

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE C. TELECOMMUNICATIONS UTILITIES

CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

Sec. 66.001. FRANCHISING AUTHORITY. The commission shall be designated as the franchising authority for a state-issued franchise for the provision of cable service or video service. Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.002. DEFINITIONS. In this chapter:

(1) "Actual incremental cost" means only current out-of-pocket expenses for labor, equipment repair, equipment replacement, and tax expenses directly associated with the labor or the equipment of a service provider that is necessarily and directly used to provide what were, under a superseded franchise, in-kind services, exclusive of any profit or overhead such as depreciation, amortization, or administrative expense.

(2) "Cable service" is defined as set forth in 47 U.S.C. Section 522(6).

(3) "Cable service provider" means a person who provides cable service.

(4) "Communications network" means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

(5) "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable or video services network in the public rights-of-way.

(6)(A) "Gross revenues" means all consideration of any kind or nature including without limitation cash, credits, property, and in-kind contributions (services or goods) derived by

the holder of a state-issued certificate of franchise authority from the operation of the cable service provider's or the video service provider's network to provide cable service or video service within the municipality. Gross revenue shall include all consideration paid to the holder of a state-issued certificate of franchise authority and its affiliates (to the extent either is acting as a provider of a cable service or video service as authorized by this chapter), which shall include but not be limited to the following: (i) all fees charged to subscribers for any and all cable service or video service provided by the holder of a state-issued certificate of franchise authority; (ii) any fee imposed on the holder of a state-issued certificate of franchise authority by this chapter that is passed through and paid by subscribers (including without limitation the franchise fee set forth in this chapter); and (iii) compensation received by the holder of a state-issued certificate of franchise authority or its affiliates that is derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or video service with respect to commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel, subject to Paragraph (B)(v). Gross revenue includes a pro rata portion of all revenue derived by the holder of a state-issued certificate of franchise authority or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or the video service within a municipality, subject to Paragraph (B)(iii). The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue. Revenue of an affiliate derived from the affiliate's provision of cable service or the video service shall

be gross revenue to the extent the treatment of such revenue as revenue of the affiliate and not of the holder of a state-issued certificate of franchise authority has the effect (whether intentional or unintentional) of evading the payment of fees which would otherwise be paid to the municipality. In no event shall revenue of an affiliate be gross revenue to the holder of a state-issued certificate of franchise authority if such revenue is otherwise subject to fees to be paid to the municipality.

(B) For purposes of this section, "gross revenues" does not include:

(i) any revenue not actually received, even if billed, such as bad debt;

(ii) non-cable services or non-video services revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state-issued certificate of franchise authority to provide cable service or video service;

(iii) refunds, rebates, or discounts made to subscribers, leased access providers, advertisers, or a municipality;

(iv) any revenues from services classified as non-cable service or non-video service under federal law including without limitation revenue received from telecommunications services; revenue received from information services (but not excluding cable services or video services); and any other revenues attributed by the holder of a state-issued certificate of franchise authority to non-cable service or non-video service in accordance with Federal Communications Commission or commission rules, regulations, standards, or orders;

(v) any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services, but not excluding any commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar

channel;

(vi) the sale of cable services or video services for resale in which the purchaser is required to collect this chapter's fees from the purchaser's customer. Nothing under this chapter is intended to limit state's rights pursuant to 47 U.S.C. Section 542(h);

(vii) the provision of cable services or video services to customers at no charge, as required or allowed by this chapter, including without limitation the provision of cable services or video services to public institutions, as required or permitted in this chapter, including without limitation public schools or governmental entities, as required or permitted in this chapter;

(viii) any tax of general applicability imposed upon the holder of a state-issued certificate of franchise authority or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the holder of a state-issued certificate of franchise authority and remitted to the taxing entity (including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and fees not imposed by this chapter);

(ix) any forgone revenue from the holder of a state-issued certificate of franchise authority's provision of free or reduced cost cable services or video services to any person including without limitation employees of the holder of a state-issued certificate of franchise authority, to the municipality and other public institutions or other institutions as allowed in this chapter; provided, however, that any forgone revenue which the holder of a state-issued certificate of franchise authority chooses not to receive in exchange for trades, barter, services, or other items of value shall be included in gross revenue;

(x) sales of capital assets or sales of surplus equipment that is not used by the purchaser to receive cable services or video services from the holder of a state-issued certificate of franchise authority;

(xi) directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing; and

(xii) reimbursement by programmers of marketing costs incurred by the holder of a state-issued franchise for the introduction of new programming that exceed the actual costs.

