

SUBSTITUTE FOR
HOUSE BILL NO. 6456

A bill to provide for uniform video service local franchises; to promote competition in providing video services in this state; to ensure local control of rights-of-way; to provide for fees payable to local units of government; to provide for local programming; to prescribe the powers and duties of certain state and local agencies and officials; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "uniform video services local franchise act".

3 (2) As used in this act:

4 (a) "Cable operator" means that term as defined in 47 USC
5 522(5).

6 (b) "Cable service" means that term as defined in 47 USC
7 522(6).

1 (c) "Cable system" means that term as defined in 47 USC
2 522(7).

3 (d) "Commission" means the Michigan public service commission.

4 (e) "Franchising entity" means the local unit of government in
5 which a provider offers video services through a franchise
6 agreement.

7 (f) "Household" means a house, an apartment, a mobile home, or
8 any other structure or part of a structure intended for residential
9 occupancy as separate living quarters.

10 (g) "Incumbent video provider" means a cable operator serving
11 cable subscribers or a telecommunication provider providing video
12 services through the provider's existing telephone exchange
13 boundaries in a particular franchise area within a local unit of
14 government on the effective date of this act.

15 (h) "IPTV" means internet protocol television.

16 (i) "Local unit of government" means a city, village, or
17 township.

18 (j) "Low-income household" means a household with an average
19 annual household income of less than \$35,000.00 as determined by
20 the most recent decennial census.

21 (k) "Open video system" or "OVS" means that term as defined in
22 47 USC 573.

23 (l) "Person" means an individual, corporation, association,
24 partnership, governmental entity, or any other legal entity.

25 (m) "Public rights-of-way" means the area on, below, or above
26 a public roadway, highway, street, public sidewalk, alley,
27 waterway, or utility easements dedicated for compatible uses.

1 (n) "Uniform video service local franchise agreement" or
2 "franchise agreement" means the franchise agreement required under
3 this act to be the operating agreement between each franchising
4 entity and video provider in this state.

5 (o) "Video programming" means that term as defined in 47 USC
6 522(20).

7 (p) "Video service" means video programming, cable services,
8 IPTV, or OVS provided through facilities located at least in part
9 in the public rights-of-way without regard to delivery technology,
10 including internet protocol technology. This definition does not
11 include any video programming provided by a commercial mobile
12 service provider defined in 47 USC 332(d) or provided solely as
13 part of, and via, a service that enables users to access content,
14 information, electronic mail, or other services offered over the
15 public internet.

16 (q) "Video service provider" or "provider" means a person
17 authorized under this act to provide video service.

18 (r) "Video service provider fee" means the amount paid by a
19 video service provider or incumbent video provider under section 6.

20 Sec. 2. (1) No later than 30 days from the effective date of
21 this act, the commission shall issue an order establishing the
22 standardized form for the uniform video service local franchise
23 agreement to be used by each franchising entity in this state.

24 (2) Except as otherwise provided by this act, a person shall
25 not provide video services in any local unit of government without
26 first obtaining a uniform video service local franchise as provided
27 under section 3.

1 (3) The uniform video service local franchise agreement
2 created under subsection (1) shall include all of the following
3 provisions:

4 (a) The name of the provider.

5 (b) The address and telephone number of the provider's
6 principal place of business.

7 (c) The name of the provider's principal executive officers
8 and any persons authorized to represent the provider before the
9 franchising entity and the commission.

10 (d) If the provider is not an incumbent video provider, the
11 date on which the provider expects to provide video services in the
12 area identified under subdivision (e).

13 (e) An exact description of the video service area footprint
14 to be served, as identified by a geographic information system
15 digital boundary meeting or exceeding national map accuracy
16 standards. For providers with 1,000,000 or more access lines in
17 this state using telecommunication facilities to provide video
18 services, the footprint shall be identified in terms of entire wire
19 centers or exchanges. An incumbent video provider satisfies this
20 requirement by allowing a franchising entity to seek right-of-way
21 related information comparable to that required by a permit under
22 the metropolitan extension telecommunications rights-of-way
23 oversight act, 2002 PA 48, MCL 484.3101 to 484.3120, as set forth
24 in its last cable franchise or consent agreement from the
25 franchising entity entered before the effective date of this act.

26 (f) A requirement that the provider pay the video service
27 provider fees required under section 6.

1 (g) A requirement that the provider file in a timely manner
2 with the federal communications commission all forms required by
3 that agency in advance of offering video service in this state.

4 (h) A requirement that the provider agrees to comply with all
5 valid and enforceable federal and state statutes and regulations.

6 (i) A requirement that the provider agrees to comply with all
7 valid and enforceable local regulations regarding the use and
8 occupation of public rights-of-way in the delivery of the video
9 service, including the police powers of the franchising entity.

