

Suspending limitations on conference committee
jurisdiction, S.B. No. 1087

By: Carona

S.R. No. 1206

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1087 (state-issued certificates of franchise authority to provide cable service and video service) to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change and omit text not in disagreement in proposed SECTION 2 of the bill, in amended Subsection (a), Section 66.004, Utilities Code, 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 agreement, except as provided by Subsections (b), (b-1), (b-2), (b-3), and (c).

Explanation: This change is necessary to clarify that a cable service provider or video service provider that received a franchise to provide cable service or video service to a municipality is not eligible to seek a state-issued certificate of franchise authority before the expiration of the franchise

except as provided by Section 66.004, Utilities Code.

(2) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2 of the bill, in added Subsections (b-1), (b-2), and (b-3), Section 66.004, Utilities Code, to read as follows:

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

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

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

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

(b-3) A municipality with a population of at least 215,000 may enter into an agreement with any cable service

provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. To the extent that the mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this chapter, the agreed on terms and conditions control.

Explanation: This change is necessary to differentiate between termination of franchises by service providers in municipalities with populations of less than 215,000 and by service providers in municipalities with populations of at least 215,000.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 2 of the bill, in amended Subsections (c) and (f), Section 66.004, Utilities Code, to read as follows:

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

(f) Except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under Subsection (b-1) or (b-2),

as applicable, [~~enactment of this chapter,~~] and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and interests in effect on September 1, 2005, or the date a franchise is terminated under Subsection (b-1) or (b-2) shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

Explanation: These changes are necessary to add cross-references to Subsection (b-2), Section 66.004, Utilities Code.

(4) Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to change text not in disagreement, omit text not in disagreement, and add text on a matter which is not included in either the house or senate version of the bill, in proposed SECTION 4 of the bill, in amended Subsection (c), Section 66.006 and added Subsection (c-2), Section 66.006, Utilities Code, to read as follows:

(c) All fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and may be used by the municipality as allowed by federal law; further, these payments are not 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) may not spend revenue from the fees except directly from the separate account.

Explanation: This change is necessary to clarify that all fees paid to municipalities under Section 66.006, Utilities Code, are not chargeable as a credit against franchise fee payments authorized under Chapter 66, Utilities Code, and that municipalities may not spend revenue from fees received under Section 66.006 except by spending the revenue directly from a separate account, to remove language requiring a detailed accounting of deposits, and to reletter Subsection (c-3) as

Subsection (c-2).

(5) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change and omit text not in disagreement in proposed SECTION 4 of the bill, in amended Subsection (d), Section 66.006, Utilities Code, to read as follows:

(d) 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 expiration or [~~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.

Explanation: This change is necessary to clarify that institutional network capacity and cable services to community public buildings shall continue to be provided in all municipalities as they were provided before the expiration or termination of a franchise.

(6) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 6 of the bill, to read as follows:

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

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

Explanation: These changes are necessary to correct cross-references.

President of the Senate

I hereby certify that the
above Resolution was adopted by
the Senate on May 28, 2011, by the
following vote: Yeas 31, Nays 0.

Secretary of the Senate