(C) For purposes of this definition, a provider's network consists solely of the optical spectrum wavelengths, bandwidth, or other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the municipality as designated by the provider in its franchise.

(7) "Incumbent cable service provider" means the cable service provider serving the largest number of cable subscribers in a particular municipal franchise area on September 1, 2005.

(8) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

(9) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(10) "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d).

(11) "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public right-of-way without regard to delivery technology. This term does not include a cable service provider.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE. (a) An entity or person seeking to provide cable service or video service in this state shall file an application for a state-issued certificate of franchise authority with the commission as required by this section. 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 or until the franchise agreement expires.

(a-1) The commission shall notify an applicant for a state-issued certificate of franchise authority whether the applicant's affidavit described by Subsection (b) is complete before the 15th business day after the applicant submits the affidavit.

(b) The commission shall issue a certificate of franchise authority to offer cable service or video service before the 17th business day after receipt of a completed affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming:

(1) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service or video service in this state;

(2) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(3) that the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

(4) a description of the service area footprint to be served within the municipality, if applicable, otherwise the municipality to be served by the applicant, which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area

and, upon such expansion, notice to the commission of the service area to be served by the applicant; and

(5) the location of the applicant's principal place of business and the names of the applicant's principal executive officers.

(c) The certificate of franchise authority issued by the commission shall contain:

(1) a grant of authority to provide cable service or video service as requested in the application;

(2) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered; and

(3) a statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

(d) The certificate of franchise authority issued by the commission is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be filed with the commission and the relevant municipality within 14 business days of the completion of such transfer.

(e) The certificate of franchise authority issued by the commission may be terminated by the cable service provider or video service provider by submitting notice to the commission.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 1, eff. September 1, 2011.

Sec. 66.004. ELIGIBILITY FOR COMMISSION-ISSUED FRANCHISE.

(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).

(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 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.

(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.

(c) A cable service provider 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.

(d) For purposes of this section, a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality.

(e) The terms "affiliates or successor entity" in this section shall include but not be limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

(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, 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.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 2, eff. September 1, 2011.

Sec. 66.005. FRANCHISE FEE. (a) The holder of a state-issued certificate of franchise authority shall pay each municipality in which it provides cable service or video service a franchise fee of five percent based upon the definition of gross revenues as set forth in this chapter. That same franchise fee structure shall apply to any unincorporated areas that are annexed by a municipality after the effective date of the state-issued certificate of franchise authority.

(b) The franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the

preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may 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), provided that the municipality may only review records that relate to the 48-month period preceding the date of the last franchise fee payment. Each party shall bear the party's own costs of the examination. A municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(c) The holder of a state-issued certificate of franchise authority may recover from the provider's customers any fee imposed by this chapter.

(d) In this subsection, "affiliated group" has the meaning assigned by Section 171.0001, Tax Code. A holder of a state-issued certificate of franchise authority is not subject to the fee imposed under Subsection (a) for a given calendar year if the holder determines that the sum of fees due from the holder and any member of the holder's affiliated group to all municipalities in this state under Subsection (a) is less than the sum of the compensation due from the holder and any member of the holder's affiliated group to all municipalities in this state under Section 283.051, Local Government Code. The determination under this subsection for a given year must be based on amounts actually paid, or amounts that would have been paid notwithstanding this subsection, during the 12-month period ending June 30 of the immediately preceding calendar year by the holder and any member of the holder's affiliated group. In the case of a conflict between this subsection and Section 283.055, Local Government Code, this subsection prevails.

(e) Notwithstanding the aggregate amount of compensation or fees paid in this state calculated under Subsection (d), Subsection (d) does not exempt a holder of a state-issued certificate of franchise authority from paying the fee imposed under Subsection (a) to a municipality if the holder is not required to pay compensation under Section 283.051, Local Government Code, to that

municipality. This subsection applies only to a municipality described in this subsection and does not limit the application of Subsection (d) to any other municipality. Nothing in this subsection affects the application of Section 66.006 or 66.009 to any holder of a state-issued certificate of franchise authority.

(f) A holder of a state-issued certificate of franchise authority shall file, not later than October 1 of each year, an annual written notification with each municipality in which the holder provides cable or video services of the holder's requirement to pay the fee under Subsection (a) or exemption from the requirement to pay the fee under Subsection (d) for the following calendar year.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 3, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 980 (S.B. 1152), Sec. 2, eff. September 1, 2019.

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY.

(a) Until the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall 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. All cable service providers and all video service providers shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly to

the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

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

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

(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.

