

BILL ANALYSIS

Senate Research Center
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S.B. 327
By: Carona
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, the 79th Legislature passed S.B. 5, which made Texas the first state in the nation to adopt a new regulatory framework for video service providers that permitted the providers to forgo a requirement to enter into municipal franchise agreements, which must be negotiated city by city, and instead apply directly to the Public Utility Commission of Texas (PUC) for a state-issued certificate of franchise agreement (SICFA). SICFAs do not specify terms or conditions, but instead grant the video service provider with the authority to provide cable or video service statewide.

Following its passage, the constitutionality of S.B. 5 was challenged in *Time Warner Cable Inc. v. Hudson* on the basis that existing cable providers were required to operate under different rules than their video competitors. Specifically, existing cable providers could not terminate municipal franchise agreements and had to honor the agreement for its full term before being permitted to apply for an SICFA. This scheme provided video service providers, as new market entrants, certain advantages over existing cable service providers. S.B. 1087, passed by the 82nd Legislature, Regular Session, in 2011, further addressed video service provider treatment in Texas by giving existing cable providers in municipalities with populations of less than 215,000 the ability to terminate existing municipal franchise agreements and opt in to SICFAs on a provider-wide basis.

In May, 2012, the United States Fifth Circuit Court of Appeals ruled in *Time Warner Inc. v. Hudson* that unequal video and cable provider treatment was unconstitutional. The United States Supreme Court declined to hear an appeal of that decision; therefore, the Fifth Circuit's opinion is now the law. S.B. 327 codifies the appellate court ruling into Texas law by providing that any cable or video service provider may enter into an SICFA and terminate a municipal franchise agreement.

As proposed, S.B. 327 amends current law relating to termination of franchises to provide cable or video service in municipalities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 66.004(b), (c), and (f), Utilities Code, as follows:

(b) Deletes existing text restricting a cable service provider or video service provider that is not the incumbent cable service provider and serves fewer than 40 percent of the total cable customers in a particular municipal franchise area from electing to terminate that municipal franchise and seeking a state-issued certificate of franchise authority by providing written notice to the Public Utility Commission of Texas and the affected municipality before January 1, 2006.

(c) Provides that a cable service provider that elects under this section, rather than under Subsection (b), (b-1) (relating to a state-issued certificate of franchise authority for areas

with populations of less than 215,000), or (b-2) (relating to authorizing a cable service provider or video service provider that elects to terminate an existing municipal franchise with a population of at least 215,000 if the provider meets certain criteria), 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.

(f) Provides that nothing in this chapter, except as provided 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 video service provider before the date a franchise expires or the date a provider terminates a franchise under this section, rather than under Subsection (b-1) or (b-2), as applicable, 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. Makes a conforming change.

SECTION 2. Amends Section 66.009(h), Utilities Code, to require, 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, rather than a state-issued certificate of franchise authority issued under Section 66.004(b-1), to use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming.

SECTION 3. Repealers: Section 66.004(a) (relating to the eligibility of a cable service provider or a video service provider to seek a state-issued certificate of franchise authority), (b-1) (relating to authorizing a cable service provider or a video service provider to terminate a municipal franchise and seek a state-issued certificate of franchise authority in an area with a population of less than 215,000), (b-2) (relating to authorizing a cable service provider or a video service provider to terminate a municipal franchise in an area with a population of at least 215,000 if the provider meets certain criteria), and (b-3) (relating to authorizing a municipality with a population of at least 215,000 to enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise), Utilities Code.

SECTION 4. Effective date: upon passage or September 1, 2013.