10 (j) A requirement that the provider comply with all federal
11 communications commission requirements involving the distribution
12 and notification of emergency messages over the emergency alert
13 system applicable to cable operators.

14 (k) A requirement that the provider comply with the public,
15 education, and government programming requirements of section 4.

16 (l) A requirement that the provider comply with all customer
17 service rules of the federal communications commission under 47 CFR
18 76.309(c) applicable to cable operators and applicable provisions
19 of the Michigan consumers protection act, 1976 PA 331, MCL 445.901
20 to 445.922.

21 (m) A requirement that the provider comply with the consumer
22 privacy requirements of 47 USC 551 applicable to cable operators.

23 (n) A requirement that the provider comply with in-home wiring
24 and consumer premises wiring rules of the federal communications
25 commission applicable to cable operators.

26 (o) A requirement that an incumbent video provider comply with
27 the terms which provide insurance for right-of-way related

1 activities that are contained in its last cable franchise or
2 consent agreement from the franchising entity entered before the
3 effective date of this act.

4 (p) A grant of authority by the franchising entity to provide
5 video service in the video service area footprint as described
6 under subdivision (e).

7 (q) A grant of authority by the franchising entity to use and
8 occupy the public rights-of-way in the delivery of the video
9 service, subject to the laws of this state and the police powers of
10 the franchising entity.

11 (r) A requirement that the parties to the agreement are
12 subject to the provisions of this act.

13 (s) The penalties provided for under section 14.

14 Sec. 3. (1) Before offering video services within the
15 boundaries of a local unit of government the video provider shall
16 enter into or possess a franchise agreement with the local unit of
17 government as required by this act.

18 (2) A franchising entity shall notify the provider as to
19 whether the submitted franchise agreement is complete as required
20 by this act within 15 business days after the date that the
21 franchise agreement is filed. If the franchise agreement is not
22 complete, the franchising entity shall state in its notice the
23 reasons the franchise agreement is incomplete.

24 (3) A franchising entity shall have 30 days after the
25 submission date of a complete franchise agreement to approve the
26 agreement. If the franchising entity does not notify the provider
27 regarding the completeness of the franchise agreement or approve

1 the franchise agreement within the time periods required under this
2 subsection, the franchise agreement shall be considered complete
3 and the franchise agreement approved.

4 (4) The uniform video service local franchise agreement issued
5 by a franchising entity or an existing franchise of an incumbent
6 video service provider is fully transferable to any successor in
7 interest to the provider to which it is initially granted. A notice
8 of transfer shall be filed with the franchising entity within 15
9 days of the completion of the transfer.

10 (5) The uniform video service local franchise agreement issued
11 by a franchising entity may be terminated or the video service area
12 footprint may be modified, except as provided under section 9, by
13 the provider by submitting notice to the franchising entity.

14 (6) If any of the information contained in the franchise
15 agreement changes, the provider shall timely notify the franchising
16 entity.

17 (7) The uniform video service local franchise shall be for a
18 period of 10 years from the date it is issued. Before the
19 expiration of the initial franchise agreement or any subsequent
20 renewals, the provider may apply for an additional 10-year renewal
21 under this section.

22 (8) A franchising entity shall not require a video service
23 provider to obtain a separate franchise or otherwise impose any fee
24 or franchise requirement except as provided under this act. For
25 purposes of this subsection, a franchise requirement includes, but
26 is not limited to, a provision regulating rates charged by video
27 service providers, requiring the video service providers to satisfy

1 any build-out requirements, or a requirement for the deployment of
2 any facilities or equipment.

3 Sec. 4. (1) A video service provider shall designate a
4 sufficient amount of capacity on its network to provide for the
5 same number of public, education, and government access channels
6 that are in actual use on the incumbent video provider system on
7 the effective date of this act.

8 (2) Any public, education, or government channel provided
9 under this section that is not utilized by the franchising entity
10 for at least 8 hours per day for 3 consecutive months may no longer
11 be made available to the franchising entity and may be programmed
12 at the provider's discretion. At such time as the franchising
13 entity can certify a schedule for at least 8 hours of daily
14 programming for a period of 3 consecutive months, the provider
15 shall restore the previously reallocated channel.

16 (3) The franchising entity shall ensure that all
17 transmissions, content, or programming to be retransmitted by a
18 video service provider is provided in a manner or form that is
19 capable of being accepted and retransmitted by a provider, without
20 requirement for additional alteration or change in the content by
21 the provider, over the particular network of the provider, which is
22 compatible with the technology or protocol utilized by the provider
23 to deliver services.