(d) The following services shall 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 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 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 the expiration or termination of the franchise agreement, 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.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 4, eff. September 1, 2011.

Sec. 66.007. BUILD-OUT. The holder of a state-issued certificate of franchise authority shall not be required to comply with mandatory build-out provisions.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.008. CUSTOMER SERVICE STANDARDS. The holder of a state-issued certificate of franchise authority shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) until there are two or more providers offering service, excluding direct-to-home satellite service, in the relevant municipality.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.009. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CHANNELS. (a) Not later than 120 days after a request by a municipality, the holder of a state-issued certificate of franchise authority shall provide the municipality with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming.

(b) The holder of a state-issued certificate of franchise authority shall provide no fewer than the number of PEG access channels a municipality has activated under the incumbent cable service provider's franchise agreement as of September 1, 2005.

(c) If a municipality did not have the maximum number of PEG access channels as of September 1, 2005, as provided by Subdivisions (1) and (2) based on the municipality's population on that date, the cable service provider or video service provider shall furnish at the request of the municipality:

(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.

(d) Any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day shall no longer be made available to the municipality, but may be programmed at the cable service provider's or video service provider's discretion. At such time as the municipality can certify to the cable service provider or video service provider a schedule for at least eight hours of daily programming, the cable service provider or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(e) In the event a municipality has not utilized the minimum number of access channels as permitted by Subsection (c), access to the additional channel capacity allowed in Subsection (c) shall be provided upon 90 days' written notice if the municipality meets the following standard: if a municipality has one active PEG channel and wishes to activate an additional PEG channel, the initial channel shall be considered to be substantially utilized when 12

hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three video-castings of a program. If a municipality is entitled to three PEG channels under Subsection (c) and has in service two active PEG channels, each of the two active channels shall be considered to be substantially utilized when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters.

(f) The operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of such channel. The holder of a state-issued certificate of franchise authority shall be responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

(g) The municipality must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued certificate of franchise authority are provided or submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the cable service provider or video service provider, which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver services.

(h) 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 issued under Section 66.004(b-1), shall use reasonable efforts to interconnect



their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The holder of a state-issued certificate of franchise authority and the incumbent cable service provider shall negotiate in good faith, and the incumbent cable service provider may not withhold interconnection of PEG channels.

(i) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 5, eff. September 1, 2011.

Sec. 66.010. NONDISCRIMINATION BY MUNICIPALITY. (a) A municipality shall allow the holder of a state-issued certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a state-issued certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. All use of a public right-of-way by the holder of a state-issued certificate of franchise authority is nonexclusive and subject to Section 66.011.

(b) A municipality may not discriminate against the holder of a state-issued certificate of franchise authority regarding:

(1) the authorization or placement of a communications network in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment term.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY. (a) A municipality may enforce police power-based regulations in the management of a public right-of-way that apply to the holder of a

state-issued certificate of franchise authority within the municipality. A municipality may enforce police power-based regulations in the management of the activities of the holder of a state-issued certificate of franchise authority to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of the holder of a state-issued certificate of franchise authority's use of the public right-of-way must be competitively neutral and may not be unreasonable or discriminatory. A municipality may not impose on activities of the holder of a state-issued certificate of franchise authority a requirement:

(1) that particular business offices be located in the municipality;

(2) regarding the filing of reports and documents with the municipality that are not required by state or federal law and that are not related to the use of the public right-of-way except that a municipality may request maps and records maintained in the ordinary course of business for purposes of locating the portions of a communications network that occupy public rights-of-way. Any maps or records of the location of a communications network received by a municipality shall be confidential and exempt from disclosure under Chapter 552, Government Code, and may be used by a municipality only for the purpose of planning and managing construction activity in the public right-of-way. A municipality may not request information concerning the capacity or technical configuration of the holder of a state-issued certificate of franchise authority's facilities;

(3) for the inspection of the holder of a state-issued certificate of franchise authority's business records except to extent permitted under Section 66.005(b);

(4) for the approval of transfers of ownership or control of the holder of a state-issued certificate of franchise authority's business, except that a municipality may require that the holder of a state-issued certificate of franchise authority maintain a current point of contact and provide notice of a transfer within a reasonable time; or

(5) that the holder of a state-issued certificate of

franchise authority that is self-insured under the provisions of state law obtain insurance or bonding for any activities within the municipality, except that a self-insured provider shall provide substantially the same defense and claims processing as an insured provider. A bond may not be required from a provider for any work consisting of aerial construction except that a reasonable bond may be required of a provider that cannot demonstrate a record of at least four years' performance of work in any municipal public right-of-way free of currently unsatisfied claims by a municipality for damage to the right-of-way.

