

By: Carona
(Hilderbran)

S.B. No. 1087

Substitute the following for S.B. No. 1087:

By: Cook

C.S.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. 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 all unexpired municipal franchises and seek a
7 state-issued certificate of franchise authority for each area
8 served under a terminated municipal franchise by providing written
9 notice to the commission and each affected municipality before
10 January 1, 2012. A municipal franchise is terminated on the date
11 the commission issues a state-issued certificate of franchise
12 authority to the provider for the area served under that terminated
13 franchise.

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

25 (f) Except as provided in this chapter, nothing in this
26 chapter is intended to abrogate, nullify, or adversely affect in
27 any way the contractual rights, duties, and obligations existing

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

1 applicant so agrees. Any person, firm, partnership, corporation,
2 or other entity holding or claiming rights herein reserved may
3 enforce same by an action brought in a court of competent
4 jurisdiction.

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

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

20 SECTION 4. Section 66.006, Utilities Code, is amended to
21 read as follows:

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

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

14 (b) On 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 one percent of
18 the provider's gross revenues, as defined by this chapter, or at the
19 municipality's election, the per subscriber fee that was paid to
20 the municipality under the expired or terminated incumbent cable
21 service provider's agreement, in lieu of in-kind compensation and
22 grants. Payments under this subsection shall be paid in the same
23 manner as outlined in Section 66.005(b).

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

27 (c-1) The holder of a state-issued certificate of franchise

1 authority shall include with a fee paid to a municipality under this
2 section a statement identifying the fee.

3 (c-2) If a municipality uses fees paid to the municipality
4 under this section for a purpose described by 47 U.S.C. Section
5 542(g)(2)(C), the fees [~~;~~ ~~further,~~ ~~these payments~~] are not
6 chargeable as a credit against the franchise fee payments
7 authorized under this chapter. If the municipality uses the fees
8 for another purpose, the fees are chargeable as a credit against the
9 franchise fee payments authorized under this chapter.

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

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

13 (2) may not commingle revenue from the fees with any
14 other money;

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

18 (4) not later than January 31 of each year, shall
19 provide to each certificate holder that pays a fee to the
20 municipality under this section, on the request of that certificate
21 holder, a detailed accounting of the deposits to and disbursements
22 from the separate account made in the preceding calendar year.

23 (d) Cable services to community public buildings, such as
24 municipal buildings and public schools, [~~The following services~~]
25 shall continue to be provided by the cable provider that was
26 furnishing services pursuant to its municipal cable franchise
27 [~~until January 1, 2008, or~~] until the expiration or termination

1 ~~[term]~~ of the franchise. For a municipality with a population of
2 more than one million, [was to expire, whichever is later, and
3 thereafter as provided in Subdivisions (1) and (2) below:

4 ~~[(1)]~~ institutional network capacity, however defined
5 or referred to in the municipal cable franchise but generally
6 referring to a private line data network capacity for use by the
7 municipality for noncommercial purposes, shall continue to be
8 provided at the same capacity as was provided by the cable provider
9 that was furnishing services pursuant to its municipal cable
10 franchise until the expiration or termination of the franchise
11 agreement, whichever is later ~~[to the municipality prior to the~~
12 ~~date of the termination, provided that the municipality will~~
13 ~~compensate the provider for the actual incremental cost of the~~
14 ~~capacity; and~~

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

1 SECTION 5. Sections 66.009(c) and (h), Utilities Code, are
2 amended to read as follows:

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

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

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

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

26 SECTION 6. (a) A municipality that received fees described
27 by Section 66.006(c), Utilities Code, as amended by this Act,

1 before September 1, 2011, shall, on September 1, 2011, transfer any
2 fees that have not been disbursed to a separate account as required
3 by Section 66.006(c-3), Utilities Code, as added by this Act.

4 (b) The change in law made by this Act in adding Sections
5 66.006(c-3)(3) and (4), Utilities Code, applies only to transfers,
6 deposits, and disbursements made on or after the effective date of
7 this Act. A transfer, deposit, or disbursement made before the
8 effective date of this Act is governed by the law in effect on the
9 date the transfer, deposit, or disbursement was made, and the
10 former law is continued in effect for that purpose.

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