

1-1 By: Carona S.B. No. 1087
1-2 (In the Senate - Filed March 2, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 4, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 1; April 4, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1087 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to state-issued certificates of franchise authority to
1-11 provide cable service and video service.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 66.003, Utilities Code,
1-14 is amended to read as follows:

1-15 (a) An entity or person seeking to provide cable service or
1-16 video service in this state [~~after September 1, 2005,~~] shall file an
1-17 application for a state-issued certificate of franchise authority
1-18 with the commission as required by this section. An entity
1-19 providing cable service or video service under a franchise
1-20 agreement with a municipality is not subject to this subsection
1-21 with respect to such municipality until the franchise agreement is
1-22 terminated under Section 66.004 or until the franchise agreement
1-23 expires [~~, except as provided by Section 66.004~~].

1-24 SECTION 2. Section 66.004, Utilities Code, is amended by
1-25 amending Subsections (a), (c), and (f) and adding Subsection (b-1)
1-26 to read as follows:

1-27 (a) A cable service provider or a video service provider
1-28 that currently has or had previously received a franchise to
1-29 provide cable service or video service with respect to a
1-30 municipality may [~~such municipalities is not eligible to~~] seek a
1-31 state-issued certificate of franchise authority to provide service
1-32 to the municipality under this section [~~chapter as to those~~
1-33 municipalities until the expiration date of the existing franchise
1-34 agreement, except as provided by Subsections (b) and (c)].

1-35 (b-1) Beginning September 1, 2011, a cable service provider
1-36 or video service provider that was not allowed to or did not
1-37 terminate a municipal franchise under Subsection (b) may elect to
1-38 terminate all unexpired municipal franchises and seek a
1-39 state-issued certificate of franchise authority for each area
1-40 served under a terminated municipal franchise by providing written
1-41 notice to the commission and each affected municipality before
1-42 January 1, 2012. A municipal franchise is terminated on the date
1-43 the commission issues a state-issued certificate of franchise
1-44 authority to the provider for the area served under that terminated
1-45 franchise.

1-46 (c) A cable service provider [~~that serves fewer than 40~~
1-47 percent of the total cable customers in a municipal franchise area
1-48 and] that elects under Subsection (b) or (b-1) to terminate an
1-49 existing municipal franchise is responsible for remitting to the
1-50 affected municipality before the 91st day after the date the
1-51 municipal franchise is terminated any accrued but unpaid franchise
1-52 fees due under the terminated franchise. If the cable service
1-53 provider has credit remaining from prepaid franchise fees, the
1-54 provider may deduct the amount of the remaining credit from any
1-55 future fees or taxes it must pay to the municipality, either
1-56 directly or through the comptroller.

1-57 (f) Except as provided in this chapter, nothing in this
1-58 chapter is intended to abrogate, nullify, or adversely affect in
1-59 any way the contractual rights, duties, and obligations existing
1-60 and incurred by a cable service provider or a video service provider
1-61 before the date a franchise expires or the date a provider
1-62 terminates a franchise under Subsection (b-1), as applicable,
1-63 [~~enactment of this chapter,~~] and owed or owing to any private

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

2-28 SECTION 3. Subsections (a) and (b), Section 66.005,
 2-29 Utilities Code, are amended to read as follows:

2-30 (a) The holder of a state-issued certificate of franchise
 2-31 authority shall pay each municipality in which it provides cable
 2-32 service or video service a franchise fee of five percent based upon
 2-33 the definition of gross revenues as set forth in this chapter. That
 2-34 same franchise fee structure shall apply to any unincorporated
 2-35 areas that are annexed by a municipality after the effective date of
 2-36 the state-issued certificate of franchise authority. The franchise
 2-37 fee paid by the holder of a state-issued certificate of franchise
 2-38 authority shall not be deemed a state or local tax.

2-39 (b) The franchise fee payable under this section is to be
 2-40 paid quarterly, within 45 days after the end of the quarter for the
 2-41 preceding calendar quarter. Each payment shall be accompanied by a
 2-42 summary explaining the basis for the calculation of the fee. A
 2-43 municipality may review the business records of the cable service
 2-44 provider or video service provider to the extent necessary to
 2-45 ensure compensation in accordance with Subsection (a), provided
 2-46 that the municipality may only review records that relate to the
 2-47 48-month period preceding the date of the last franchise fee
 2-48 payment. Each party shall bear the party's own costs of the
 2-49 examination. A municipality may, in the event of a dispute
 2-50 concerning compensation under this section, bring an action in a
 2-51 court of competent jurisdiction.

