

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1087
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 5, 79th Legislature, Regular Session, 2005, made Texas the first state in the nation to adopt a new regulatory framework for providers of video services. More specifically, Incumbent Local Exchange Companies (ILEC) like Verizon and AT&T were granted the ability to provide video/cable services; however, some cable providers were required to operate under different rules than their competitors, thus providing new market entrants certain advantages over incumbent video providers. C.S.S.B. 1087 helps equalize video provider treatment in Texas by allowing video providers the ability to opt-in to a State Issued Certificate of Franchise Authority (SICFA). The bill also ends certain outdated institutional network capacity (I-NET) obligations, creates streamlined audit periods, and ensures accountability for the one percent Public, Education, and Government (PEG) fee paid by Texas video customers.

Currently, Chapter 66 (State-Issued Cable and Video Franchise), Utilities Code, allows cable and video service providers entering the market after 2005, to forgo municipal franchise agreements and apply to the Public Utility Commission (PUC) for SICFAs when entering the video franchise market. A SICFA allows municipalities to assess a fee of five percent of gross revenues to cable/video providers. However, cable providers cannot apply for SICFAs until the existing municipal franchise agreements expire. In addition, municipalities can review the business records of a video service provider to ensure proper payments of franchise fees. However, under current law, there are no limits as to how far back municipalities can audit video providers' franchise fee payments. Furthermore, Chapter 66 allows assessment of a one percent fee that video service providers in this state franchising regime are required to pay to municipalities to assist in funding PEG channels; to help municipalities to assist in funding PEG channels. This fee was intended to help municipalities pay for PEG capital costs; or to be spent by municipalities as otherwise allowed by federal law. Although there are clear state and federal statutory limitations as to what the one percent PEG fee can be spent on, there is not a system in place to ensure that those PEG funds are being spent only for their intended purpose. Lastly, incumbent cable providers are required to continue providing I-NET and cable services to community public buildings after transitioning to a SCIFA.

C.S.S.B. 1087 amends current law relating to state-issued certificates of franchise authority to provide cable service and video service.

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 Section 66.003(a), Utilities Code, as follows:

- (a) Requires an entity or person seeking to provide cable service or video service in this state, rather than in this state after September 1, 2005, to file an application for a state-issued certificate of franchise authority with the Public Utility Commission of Texas (PUC) as required by this section. Provides that 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 (Eligibility for Commission-Issued Franchise) or until the franchise agreement expires, rather than until the franchise agreement expires, except as provided by Section 66.004.

SECTION 2. Amends Section 66.004, Utilities Code, by amending Subsections (a), (c), and (f), and adding Subsection (b-1), as follows:

(a) Authorizes 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 to seek state-issued certificate of franchise authority to provide service to the municipality under this section, rather than providing that 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) and (c).

(b-1) Authorizes a cable service provider that was not allowed to or did not terminate a municipal franchise under Subsection (b), beginning September 1, 2011, to elect to terminate all unexpired municipal franchises and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to PUC and each affected municipality before January 1, 2012. Provides that a municipal franchise is terminated on the date PUC issues a state-issued certificate of franchise authority to the provider for the area under that terminated franchise.

(c) Provides that a cable service provider that elects, rather than 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) or (b-1) 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. Authorizes the provider, if the cable service provider has credit remaining from prepaid franchise fees, to deduct the amount of the remaining credit from any future fees or taxes it is required to pay to the municipality, either directly or through the comptroller of public accounts (comptroller).

(f) Provides that, 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 Subsection (b-1), as applicable, rather than before 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. Requires that 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) continue in full force and effect, without the necessity for renewal, extension, or continuance, and be paid and performed by the holder of a state-issued certificate of franchise authority, and to 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.

SECTION 3. Amends Sections 66.005(a) and (b), Utilities Code, as follows:

(a) Prohibits the franchise fee paid by the holder of a state-issued certificate of franchise authority from being deemed a state or local tax.

