

BURNET COUNTY ATTORNEY'S OFFICE

**Victim Services
Hot Checks Division**



**Criminal Division
Civil Division**

**Eddie Arredondo
Burnet County Attorney**

RQ-0003-AC

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I.D.# 49293

July 31, 2023

The Honorable Angela Colmenero
Provisional Attorney General of the State of Texas
ATTN: Opinion Committee
Opinion.committee@oag
P O Box 12548
Austin, Texas 78711-2548

Re: Authority of a City to require a certified telecommunications provider or the holder of a state-issued certificate of franchise authority to enter into a Broadband Internet Services Right-of-Way Agreement.

Dear Attorney General Colmenero:

My office has been contacted by the City of Horseshoe Bay, Texas which partially lies within the confines of Burnet County. Pursuant to the authority to issue advisory opinions granted to the Attorney General in Section 402.041, *et seq.* of the Texas Government Code, this letter is being submitted to request an opinion regarding certain provisions of the Texas Local Government Code and Texas Utilities Code.

The City of Horseshoe Bay, a Texas Home Rule municipality (the "City"), is seeking to expand broadband internet services in the City. The City desires to enter into an operating agreement with one or more entities to deploy and operate residential and commercial broadband services. The City also desires for each such entity to enter into a Broadband Internet Services Right of Way Agreement with the City to use the public rights-of-way for fiber optic cables and other facilities required to deliver broadband internet services and to pay the City a license fee for use of such right of way. A certified telecommunications provider and the holder of a state-issued certificate of franchise authority have expressed interest in providing broadband internet services in the City. Provisions of the Local Government Code and Utilities Code address those entities' use of municipal rights of way.

Under Chapter 283 of the Local Government Code, a Public Utility Commission (PUC) certified telecommunications provider that provides telecommunications services within a municipality is required to pay a fee for its use of the municipal right-of-way. The amount of the

fee is calculated according to a statutory formula and is administered by the PUC. TEX. LOC. GOV'T CODE §§ 283.053, .055. A municipality may not require a certified communications provider to “pay any compensation” other than the fee provided under that chapter. *Id.* § 283.056.

Similarly, under Chapter 66 of the Utilities Code, the PUC is the designated franchising authority for a state-issued franchise for the provision of cable service or video service. TEX. UTIL. CODE § 66.001. To compensate a municipality for their use of the right-of-way, state-issued franchise holders pay municipalities a franchise fee of five percent of their gross revenue. *Id.* § 66.005(a). A municipality’s authority to “regulate the holder of a state-issued certificate of franchise authority is limited to” requiring registration with the municipality, establishing guidelines for certain channels, and submitting reports on certain customer service standards. *Id.* § 66.013.

Neither Chapter 283 of the Local Government Code nor Chapter 66 of the Utilities Code apply to broadband internet service. Under the Local Government Code, a certificated telecommunications provider is defined as “a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.” *Id.* § 283.002(2). Voice service means “voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology.” *Id.* § 283.002(7). Local exchange telephone service means “telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance service.” TEX. UTIL. CODE § 51.002(5). And under the Utilities Code, a Cable Service Provider provides “(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.” TEX. UTIL. CODE § 66.002(3); 47 U.S.C. § 522(6). A Video Service Provider distributes “programming provided by, or generally considered comparable to programming provided by, a television broadcast station.” TEX. UTIL. CODE § 66.002(9), (11).

Although the above statutes do not encompass broadband internet service, the limitations on municipalities under Local Government Code section 283.056 and Utilities Code section 66.013, raise the question of whether the City may require a certified telecommunications provider or the holder of a state-issued certificate of franchise authority to enter into a Broadband Internet Services Right-of-Way Agreement under which the entity will pay the City a fee.

Question 1: Can the City require a holder of a state-issued certificate of franchise authority to enter into a Broadband Internet Services Right-of-Way Agreement and require payment of a license fee to the City for use of such right of way?

Question 2: Can the City require a certified telecommunications provider to enter into a Broadband Internet Services Right-of-Way Agreement and require payment of a license fee to the

City for use of such right of way? Is the answer the same if the fiber cables installed by said provider will provide both voice and broadband services?

We request that your office review the statutes and provide an opinion or an interpretation of the questions presented. Thank you in advance for your assistance and consideration.

Respectfully Submitted

A handwritten signature in blue ink that reads "E Arredondo". The signature is written in a cursive style with a large initial "E".

Eddie Arredondo

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