

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. 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 to
19 read as follows:

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

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

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

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

25 (c-1) If a municipality uses fees paid to the municipality
 26 under this section for a purpose described by 47 U.S.C. Section
 27 524(g)(2)(c), the fees~~[, further, these payments]~~ are not

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

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

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

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

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

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

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

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

~~municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of the termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and~~

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

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

(h) Where technically feasible, the holder of a state-issued certificate of franchise authority that is not an incumbent cable service provider and an incumbent cable service provider, including an incumbent cable service provider that holds a state-issued certificate of franchise authority issued under Section 66.004(b-1), shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable,

1 microwave link, satellite, or other reasonable method of
2 connection. The holder [~~Holders~~] of a state-issued certificate of
3 franchise authority and the incumbent cable service provider
4 [~~providers~~] shall negotiate in good faith, and the incumbent cable
5 service provider [~~providers~~] may not withhold interconnection of
6 PEG channels.

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

12 (b) The change in law made by this Act in adding Sections
13 66.006(c-2)(3) and (4), Utilities Code, applies only to transfers,
14 deposits, and disbursements made on or after the effective date of
15 this Act. A transfer, deposit, or disbursement made before the
16 effective date of this Act is governed by the law in effect on the
17 date the transfer, deposit, or disbursement was made, and the
18 former law is continued in effect for that purpose.

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