(b) Notwithstanding any other law, a municipality may require the issuance of a construction permit, without cost, to the holder of a state-issued certificate of franchise authority that is locating facilities in or on a public right-of-way in the municipality. The terms of the permit shall be consistent with construction permits issued to other persons excavating in a public right-of-way.

(c) In the exercise of its lawful regulatory authority, a municipality shall promptly process all valid and administratively complete applications of the holder of a state-issued certificate of franchise authority for a permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or obtain zoning or subdivision regulation approvals or other similar approvals. A municipality shall make every reasonable effort not to delay or unduly burden the provider in the timely conduct of the provider's business.

(d) If there is an emergency necessitating response work or repair, the holder of a state-issued certificate of franchise authority may begin the repair or emergency response work or take any action required under the circumstances without prior approval from the affected municipality, if the holder of a state-issued certificate of franchise authority notifies the municipality as promptly as possible after beginning the work and later obtains any approval required by a municipal ordinance applicable to emergency response work.

(e) The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a

municipality to manage the public rights-of-way.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY; NOTICE OF LIABILITY. (a) The holder of a state-issued certificate of franchise authority shall indemnify and hold a municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought, that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the holder of a state-issued certificate of franchise authority or any agent, officer, director, representative, employee, affiliate, or subcontractor of the holder of a state-issued certificate of franchise authority or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality or its officers, employees, contractors, or subcontractors. If the holder of a state-issued certificate of franchise authority and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This subsection is solely for the benefit of the municipality and the holder of a state-issued certificate of franchise authority and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

(b) The holder of a state-issued certificate of franchise authority and a municipality shall promptly advise the other in

writing of any known claim or demand against the holder of a state-issued certificate of franchise authority or the municipality related to or arising out of the holder of a state-issued certificate of franchise authority's activities in a public right-of-way.

(c) The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.013. MUNICIPAL AUTHORITY. In addition to a municipality's authority to exercise its nondiscriminatory police power with respect to public rights-of-way under current law, a municipality's authority to regulate the holder of state-issued certificate of franchise authority is limited to:

(1) a requirement that the holder of a state-issued certificate of franchise authority who is providing cable service or video service within the municipality register with the municipality and maintain a point of contact;

(2) the establishment of reasonable guidelines regarding the use of public, educational, and governmental access channels; and

(3) submitting reports within 30 days on the customer service standards referenced in Section 66.008 if the provider is subject to those standards and has continued and unresolved customer service complaints indicating a clear failure on the part of the holder of a state-issued certificate of franchise authority to comply with the standards.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose of this section is to prevent discrimination among potential residential subscribers.

(b) A cable service provider or video service provider that has been granted a state-issued certificate of franchise authority

may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(c) An affected person may seek enforcement of the requirements described by Subsection (b) by initiating a proceeding with the commission. A municipality within which the potential residential cable service or video service subscribers referenced in Subsection (b) may be considered an affected person for purposes of this section.

(d) The holder of a state-issued certificate of franchise authority shall have a reasonable period of time to become capable of providing cable service or video service to all households within the designated franchise area as defined in Section 66.003(b)(4) and may satisfy the requirements of this section through the use of an alternative technology that provides comparable content, service, and functionality.

(e) Notwithstanding any provision of this chapter, the commission has the authority to make the determination regarding the comparability of the technology and the service provided. Notwithstanding any provision of this chapter, the commission has the authority to monitor the deployment of cable services, video services, or alternate technology.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.015. COMPLIANCE. (a) Should the holder of a state-issued certificate of franchise authority be found by a court of competent jurisdiction to be in noncompliance with the requirements of this chapter, the court shall order the holder a state-issued certificate of franchise authority, within a specified reasonable period of time, to cure such noncompliance. Failure to comply shall subject the holder of the state-issued franchise of franchise authority to penalties as the court shall reasonably impose, up to and including revocation of the state-issued certificate of franchise authority granted under this chapter.

(b) A municipality within which the provider offers cable

service or video service shall be an appropriate party in any such litigation.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.016. APPLICABILITY OF OTHER LAWS. (a) Nothing in this chapter shall be interpreted to prevent a voice provider, cable service provider or video service provider, or municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

(b) Nothing in this chapter shall limit the ability of a municipality under existing law to receive compensation for use of the public rights-of-way from entities determined not to be subject to all or part of this chapter, including but not limited to provider of Internet protocol cable or video services, unless such payments are expressly prohibited by federal law.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.