2-52 SECTION 4. Section 66.006, Utilities Code, is amended to
 2-53 read as follows:

2-54 Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY.

2-55 (a) Until the expiration or termination of the incumbent cable
 2-56 service provider's agreement, the holder of a state-issued
 2-57 certificate of franchise authority shall pay a municipality in
 2-58 which it is offering cable service or video service the same cash
 2-59 payments on a per subscriber basis as required by the incumbent
 2-60 cable service provider's franchise agreement. All cable service
 2-61 providers and all video service providers shall report quarterly to
 2-62 the municipality the total number of subscribers served within the
 2-63 municipality. The amount paid by the holder of a state-issued
 2-64 certificate of franchise authority shall be calculated quarterly by
 2-65 the municipality by multiplying the amount of cash payment under
 2-66 the incumbent cable service provider's franchise agreement by a
 2-67 number derived by dividing the number of subscribers served by a
 2-68 video service provider or cable service provider by the total
 2-69 number of video or cable service subscribers in the municipality.

3-1 Such pro rata payments are to be paid quarterly to the municipality
 3-2 within 45 days after the end of the quarter for the preceding
 3-3 calendar quarter.

3-4 (b) On the expiration or termination of the incumbent cable
 3-5 service provider's agreement, the holder of a state-issued
 3-6 certificate of franchise authority shall pay a municipality in
 3-7 which it is offering cable service or video service one percent of
 3-8 the provider's gross revenues, as defined by this chapter, or at the
 3-9 municipality's election, the per subscriber fee that was paid to
 3-10 the municipality under the expired or terminated incumbent cable
 3-11 service provider's agreement, in lieu of in-kind compensation and
 3-12 grants. Payments under this subsection shall be paid in the same
 3-13 manner as outlined in Section 66.005(b).

3-14 (c) All fees paid to municipalities under this section are
 3-15 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
 3-16 may be used by the municipality as allowed by federal law.

3-17 (c-1) The holder of a state-issued certificate of franchise
 3-18 authority shall include with a fee paid to a municipality under this
 3-19 section a statement identifying the fee.

3-20 (c-2) If a municipality uses fees paid to the municipality
 3-21 under this section for a purpose described by 47 U.S.C. Section
 3-22 542(g)(2)(C), the fees [, further, these payments] are not
 3-23 chargeable as a credit against the franchise fee payments
 3-24 authorized under this chapter. If the municipality uses the fees
 3-25 for another purpose, the fees are chargeable as a credit against the
 3-26 franchise fee payments authorized under this chapter.

3-27 (c-3) A municipality that receives fees under this section:

3-28 (1) shall maintain revenue from the fees in a separate
 3-29 account established for that purpose;

3-30 (2) may not commingle revenue from the fees with any
 3-31 other money;

3-32 (3) shall maintain a record of each deposit to and
 3-33 disbursement from the separate account, including a record of the
 3-34 payee and purpose of each disbursement; and

3-35 (4) not later than January 31 of each year, shall
 3-36 provide to each certificate holder that pays a fee to the
 3-37 municipality under this section a detailed accounting of the
 3-38 deposits to and disbursements from the separate account made in the
 3-39 preceding calendar year.

3-40 (d) Cable services to community public buildings, such as
 3-41 municipal buildings and public schools, [The following services]
 3-42 shall continue to be provided by the cable provider that was
 3-43 furnishing services pursuant to its municipal cable franchise
 3-44 [until January 1, 2008, or] until the expiration or termination
 3-45 [term] of the franchise; and [was to expire, whichever is later, and
 3-46 thereafter as provided in Subdivisions (1) and (2) below:

