

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

1. creates a statewide cable and video franchise to be administered by the Public Utility Commission (PUC).
2. requires an entity seeking to provide cable or video service in Texas after September 1, 2005, to file an application with the PUC for the state-issued certificate of franchise authority.
3. provides that an entity providing cable or video service pursuant to a franchise agreement with a city may not seek a state franchise until the expiration of the existing franchise agreement. However, non-incumbent cable service providers that serve fewer than 40 percent of the total cable customers in a particular municipal franchise area may elect to terminate the existing franchise agreement and move to a state-issued certificate of franchise authority if they do so by January 1, 2006.
4. requires the PUC to issue a certificate of franchise within 14 business days of the receipt of an application provided that, among other things, the applicant: (a) agrees to comply with all federal laws and regulations; (b) agrees to comply with all city regulations regarding the use of the public rights-of-way (ROW), including the police powers of the city; and (c) provides a description of the service area footprint to be served.
5. provides that a state-issued certificate of franchise shall contain a grant of authority to use a city's ROWs, subject to the police powers of a city.
6. provides that the certificate of franchise is fully transferable to successors in interest.
7. provides that a condition of issuance of a statewide franchise is that the obligations of the entity providing cable or video service continue to be honored, paid, or performed just as though the entity continued to operate under its prior franchise.
8. requires a statewide franchise holder to make a quarterly payment to each city in which it provides service; and that the payment be equal to five percent of gross revenues, as that term is defined in the bill, earned by the franchise holder in that city.
9. authorizes the state or a city to review the business records of a provider to ensure proper payment of fees.
10. provides that, until the expiration of the incumbent cable provider's franchise agreement, a statewide franchise holder shall pay to a city a pro rata amount of cash to cover any in-kind services received by the city.
11. provides that, following the expiration of the incumbent provider's franchise agreement, a statewide franchise holder shall pay each city either an amount equal to one percent of the provider's gross revenue or a monthly, per-subscriber line fee (if such fee was imposed under previous franchise agreements) in lieu of in-kind services and operational grants.
12. requires an incumbent cable provider to provide certain services, such as cable service to city and other public buildings, until January 1, 2008, or the expiration of a franchise agreement, whichever is later, after which time providers will provide the services at their incremental cost and deduct the amount from the franchise fee owed to the city.
13. exempts the holder of a statewide franchise from any "build-out" requirements.

14. requires: (a) a statewide franchise holder to comply with federal customer service requirements until there are two or more providers offering service to an area; and (b) the PUC to post the number of complaints regarding each service provider on its Web site.
15. requires a statewide franchise holder to: (a) provide a city, upon request, with public, educational, and governmental access channels (PEG Channels) to be operated by the city for noncommercial programming, with certain limitations and restrictions; (b) provide the same number of PEG channels as provided under the existing city cable franchise; and (c) provide to a city without a PEG channel a certain number of them, based on population.
16. mandates that a city allow a statewide franchise holder to install, construct, and maintain a communications network in the city's ROWs and prohibit discrimination against providers.
17. provides that a city may enforce police-power-based regulations in the management of the public ROWs against a statewide franchise holder to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.
18. prohibits a city from requiring a statewide franchise holder to: (a) maintain a business office in the city; (b) obtain bonding or insurance for activities within the city; or (c) pay any fee for a permit to work in the city's ROW, but allows the city to require a statewide franchise holder to register with the city and maintain a point of contact.
19. provides that: (a) a city must promptly process any request from a statewide franchise holder to construct or maintain any facilities in the city's ROW; and (b) a provider may begin work under certain circumstances without a permit, if it notifies the city as promptly as possible after work begins.
20. provides that the PUC has no jurisdiction to review a city's police power regulations governing the city's ROWs.
21. requires a provider to indemnify a city for the negligent acts of the provider while working in the ROW.
22. prohibits a statewide franchise holder from discriminating against any group of potential residential subscribers based on income in the "local area" in which the group resides.
23. provides that the state may enforce any of its franchise provisions in a court of competent jurisdiction, and that a city may be a party to such litigation.

Also of interest, the bill:

1. 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.
2. 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.
3. provides that an electric utility may implement BPL under the procedures set forth in the bill, but is not required to do so.
4. prohibits an electric utility from being penalized for providing or not providing BPL.

5. 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.
6. 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.
7. provides that an electric utility that allows BPL shall employ all reasonable measures to protect electric reliability.
8. prohibits the Public Utility Commission or any state or local government from: (a) 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.
9. 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.
10. 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.
11. 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.
12. prohibits a city or a municipally owned utility from discriminating against a certified telecommunications provider regarding the use of the public rights-of-way.
13. 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.
14. requires a study of the purposes of the Universal Service Fund, and whether the fund has achieved its goals.
15. 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.
16. provides that an incumbent local exchange company may elect to remain regulated.
17. requires telecommunications and cable employees to provide identification when entering real property to work within a public right-of-way.
18. creates a telecommunications competitiveness legislative oversight committee to report to the legislature on telecommunications issues.