

By: Carona

S.B. No. 327

A BILL TO BE ENTITLED

AN ACT

relating to termination of franchises to provide cable or video service in municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 66.004(b), (c), and (f), Utilities Code, are amended to read as follows:

(b) Beginning September 1, 2005, 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]~~ may elect to terminate a ~~[that]~~ municipal franchise and seek a state-issued certificate of franchise authority by providing written notice to the commission and the affected municipality ~~[before January 1, 2006]~~. The municipal franchise is terminated on the date the commission issues the state-issued certificate of franchise authority.

(c) A cable service provider that elects under this section ~~[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

1 taxes it must pay to the municipality, either directly or through  
2 the comptroller.

3 (f) Except as provided in this chapter, nothing in this  
4 chapter is intended to abrogate, nullify, or adversely affect in  
5 any way the contractual rights, duties, and obligations existing  
6 and incurred by a cable service provider or a video service provider  
7 before the date a franchise expires or the date a provider  
8 terminates a franchise under this section [~~Subsection (b-1) or~~  
9 ~~(b-2), as applicable,~~] and owed or owing to any private person,  
10 firm, partnership, corporation, or other entity including without  
11 limitation those obligations measured by and related to the gross  
12 revenue hereafter received by the holder of a state-issued  
13 certificate of franchise authority for services provided in the  
14 geographic area to which such prior franchise or permit  
15 applies. All liens, security interests, royalties, and other  
16 contracts, rights, and interests in effect on September 1, 2005, or  
17 the date a franchise is terminated under this section [~~Subsection~~  
18 ~~(b-1) or (b-2)~~] shall continue in full force and effect, without the  
19 necessity for renewal, extension, or continuance, and shall be paid  
20 and performed by the holder of a state-issued certificate of  
21 franchise authority, and shall apply as though the revenue  
22 generated by the holder of a state-issued certificate of franchise  
23 authority continued to be generated pursuant to the permit or  
24 franchise issued by the prior local franchising authority or  
25 municipality within the geographic area to which the prior permit  
26 or franchise applies. It shall be a condition to the issuance and  
27 continuance of a state-issued certificate of franchise authority

1 that the private contractual rights and obligations herein  
2 described continue to be honored, paid, or performed to the same  
3 extent as though the cable service provider continued to operate  
4 under its prior franchise or permit, for the duration of such  
5 state-issued certificate of franchise authority and any renewals or  
6 extensions thereof, and that the applicant so agrees. Any person,  
7 firm, partnership, corporation, or other entity holding or claiming  
8 rights herein reserved may enforce same by an action brought in a  
9 court of competent jurisdiction.

10 SECTION 2. Section 66.009(h), Utilities Code, is amended to  
11 read as follows:

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 of a state-issued certificate of franchise  
22 authority and the incumbent cable service provider shall negotiate  
23 in good faith, and the incumbent cable service provider may not  
24 withhold interconnection of PEG channels.

25 SECTION 3. Sections 66.004(a), (b-1), (b-2), and (b-3),  
26 Utilities Code, are repealed.

27 SECTION 4. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2013.