 preceding calendar quarter. Each payment shall be accompanied by a

1 summary explaining the basis for the calculation of the fee. A
2 municipality may review the business records of the cable service
3 provider or video service provider to the extent necessary to
4 ensure compensation in accordance with Subsection (a), provided
5 that the municipality may only review records that relate to the
6 48-month period preceding the date of the last franchise fee
7 payment. Each party shall bear the party's own costs of the
8 examination. A municipality may, in the event of a dispute
9 concerning compensation under this section, bring an action in a
10 court of competent jurisdiction.

11 SECTION 4. Section 66.006, Utilities Code, is amended to
12 read as follows:

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

1 number of video or cable service subscribers in the municipality.
2 Such pro rata payments are to be paid quarterly to the municipality
3 within 45 days after the end of the quarter for the preceding
4 calendar quarter.

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

15 (c) All fees paid to municipalities under this section are
16 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
17 may be used by the municipality as allowed by federal law; further,
18 these payments are not chargeable as a credit against the franchise
19 fee payments authorized under this chapter.

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

23 (c-2) A municipality that receives fees under this section:

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

26 (2) may not commingle revenue from the fees with any
27 other money;

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

4 (4) may not spend revenue from the fees except
5 directly from the separate account.

6 (d) The following services shall continue to be provided by
7 the cable provider that was furnishing services pursuant to its
8 municipal cable franchise [~~until January 1, 2008, or~~] until the
9 expiration or termination [~~term~~] of the franchise [~~was to expire,~~
10 ~~whichever is later,~~] and thereafter as provided in Subdivisions (1)
11 and (2) below:

12 (1) institutional network capacity, however defined
13 or referred to in the municipal cable franchise but generally
14 referring to a private line data network capacity for use by the
15 municipality for noncommercial purposes, shall continue to be
16 provided at the same capacity as was provided to the municipality
17 prior to the date of expiration or [~~the~~] termination, provided that
18 the municipality will compensate the provider for the actual
19 incremental cost of the capacity; and

20 (2) cable services to community public buildings, such
21 as municipal buildings and public schools, shall continue to be
22 provided to the same extent provided immediately prior to the date
23 of the termination. On [~~Beginning on January 1, 2008, or~~] the
24 expiration or termination of the franchise agreement, [~~whichever is~~
25 ~~later,~~] a provider that provides the services may deduct from the
26 franchise fee to be paid to the municipality an amount equal to the
27 actual incremental cost of the services if the municipality

1 requires the services after that date. Such cable service
2 generally refers to the existing cable drop connections to such
3 facilities and the tier of cable service provided pursuant to the
4 franchise at the time of the expiration or termination.

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

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

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

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

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

1 service provider [~~providers~~] may not withhold interconnection of
2 PEG channels.

3 SECTION 6. (a) A municipality that received fees described
4 by Subsection (c), Section 66.006, Utilities Code, before September
5 1, 2011, shall, on September 1, 2011, transfer any fees that have
6 not been disbursed to a separate account as required by Subsection
7 (c-2), Section 66.006, Utilities Code, as added by this Act.

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

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1087 passed the Senate on April 6, 2011, by the following vote: Yeas 26, Nays 5; May 17, 2011, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 24, 2011, House granted request of the Senate; May 28, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.B. No. 1087 passed the House, with amendment, on May 12, 2011, by the following vote: Yeas 145, Nays 1, two present not voting; May 24, 2011, House granted request of the Senate for appointment of Conference Committee; May 28, 2011, House adopted Conference Committee Report by the following vote: Yeas 146, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor