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BILL ANALYSIS

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House Bill 6456 (as enrolled) **PUBLIC ACT 480 of 2006**
Sponsor: Representative Mike Nofs
House Committee: Energy and Technology
First Senate Committee: Technology and Energy
Second Senate Committee: Government Operations

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CONTENT

The bill created the "Uniform Video Services Local Franchise Act" to do the following:

-- Prohibit a person from providing video services in any local unit of government without first obtaining a uniform video service local franchise, except as otherwise provided.
-- Provide that a uniform video service local franchise will be in effect for 10 years.
-- Prohibit a franchising entity (a local unit of government) from requiring a video service provider to obtain a separate franchise or otherwise imposing any fee or franchise requirement except as provided under the Act.
-- Require the Public Service Commission (PSC), within 30 days after the bill's effective date, to establish the standardized form for the uniform video service local franchise agreement.
-- Specify that any provisions of a franchise agreement existing on the bill's effective date that are inconsistent with or in addition to the provisions of the uniform agreement are unreasonable and unenforceable.
-- Require a video service provider to provide for the same number of public, education, and government (PEG) access channels that were in use on the incumbent video provider's system on the Act's effective date.
-- Provide that a video service provider is not subject to any civil or criminal liability for any program on a PEG channel.
-- Require a provider to give subscribers access to the signals of the local broadcast television station.
-- Prohibit a franchising entity from enforcing any term, condition, or requirement of any franchise agreement that is more burdensome than the terms, conditions, or requirements contained in another franchise agreement.
-- Require a video service provider to pay to the franchising entity an annual video service provider fee, as well as an annual fee for the costs of PEG access facilities.
-- Require each video service provider to pay an assessment to cover the PSC's expenses required by the Act until January 1, 2010.
-- Require a franchising entity to allow a video service provider nondiscriminatory and competitively neutral access to a public right-of-way.
-- Prohibit a video service provider from denying access to service to any group of potential residential subscribers due to race or income.
-- Require each video service provider to establish a dispute resolution process for its customers.
-- Require the PSC to submit to the Legislature by June 1, 2007, a proposed process that would allow the Commission to resolve disputes that cannot be resolved under the provider's process, and disputes

between a provider and a franchising entity or between providers.
-- Require the PSC to file an annual report on the status of competition for video services in Michigan.
-- Prescribe administrative penalties for a violation.

The bill took effect on January 1, 2007. It is described below in further detail.

Uniform Local Franchise Agreement

The uniform video service local franchise agreement must include all of the following provisions:

-- The provider's name, address, telephone number, and principal place of business.
-- The names of the provider's principal executive officers and any people authorized to represent the provider before the franchising entity and the PSC.
-- The date on which the provider expects to provide video services in the identified video service area, if the provider is not an incumbent video provider.
-- An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.
-- A requirement that the provider pay the video service provider fees required by the Act.
-- A requirement that the provider file in a timely manner with the Federal Communications Commission (FCC) all forms required by that agency before offering video service in Michigan.
-- A requirement that the provider agree to comply with all valid and enforceable Federal and State statutes and regulations.
-- A requirement that the provider agree to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the franchising entity.
-- A requirement that an incumbent video provider comply with the terms providing insurance for right-of-way related activities that are contained in its last cable franchise or consent agreement from the franchising entity entered into before the Act's effective date.
-- A grant of authority by the franchising entity to provide video service in the identified video service area footprint.
-- A grant of authority by the franchising entity to use and occupy the public rights-of-way in the delivery of the video service, subject to the laws of Michigan and the police powers of the franchising entity.
-- A requirement that the parties to the agreement be subject to the provisions of the Act.
-- The penalties provided for in the Act.

The uniform agreement also must require the provider to comply with all of the following:

-- All FCC requirements involving the distribution and notification of Federal, State, and local emergency messages over the emergency alert system applicable to cable operators.
-- The Act's PEG programming requirements.
-- Applicable provisions of the Michigan Consumer Protection Act and all customer service rules of the FCC under 47 CFR 76.309(c) applicable to cable operators (which pertain to cable system office hours and telephone availability; installations, outages, and service calls; and communications between cable operators and cable subscribers).
-- Federal consumer privacy requirements applicable to cable operators.
-- In-home wiring and consumer premises wiring rules of the FCC applicable to cable operators.

With regard to the description of the service area footprint, for providers with at least 1.0 million access lines in Michigan using telecommunication facilities to provide video services, the footprint must be identified in terms of entire wire centers or exchanges. An incumbent video provider will satisfy the requirement by allowing a franchising entity to seek right-of-way related information comparable to that required by a permit under the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act, as set forth in its last agreement from the franchising entity entered into before the Act's effective date.

"Franchising entity" means the local unit of government in which a provider offers video services through a franchise agreement.

"Video service" means video programming, cable services, IPTV (internet protocol television), or OVS (open video system) provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. The term does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) or provided solely as part of, and via, a service that enables users to gain access to content, information, electronic mail, or other services offered over the public internet.

(Under 47 USC 332(d), "commercial mobile service" means any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by FCC regulation.)

"Incumbent video provider" means a cable operator serving cable subscribers or a telecommunication provider providing video services through the provider's existing telephone exchange boundaries in a particular franchise area within a local unit of government (a city, village, or township) on the Act's effective date.

Franchise Agreement Approval

Before offering video services within the boundaries of a local unit of government, a video provider must enter into or possess a franchise agreement with the local unit as required by the Uniform Video Services Local Franchise Act.

A franchising entity must notify the provider as to whether the submitted franchise agreement is complete within 15 business days after it is filed. If the agreement is not complete, the franchising entity must state in its notice the reasons the agreement is incomplete.

A franchising entity will have 30 days after a franchise agreement is submitted to approve it. If the entity does not notify the provider regarding the agreement's completeness or approve the agreement within the required time period, the agreement will be considered complete and approved.

Franchise Duration & Scope

A uniform video service local franchise will be for a period of 10 years from the date it is issued. Before the initial agreement or any subsequent renewals expire, the provider may apply for an additional 10-year renewal.

As a condition to obtaining or holding a franchise, a franchising entity may not require a video service provider to obtain a separate franchise, assess any other fee or charge, or impose any other franchise requirement than is allowed under the Act. For purposes of this provision, a franchise requirement includes a provision regulating rates charged by video service providers or requiring them to satisfy any build-out requirements, or a requirement for the deployment of any facilities or equipment.

Agreement Transfer; Termination & Modification

The uniform video service local franchise agreement issued by a franchising entity or an incumbent video service provider's existing franchise is fully transferable to any successor in interest to the provider to which it initially is granted. A notice of transfer must be filed with the franchising entity within 15 days after the transfer is completed.

Except as provided by the Act, a provider may terminate a uniform video service local franchise agreement, or modify the service area footprint by submitting notice to the franchising entity. If any of the information contained in the franchise agreement changes, the provider must notify the franchising entity in a timely manner.

Programming

PEG Access Channels. A video service provider must designate a sufficient amount of capacity on its network to provide for the same number of PEG access channels that were in actual use on the incumbent video provider's system on the Act's effective date.

Any PEG access channel that is not used by the franchising entity for at least eight hours per day for three consecutive months may no longer be made available to the franchising entity and may be programmed at the provider's discretion. The provider must restore the previously reallocated channel when the franchising entity can certify a schedule for at least eight hours of daily programming for three consecutive months.

A PEG channel may be used only for noncommercial purposes.

If a franchising entity seeks to use designated capacity to provide access to video programming over one or more PEG channels, the franchising entity must give the provider a written request specifying the number of channels in actual use on the incumbent video provider's system or as specified in a voluntary franchise agreement (described below). The video service provider will have 90 days to begin providing access as requested by the franchising entity.

Form of Transmission. The franchising entity must ensure that all transmissions, content, or programming to be retransmitted by a video service provider is provided in a manner or form that is capable of being accepted and retransmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the provider's particular network, which is compatible with the technology or protocol used by the provider to deliver services.

Interconnectivity with Incumbent Provider. A video service provider may request that an incumbent provider interconnect with its video system for the sole purpose of providing access to video programming over PEG channels for a franchising entity that is served by both providers. Where technically feasible, interconnection must be allowed under an agreement of the parties. The video service provider and incumbent video provider must negotiate in good faith and may not withhold interconnection unreasonably. Interconnection may be accomplished by any reasonable method to which the providers agree. The requesting provider must pay the construction, operation, maintenance, and other costs arising out of the interconnection, including the reasonable costs incurred by the incumbent provider.

Responsibility & Liability. The person producing the broadcasts is solely responsible for all content provided over designated PEG channels. A video service provider may not exercise any editorial control over any programming on any channel designed for public, education, or government use.

A video service provider is not subject to any civil or criminal liability for any program carried on any channel designated for PEG use.

Broadcast Signals

Except as otherwise provided, a provider must give subscribers access to the signals of the local broadcast television station licensed by the FCC to serve those subscribers over the air. A provider is required to carry digital broadcast signals only to the extent that a broadcast television station has the right under Federal law or regulation to demand carriage of those signals by a cable operator on a cable system.

To facilitate access by subscribers of a video service provider to the signals of local broadcast stations, a station either must be granted mandatory carriage or may request retransmission consent with the provider. A provider must transmit, without degradation, the signals a local broadcast station delivers to the provider. A provider does not have to provide a television station valuable consideration in exchange for carriage.

A provider may not discriminate among or between broadcast stations and programming providers with respect to transmission of their signals, taking into account any consideration afforded the provider by the programming provider or broadcast station. In no event may the signal quality as retransmitted by the provider be required to be superior to the signal quality of the broadcast stations as received by the provider from the broadcast television station.

A provider may not delete, change, or alter a copyright identification transmitted as part of a broadcast station's signal.

A provider may not be required to use reception technology that is the same as or similar to the broadcast station's or programming provider's.

These provisions apply only to a video service provider that delivers video programming in a video service area where the provider is not regulated as a cable operator under Federal law.

Low Power Station

The provisions described above concerning programming and broadcast signals do not apply to a low power station unless it is a qualified low power station as defined under 47 USC 534(h)(2).

(Under 47 USC 534(h)(2), "qualified low power station" means any television broadcast station conforming to Federal regulations established for low power television stations, only if all of the following conditions are met:

- -- The station broadcasts for at least the minimum number of hours of operation required by the FCC for television broadcast stations under Federal regulations.
- -- The station complies with Federal interference regulations consistent with its secondary status.
- -- The station is located within 35 miles from the cable system's headend, and delivers to the principal headend an over-the-air signal of good quality, as determined by the FCC.
- -- The station's community of license and the cable system's franchise area are both located outside of the largest 160 metropolitan statistical areas as of June 30, 1990, and the population of the community of license did not exceed 35,000 on that date.
- -- There is no full power television broadcast station licensed to any community within the county or other political subdivision of a state served by the cable system.

In addition, the station must meet all obligations and requirements applicable to television broadcast stations under Federal regulations with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the FCC determines that the provision of such programming by the station would address local news and information needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license.)

Existing Franchise Agreements

As of the Act's effective date, no existing franchise agreement with a franchising entity may be renewed or extended upon the agreement's expiration date.

An incumbent video provider, at its option, may continue to provide video services to a franchising entity by electing to do one of the following:

- -- Terminate the existing agreement before its expiration date and enter into a new franchise under a uniform video service local franchise agreement.
- -- Continue under the existing franchise agreement amended to include only those provisions required under a uniform video service local franchise.
- -- Continue to operate under the terms of an expired franchise until a uniform video service local franchise agreement takes effect.

An incumbent video provider has 120 days after the Act's effective date to file for a uniform video service local franchise agreement.

On the Act's effective date, any provisions of an existing franchise agreement that are inconsistent with or in addition to the provisions of a uniform video service local franchise agreement are unreasonable and unenforceable by the franchising entity.

If a franchising entity authorizes two or more video service providers through an existing franchise, a uniform video service local franchise agreement, or a voluntary agreement (described below), the franchising entity may not enforce any term, condition, or requirement of any franchise agreement that is more burdensome than the terms, conditions, or requirements contained in another franchise agreement.

Voluntary Franchise Agreement

The Act specifies that it does not prohibit a local unit of government and a video service provider from entering into a voluntary franchise agreement that includes terms and conditions different than those required under the Act, including a reduction in the franchise fee in return for the provider's making available to the franchising entity services, equipment, capabilities, or other valuable consideration. This provision does not apply unless for each provider servicing the franchise entity it is technically feasible and commercially practicable to comply with similar terms and conditions in the franchise agreement and it is offered to the other provider.

Video Service Provider Fees

Annual Provider Fee. A video service provider must calculate and pay to the franchising entity an annual video service provider fee. The fee must be one of the following:

-- If there is an existing franchise agreement, an amount equal to the percentage of gross revenue paid to the franchising entity by the incumbent provider with the largest number of subscribers in the franchising entity.
-- At the expiration of an existing agreement, or if there is no existing agreement, an amount equal to the percentage of gross revenue as established by the franchising entity, not to exceed 5% and applicable to all providers.

The franchising entity may not demand any additional fees or charges from a provider, or demand the use of any calculation method other than allowed under the Act.

In the case of a video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the video provider's revenue attributable to the other services, capabilities, or applications must be included in gross revenue unless the provider reasonably can identify the division or exclusion of the revenue from its books and records kept in the regular course of business.

Revenue of an affiliate must be included in the calculation of gross revenue to the extent that its treatment as revenue of the affiliate has the effect of evading the payment of franchise fees that otherwise would be paid for video service.

"Gross revenue" means all consideration of any kind or nature, including cash, credits, property, and in-kind contributions the provider receives from subscribers for the provision of video service by the provider within the jurisdiction of the franchising entity. Gross revenue includes all of the following:

-- All charges and fees paid by subscribers for the provision of video service, including equipment rental, late fees, insufficient funds fees, fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated, with services other than video services.
-- Any franchise fee imposed on the provider that is passed on to subscribers.
-- Compensation the provider receives for promotion or exhibition of any products or services over the video service.
-- Revenue the provider receives as compensation for carriage of video programming on that provider's video service.
-- All revenue derived from compensation arrangements for advertising attributable to the local franchise area.
-- Any advertising commissions paid to an affiliated third party for video service advertising.

Gross revenue does not include any of the following:

-- Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt.
-- Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset as described above, to the extent the refund, rebate, credit, or discount is attributable to the video service.
-- Any revenue received by the provider or its affiliates from the provision of services or capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that can be sold as part of a package or bundle, or

functionally integrated, with video service.

- -- Any revenue the provider or its affiliates receives for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.
- -- Any amount attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge.
- -- Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a Federal, state, or local government or any other governmental entity, collected by the provider, and required to be remitted to the taxing entity, including sales and use taxes.
- -- Any foregone revenue from the provision of video service at no charge to any person, except that any foregone revenue exchanged for trades, barters, services, or other items of value must be included in gross revenue.
- -- Sales of capital assets or surplus equipment.
- -- Reimbursement by programmers of marketing costs actually incurred by the provider for the introduction of new programming.
- -- The sale of video service for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect to it.

<u>Credit</u>. A video service provider is entitled to a credit applied toward the annual provider fee for all funds allocated to the franchising entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under the METRO Act. The credits must be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the franchising entity receives its allocation of funds. The credit must be calculated by multiplying the number of linear feet occupied by the provider in the franchising entity's public rights-of-way by the lesser of five cents or the amount assessed under the METRO Act. A video service provider is not eligible for this credit unless it has taken all property tax credits allowed under the METRO Act.

<u>PEG Access Facilities</u>. In addition to the required annual video service provider fee, a video service provider must pay to the franchising entity as support for the cost of PEG access facilities and services an annual fee equal to one of the following:

- -- If there was an existing franchise on the Act's effective date, the fee paid to the franchising entity by the incumbent provider with the largest number of cable service subscribers in the franchising entity as determined by the existing agreement.
- -- At the expiration of the existing agreement, the amount required above, not to exceed 2% of gross revenue.
- -- If there was no existing agreement, a percentage of gross revenue as established by the franchising entity, not to exceed 2%, to be determined by a community need assessment.
- -- An amount agreed to by the franchising entity and the video service provider.

The fee must apply to all providers.

<u>Payment</u>. The fees are due on a quarterly basis and must be paid within 45 days after the close of the quarter. Each payment must include a statement explaining the basis for the calculation of the fee.

<u>GAAP</u>. All determinations and computations made with regard to the required fees must be pursuant to generally accepted accounting principles.

<u>PSC Costs.</u> Within 30 days after the enactment into law of any appropriation to the PSC, the Commission must ascertain the amount of the appropriation attributable to its actual costs in exercising its duties under the Act. That amount must be assessed against each provider in the State. Each provider must pay a portion of the total assessment in the same proportion that its number of subscribers for the preceding calendar year bears to the total number of video service subscribers in the State. The first assessment must be based on the PSC's estimated number of subscribers for each provider in the year that the appropriation is made. The total assessment may not exceed $1.0 million annually. These provisions do not apply after December 31, 2009.

<u>Billing</u>. Any video service provider may identify and collect as a separate line item on the regular bill of each subscriber an

amount equal to the percentage of the video service provider fee and the PEG programming fee established under the Act.

Audits of Fees

Not more than every 24 months, a franchising entity may perform reasonable audits of a video service provider's calculation of the fees paid during the preceding 24-month period only. The provider must make available all records reasonably necessary for the audits at the location where records are kept in the ordinary course of business. The franchising entity and the provider are responsible for their respective costs of the audit. The provider must pay any additional amount due verified by the franchising entity within 30 days of the franchising entity's submission of an invoice for the sum. If the sum exceeds 5% of the total fees the audit determined should have been paid for the 24-month period, the provider must pay the franchising entity's reasonable costs of the audit.

Any claims by a franchising entity that fees have not been paid as required, and any claims for refunds or other corrections to the remittance of the provider, must be made within three years from the date the compensation is remitted.

Access to Right-of-Way

A franchising entity must allow a video service provider to install, construct, and maintain a video service or communications network within a public right-of-way and must give the provider open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

A franchising entity may not discriminate against a video service provider to provide video service for any of the following:

-- The authorization or placement of a video service or communications network in public rights-of-way.
-- Access to a building owned by a governmental entity.
-- A municipal utility pole attachment.

Permit Fee

A franchising entity may impose on a video service provider a permit fee only to the extent it imposes such a fee on incumbent providers. Any fee may not exceed the actual, direct costs the franchising entity incurred for issuing the relevant permit. A fee may not be levied if the provider already has paid a permit fee of any kind in connection with the same activity that otherwise would be covered by the permit fee, or otherwise is authorized by law or contract to place the facilities the provider uses in the public rights-of-way or for general revenue purposes.

Subscriber Access

A video service provider may not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.

It is a defense to an alleged violation of this prohibition if the provider has met either of the following conditions:

-- Within three years of the date it begins providing video service under the Act, at least 25% of households with access to the provider's video service are low-income households.
-- Within five years of the date it begins providing service and from that point forward, at least 30% of the households with access to the provider's video service are low-income households.

("Low-income household" means a household with an average annual household income of less than $35,000 as determined by the most recent decennial census.)

If a provider is using telecommunication facilities to provide video services and has more than 1.0 million telecommunication access lines in Michigan, the provider must provide access to its video service to a number of households equal to at least 25% of the households in the provider's telecommunication service area in the State within three years of the date it begins providing video service under the Act, and to a number that is at least 50% of those households within six years. A provider does not have to meet the 50% requirement until two years after at least 30% of the households with access to the provider's video service subscribe to the service for six consecutive months.

Each provider must file with the franchising entity and the PSC an annual report regarding the progress that has been made toward compliance with these provisions.

Except for satellite service, a video service provider may satisfy these requirements through the use of alternative technology that offers service, functionality, and content, that is demonstrably similar to that provided through the provider's video service system, and may include a technology that does not require the use of any public right-of-way. The technology used to comply with the subscriber access requirements must include local PEG channels and messages over the emergency alert system as required by the Act.

A provider may apply to the franchising entity, and, in the case of a provider using telecommunication facilities to provide video services that has more than 1.0 million telecommunication access lines in Michigan, the PSC, for a waiver of or for an extension of time to meet these requirements if any of the following apply:

-- The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.
-- Developments or buildings not being subject to competition because of existing exclusive service arrangements.
-- Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
-- Natural disasters.
-- Factors beyond the provider's control.

The franchising entity or PSC may grant the waiver or extension only if the provider has made substantial and continuous effort to meet the access requirements. If an extension is granted, the franchising entity or the PSC must establish a new compliance deadline. If a waiver is granted, the franchising entity or the PSC must specify the requirement or requirements waived.

Notwithstanding any other provision of the Act, a provider using telephone facilities to provide video service is not obligated to provide the service outside the provider's existing telephone exchange boundaries. A video service provider may not be required to comply with, and a franchising entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by the Act.

<u>Prohibited Activities</u>

A video service provider may not do any of the following in connection with the provision of video services to its subscribers, and the PSC may enforce compliance with any of the following to the extent that the activities are not covered by the Act (under a requirement that the uniform agreement require the provider to comply with FCC customer service rules or applicable provisions of the Michigan Consumer Protection Act):

-- Make a false, misleading, or deceptive statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing video service.
-- If a customer has canceled a service, charge the customer for service provided after the effective date the service was canceled.
-- Cause a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction by making a false, deceptive, or misleading statement or by failing to inform the customer of a material fact, the omission of which is deceptive or misleading.
-- Represent or imply that the subject of a transaction will be provided promptly, or at a specified time, or within a reasonable time, if the provider knows or has reason to know that it will not be so provided.
-- Cause coercion and duress as a result of the time and nature of a sales presentation.
-- Charge a customer for a subscribed service for which the customer did not make an initial affirmative order.

A customer's failure to refuse an offered or proposed subscribed service is not an affirmative order for the service.

"Material information" includes all applicable fees, taxes, and charges that will be billed to the subscriber, regardless of whether the fees, taxes, and charges are authorized by State or Federal law.

Dispute Resolution Process

Each video service provider must establish a dispute resolution process for its customers. Each provider must maintain a local or toll-free telephone number for customer service contact, and notify customers of the dispute resolution process.

By June 1, 2007, the PSC must submit to the Legislature a proposed process to be added to the Act that would allow the Commission to review disputes that are not resolved under the provider's dispute resolution process, disputes between a provider and a franchising entity, and disputes between providers.

Confidentiality

Trade secrets and commercial or financial information submitted under the Act to the franchising entity or the PSC are exempt from the Freedom of Information Act, except under the terms of a mandatory protective order. If information is disclosed under such an order, the franchising entity or PSC may use the information for the purposes for which it is required, but the information must remain confidential.

There is a rebuttable presumption that costs studies, customer usage data, marketing studies and plans, and contracts are trade secrets or protected commercial or financial information. The burden of removing the presumption is with the party seeking to have the information disclosed.

Violations & Penalties

After notice and hearing, if the PSC finds that a person has violated the Uniform Video Services Local Franchise Act, it must order remedies and penalties to protect and make whole people who suffer damages as a result of the violation. The PSC may do one or more of the following:

-- Except as provided below, order the person to pay a fine of not less than $1,000 or more than $20,000 for a first offense, or at least $2,000 but not more than $40,000 for a second or subsequent offense.
-- If the provider has fewer than 250,000 telecommunication access lines in this State, order the person to pay a fine of not less than $200 or more than $500 for a first offense, or at least $500 but not more than $1,000 for a second or subsequent offense.
-- If the person has received a uniform video service local franchise, revoke the franchise.
-- Issue cease and desist orders.

A fine may not be imposed for a violation if the provider has otherwise fully complied with the Act and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under the Act is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the provider.

If the PSC finds that a party's complaint or defense is frivolous, it must award to the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and its attorney.

Any party of interest has the same rights to appeal and review a PSC finding or order as provided under the Michigan Telecommunications Act.

PSC Authority; Report

The PSC's authority to administer the Uniform Video Services Local Franchise Act is limited to the powers and duties explicitly provided for under it. The Commission does not have the authority to regulate or control a provider under the Act as a public utility.

The PSC must file a report with the Governor and Legislature by February 1 of each year. The report must include information on the status of competition for video services in Michigan and recommendations for any necessary legislation. A video service provider must submit to the PSC any information requested by the Commission necessary for the preparation of the report. A provider's obligation under this provision is limited to the submission of information generated or gathered in the normal course of business.

MCL 484.3301 – 484.3314

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill increases the administrative responsibilities for the Public Service Commission by requiring the Commission to create a uniform video service local franchise agreement; requiring the establishment of a dispute resolution process for disputes not resolved through the provider process; and requiring an annual report on the status of competition in the State. The bill establishes an assessment on video service providers to generate revenue for the Commission sufficient to cover the costs of regulation, but not to exceed $1.0 million. The authority to levy the assessment will expire on December 31, 2009.

The bill allows the PSC to impose fines for any violation of the Act by a provider. Since the bill does not dedicate that revenue, those fines will be deposited into the General Fund. The amount of revenue that will be generated will depend on the number and severity of the fines imposed.

The bill will have an indeterminate effect on local unit revenue and expenditures. The actual amount of the impact on local units will depend on a number of factors that differ between local units. In local units where the franchise fee is below the level established in the bill (or nonexistent), the bill will increase revenue. In local units where the fee is higher than the level set in the bill, the bill will reduce revenue when the fee changed. Similarly, fees paid as support for the capital cost of public, education, and government access will have an indeterminate effect, depending on the fees under the bill relative to previously set fees.

Revenue to local units also will be affected by the interaction of credits allowed under the bill, particularly maintenance fees paid for use of public rights-of-way. To the extent that the allowed credit of five cents per linear foot of public rights-of-way exceeds the gross revenue per linear foot, the credit may eliminate any revenue the local unit might receive under the bill's franchise fee. The credit also will effectively eliminate the cost to providers of any right-of-way fees paid by providers, unless those fees exceed the franchise fee imposed under the bill - in which case the local unit will receive no franchise fee income from the provider.

To the extent that the bill limits the requirements local units may impose as part of franchise agreements, the bill may increase local unit expenditures to maintain or replace property or services available under existing franchise agreements, if the bill excludes such property or services from the agreements.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.