

**SUMMARY OF TEXAS 2S.B.5 – Telecommunications
SB5, Creating Chapter 66 of the Texas Utilities Code:**

STATE-ISSUED CABLE AND VIDEO FRANCHISE

2S.B.5 makes numerous changes to telecommunications, cable, and broadband laws. Specifically, the bill:

Sec. 66.001. Franchising Authority.

- Creates a statewide cable and video franchise administered by the Public Utility Commission. Cities no longer have authority to issue franchises for these services.

Sec. 66.002. Definitions.

- Defines "actual incremental cost," "cable service," "gross revenues," "incumbent cable service provider," "public right-of-way", "video programming," and other key terms.

Sec. 66.003. State Authorization To Provide Cable Service Or Video Service.

- State, via PUC, is the sole franchising authority in Texas, replacing cities in that authority
- Cable and video providers must have a state franchise, unless they have a current municipal franchise
- State franchisee must agree to comply with municipal rules on ROW
- City consent no longer required for franchise transfer

Sec. 66.004. Eligibility for PUC-Issued Franchise.

- Provider with a current city franchise not eligible for state franchise until city franchise expires
- Provider with less than 40% penetration may terminate its city franchise now (by 1/1/2006)

Sec. 66.005. Franchise Fee.

- Provider pays city 5% of gross revenue
- State-franchised provider may recover franchise fees from customers

Sec. 66.006. In-Kind Contributions To Municipality.

- PUC franchisee pays same per-subscriber payments as the incumbent (municipally-franchised) provider
- Pro rata according to percentage of PUC franchisee's share of all subscribers in the area
- All providers report subscriber numbers to municipality quarterly
- At end of incumbent's franchise period, PUC franchisee starts paying 1% of gross in lieu of in-kind compensation and grants
- Instead of 1% fee, municipality may opt to receive the per-subscriber fees that were paid under the expired incumbent's agreement.
- Other services formerly in-kind (e.g., I-Net, drops to schools) may continue to be received by municipality, but crediting provider's "actual incremental cost" against fees received.

SUMMARY OF TEXAS 2S.B.5 (CONT.)

Sec. 66.007. Build-Out.

- Cities may not impose mandatory build-out provisions on PUC franchisees.

Sec. 66.008. Customer Service Standards.

- PUC franchisees must comply with federal customer service standards
- When there are two or more providers in an area, no customer service standards will apply
- Enforcement procedures unclear; PUC not granted any jurisdiction in this area

Sec. 66.009. PEG Access Channels.

- PUC franchisee must provide PEG channels at the municipality's request
- Existing PEG channels grandfathered
- Where there were none before, up to three PEG channels must be provided by PUC franchisee
- Minimum utilization criteria, existing channels: 8 hrs./day per channel; for new second channel: 12 hr./day, with 40% non-repeat programming on first channel; for new third channel: 12 hr./day, with 50% non-repeat programming on first two channels.
- Incumbent and PUC franchisee must make reasonable effort to interconnect to provide PEG programming.

Sec. 66.010. Nondiscrimination By Municipality.

- Municipality must provide PUC franchisee with fair access to ROW ("competitively neutral, non-discriminatory").
- Applies to: placement of network in ROW; access to buildings; utility pole attachments.

Sec. 66.011. Municipal Police Power; Other Authority.

- Municipality restricted in use of police power over PUC franchisee: only to extent reasonably necessary to protect the health, safety, and welfare of the public; competitively-neutral, non-discriminatory
- Certain municipal requirements prohibited: certain bond and insurance requirements; disclosure of most business records and technical/performance records.
- Municipality may require PUC franchisee to obtain construction permits
- Regarding permits, zoning, etc.: municipality may not delay or unduly burden PUC franchisee
- PUC has no jurisdiction to review police power ordinances

Sec. 66.012. Indemnity In Connection With Right-Of-Way; Notice Liability.

- PUC franchisee will indemnify municipality against certain actions caused by negligence of franchisee while working on facilities in ROW.
- Franchisee and municipality must notify the other of any claim arising out of activities in the ROW.

Sec. 66.013. Municipal Authority.

- Authority to regulate limited to: requiring PUC franchisee to register with the municipality and maintain a point of contact; establishing reasonable guidelines for PEG use; requiring submission, under certain circumstances, of customer service reports.

SUMMARY OF TEXAS 2S.B.5 (CONT.)

Sec. 66.014. Discrimination By A Provider Is Prohibited

- PUC franchisee may not discriminate among potential subscribers, nor deny access to service to any group because of the income of the residents in their area.
- Provides redress procedures.

Sec. 66.017. Joint Legislative Committee And PUC Study

Joint study to report on:

- Alternative forms of competitively-neutral compensation methodology;
- ROW access and fees;
- Transition from local to state franchise authority, including methods for maintaining current municipal revenue streams; continuation of PEG access channels; and build-out requirements;

Also of interest, the bill:

- Changes the telecommunications access line system to require voice over internet protocol (VOIP) service providers to pay the right-of-way access line fee to cities.
- Provides that a city does not have jurisdiction over broadband over power line (BPL) systems or services, including the rates, operations, or services of an electric utility or transmission and distribution utility that are related to providing BPL.
- Provides that an electric utility may implement BPL under the procedures set forth in the bill, but is not required to do so.
- Prohibits an electric utility from being penalized for providing or not providing BPL.
- Authorizes an electric utility to elect to: (a) allow an affiliate to own or operate a BPL system on its electric delivery system; (b) allow an unaffiliated entity to own or operate a BPL system on the utility's electric delivery system; or (c) allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.
- Provides that the installation of a BPL system on an electric delivery system shall not require the utility or the owner of the BPL system to obtain other rights-of-way or to make payments for easements in addition to payments made by the utility for the placement of its electric delivery system.
- Provides that an electric utility that allows BPL shall employ all reasonable measures to protect electric reliability.

- Prohibits the Public Utility Commission or any state or local government from: requiring a utility to install a BPL system on its power lines or to offer BPL services in all or any part of the utility's certificated service area; (b) requiring a utility to allow others to install a BPL system on the utility's electric delivery system; or (c) prohibiting a utility from installing a BPL system or offering BPL services in any part or all of the utility's certificated service area.
- Provides that if a city is already collecting a charge or fee from an electric utility for the use of a street, alley, or public way for the delivery of electricity to retail electric customers, the city is prohibited from requiring a BPL franchise and is prohibited from imposing or collecting a charge, fee, or tax from an electric utility for installing equipment to facilitate BPL services on an existing electric distribution system
- Authorizes the state or a city to impose a charge on the provision of BPL services that is no greater than the lowest charge the state or a city imposes on other broadband providers for use of the public rights-of-way.
- Provides that a municipally owned utility is not prohibited from providing energy-related data services, such as load management or automated meter reading, to its energy customers.
- Prohibits a city or a municipally owned utility from discriminating against a certified telecommunications provider regarding the use of the public rightsof-way.
- Prohibits a city or a municipally owned utility from charging more for a pole attachment than is allowed by federal law, and requires a city or MOU to establish a single, uniform pole attachment fee prior to September 1, 2006.
- Requires a study of the purposes of the Universal Service Fund, and whether the fund has achieved its goals.
- Provides that all incumbent local exchange markets are deregulated on January 1, 2006 (or January 1, 2007, for areas with a population less than 30,000); unless the Public Utility Commission determines that a market should remain regulated.
- Provides that an incumbent local exchange company may elect to remain regulated.
- Requires telecommunications and cable employees to provide identification when entering real property to work within a public right-of-way.