(b) Authorizes a municipality to review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a) (relating to payment of a franchise fee), provided that the municipality is authorized to only review records that relate to the 48-month period preceding the date of the last franchise fee payment.

SECTION 4. Amends Section 66.006, Utilities Code, as follows:

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Requires the holder of a state-issued certificate of franchise authority, until the expiration or termination of the incumbent cable service provider's agreement, to pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement.

(b) Makes conforming changes.

(c) Makes a nonsubstantive change.

(c-1) Requires the holder of a state-issued certificate of franchise authority to include with a fee paid to a municipality under this section a statement identifying the fee.

(c-2) Provides that if a municipality uses fees paid to the municipality under this section for a purpose described by 47 U.S.C. Section 524(g)(2)(c), the fees are not chargeable as a credit against the franchise fee payments authorized under this chapter. Provides that 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. Makes nonsubstantive changes.

(c-3) Provides that a municipality that receives fees under this section:

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

(2) is prohibited from commingling the revenue from the fees with any other money;

(3) is required to 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) is required, not later than January 31 of each year, to 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) Requires cable services to community public buildings, such as municipal buildings and public schools, to continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until the expiration or termination of the franchise; and 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, to continue to be provided at the same capacity by the cable provider that was furnishing services pursuant to its municipal cable franchise until the date of expiration or termination of the franchise, whichever is later, for municipalities with a population greater than one million as of January 1, 2012.

Authorizes a provider that provides cable services as described by this section, on the expiration or termination of the franchise agreement, to deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the cable services if the municipality requires the cable services after that date, rather than authorizing a provider that provides services, beginning January 1, 2008, or the expiration of the franchise agreement, whichever is later, to 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. Provides that 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.

Deletes existing text of Subdivision (1) requiring the following services to 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 term of the franchise was to expire, whichever is later and thereafter as provided in Subdivisions (1) and (2).

Deletes existing text of Subdivision (1) relating to a municipality compensating a provider for the actual incremental cost of the capacity of services provided prior to the date of franchise termination.

Deletes existing text of Subdivision (2) relating to furnishing certain cable services to community public buildings.

SECTION 5. Amends Sections 66.009(c) and (h), Utilities Code, as follows:

(c) Requires the cable service provider or video service provider, if a municipality did not have the minimum number of public educational and governmental programming (PEG) access channels as of September 1, 2005, as set out in Subdivisions (1) and (2) based on its population as of that date, to furnish:

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

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

(h) Requires 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), where technically feasible, to use reasonable efforts to interconnect their cable or video systems for the purpose of providing public, PEG. Authorizes interconnection to be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Requires the holder of a state-issued certificate of franchise authority and the incumbent cable service provider to negotiate in good faith, and prohibits the incumbent cable service provider from withholding interconnection of PEG channels. Makes nonsubstantive changes.

SECTION 6. (a) Requires a municipality that received fees described by Section 66.006(c), Utilities Code, as amended by this Act, before September 1, 2011, to, on September 1, 2011, transfer any fees that have not been disbursed to a separate account as required by Section 66.006(c-3), Utilities Code, as added by this Act.

(b) Provides that the change in law made by this Act in adding Subdivisions (3) and (4), Subsection (c-3), Section 66.006, Utilities Code, applies only to transfers, deposits, and disbursements made on or after the effective date of this Act. Provides that 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.

SECTION 7. Makes application of this Act contingent upon passage of H.B. 259 or H.B. 3675 or similar legislation by the 82nd Legislature, Regular Session, 2011, that imposes an assessment on providers of subscription video services and allows subscription video service providers to claim a credit against the assessment for fees paid to municipalities pursuant to a municipal franchise or state-issued certification of franchise authority and provides that at least 25 percent of the revenue generated by the state assessment on providers of subscription video services be distributed to municipalities and counties. Provides that if legislation described by this section is not enacted by the 82nd Legislature, Regular Session, 2011, or does not become law, this Act has no effect.

SECTION 8. Effective date, except as provided by SECTION 7 of this Act: October 1, 2011.