3-47 ~~[(1)]~~ institutional network capacity, however defined
 3-48 or referred to in the municipal cable franchise but generally
 3-49 referring to a private line data network capacity for use by the
 3-50 municipality for noncommercial purposes, shall continue to be
 3-51 provided at the same capacity by the cable provider that was
 3-52 furnishing services pursuant to its municipal cable franchise until
 3-53 the date of expiration or termination of the franchise, whichever
 3-54 is later, for municipalities with a population greater than one
 3-55 million as of January 1, 2012 [as was provided to the municipality
 3-56 prior to the date of the termination, provided that the
 3-57 municipality will compensate the provider for the actual
 3-58 incremental cost of the capacity; and

3-59 ~~[(2)]~~ cable services to community public buildings,
 3-60 such as municipal buildings and public schools, shall continue to
 3-61 be provided to the same extent provided immediately prior to the
 3-62 date of the termination]. On [Beginning on January 1, 2008, or] the
 3-63 expiration or termination of the franchise agreement, [whichever is
 3-64 later,] a provider that provides the cable services as described by
 3-65 this section may deduct from the franchise fee to be paid to the
 3-66 municipality an amount equal to the actual incremental cost of the
 3-67 cable services if the municipality requires the cable services
 3-68 after that date. Such cable service generally refers to the
 3-69 existing cable drop connections to such facilities and the tier of

4-1 cable service provided pursuant to the franchise at the time of the
4-2 expiration or termination.

4-3 SECTION 5. Subsections (c) and (h), Section 66.009,
4-4 Utilities Code, are amended to read as follows:

4-5 (c) If a municipality did not have the minimum number of PEG
4-6 access channels as of September 1, 2005, as set out in Subdivisions
4-7 (1) and (2) based on its population as of that date, the cable
4-8 service provider or video service provider shall furnish:

4-9 (1) up to three PEG channels for a municipality with a
4-10 population of at least 50,000; and

4-11 (2) up to two PEG channels for a municipality with a
4-12 population of less than 50,000.

4-13 (h) Where technically feasible, the holder of a
4-14 state-issued certificate of franchise authority that is not an
4-15 incumbent cable service provider and an incumbent cable service
4-16 provider, including an incumbent cable service provider that holds
4-17 a state-issued certificate of franchise authority issued under
4-18 Section 66.004(b-1), shall use reasonable efforts to interconnect
4-19 their cable or video systems for the purpose of providing PEG
4-20 programming. Interconnection may be accomplished by direct cable,
4-21 microwave link, satellite, or other reasonable method of
4-22 connection. The holder [~~holders~~] of a state-issued certificate of
4-23 franchise authority and the incumbent cable service provider
4-24 [~~providers~~] shall negotiate in good faith, and the incumbent cable
4-25 service provider [~~providers~~] may not withhold interconnection of
4-26 PEG channels.

4-27 SECTION 6. (a) A municipality that received fees described
4-28 by Subsection (c), Section 66.006, Utilities Code, as amended by
4-29 this Act, before September 1, 2011, shall, on September 1, 2011,
4-30 transfer any fees that have not been disbursed to a separate account
4-31 as required by Subsection (c-3), Section 66.006, Utilities Code, as
4-32 added by this Act.

4-33 (b) The change in law made by this Act in adding
4-34 Subdivisions (3) and (4), Subsection (c-3), Section 66.006,
4-35 Utilities Code, applies only to transfers, deposits, and
4-36 disbursements made on or after the effective date of this Act. A
4-37 transfer, deposit, or disbursement made before the effective date
4-38 of this Act is governed by the law in effect on the date the
4-39 transfer, deposit, or disbursement was made, and the former law is
4-40 continued in effect for that purpose.

4-41 SECTION 7. This Act takes effect only if House Bill No. 259
4-42 or House Bill No. 3675 or similar legislation by the 82nd
4-43 Legislature, Regular Session, 2011, is enacted and becomes law that
4-44 imposes an assessment on providers of subscription video services
4-45 and allows subscription video service providers to claim a credit
4-46 against the assessment for fees paid to municipalities pursuant to
4-47 a municipal franchise or state-issued certificate of franchise
4-48 authority and provides that at least 25 percent of the revenue
4-49 generated by the state assessment on providers of subscription
4-50 video services be distributed to municipalities and counties. If
4-51 legislation described by this section is not enacted by the 82nd
4-52 Legislature, Regular Session, 2011, or does not become law, this
4-53 Act has no effect.

4-54 SECTION 8. Except as provided by Section 7 of this Act, this
4-55 Act takes effect October 1, 2011.

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