24 (4) A video service provider may request that an incumbent
25 video provider interconnect with its video system for the sole
26 purpose of providing access to video programming that is being
27 provided over public, education, and government channels for a

1 franchising entity that is served by both providers. Where
2 technically feasible, interconnection shall be allowed under an
3 agreement of the parties. The video service provider and incumbent
4 video provider shall negotiate in good faith and may not
5 unreasonably withhold interconnection. Interconnection may be
6 accomplished by any reasonable method as agreed to by the
7 providers. The requesting video service provider shall pay the
8 construction, operation, maintenance, and other costs arising out
9 of the interconnection, including the reasonable costs incurred by
10 the incumbent provider.

11 (5) The person producing the broadcasts is solely responsible
12 for all content provided over designated public, education, or
13 government channels. A video service provider shall not exercise
14 any editorial control over any programming on any channel designed
15 for public, education, or government use or on any other channel
16 required by law.

17 (6) A video service provider is not subject to any civil or
18 criminal liability for any program carried on any channel
19 designated for public, education, or government use or on any other
20 channel.

21 (7) Except as otherwise provided in subsection (8), a provider
22 shall provide subscribers access to the signals of the local
23 broadcast television station licensed by the federal communications
24 commission to serve those subscribers over the air. This section
25 does not apply to a low power station unless the station is a
26 qualified low power station as defined under 47 USC 534(h)(2). A
27 provider is required to only carry digital broadcast signals to the

1 extent that a broadcast television station has the right under
2 federal law or regulation to demand carriage of the digital
3 broadcast signals by a cable operator on a cable system.

4 (8) To facilitate access by subscribers of a video service
5 provider to the signals of local broadcast stations under this
6 section, a station either shall be granted mandatory carriage or
7 may request retransmission consent with the provider.

8 (9) A provider shall transmit, without degradation, the
9 signals a local broadcast station delivers to the provider. A
10 provider is not required to provide a television station valuable
11 consideration in exchange for carriage.

12 (10) A provider shall not do either of the following:

13 (a) Discriminate among or between broadcast stations and
14 programming providers with respect to transmission of their
15 signals, taking into account any consideration afforded the
16 provider by the programming provider or broadcast station. In no
17 event shall the signal quality as retransmitted by the provider be
18 required to be superior to the signal quality of the broadcast
19 stations as received by the provider from the broadcast television
20 station.

21 (b) Delete, change, or alter a copyright identification
22 transmitted as part of a broadcast station's signal.

23 (11) A provider shall not be required to utilize the same or
24 similar reception technology as the broadcast stations or
25 programming providers.

26 (12) A public, education, or government channel shall only be
27 used for noncommercial purposes.

1 (13) Subsections (7) to (11) apply only to a video service
2 provider that delivers video programming in a video service area
3 where the provider is not regulated as a cable operator under
4 federal law.

5 Sec. 5. (1) As of the effective date of this act, no existing
6 franchise agreement with a franchising entity shall be renewed or
7 extended upon the expiration date of the agreement.

8 (2) The incumbent video provider, at its option, may continue
9 to provide video services to the franchising entity by electing to
10 do 1 of the following:

11 (a) Terminate the existing franchise agreement before the
12 expiration date of the agreement and enter into a new franchise
13 under a uniform video service local franchise agreement.

14 (b) Continue under the existing franchise agreement amended to
15 include only those provisions required under a uniform video
16 service local franchise.

17 (c) Continue to operate under the terms of an expired
18 franchise until a uniform video service local franchise agreement
19 takes effect. An incumbent video provider has 120 days after the
20 effective date of this act to file for a uniform video service
21 local franchise agreement.

22 (3) On the effective date of this act, any provisions of an
23 existing franchise that are inconsistent with or in addition to the
24 provisions of a uniform video service local franchise agreement are
25 unreasonable and unenforceable by the franchising entity.

26 (4) If a franchising entity authorizes 2 or more video service
27 providers through an existing franchise, a uniform video service

1 local franchise agreement, or an agreement under section 13, the
2 franchising entity shall not enforce any term, condition, or
3 requirement of any franchise agreement that is more burdensome than
4 the terms, conditions, or requirements contained in another
5 franchise agreement.

6 Sec. 6. (1) A video service provider shall calculate and pay
7 an annual video service provider fee to the franchising entity. The
8 fee shall be 1 of the following:

9 (a) If there is an existing franchise agreement, an amount
10 equal to the percentage of gross revenues paid to the franchising
11 entity by the incumbent video provider with the largest number of
12 subscribers in the franchising entity.

13 (b) At the expiration of an existing franchise agreement or if
14 there is no existing franchise agreement, an amount equal to the
15 percentage of gross revenues as established by the franchising
16 entity not to exceed 5% and shall be applicable to all providers.

17 (2) The fee due under subsection (1) shall be due on a
18 quarterly basis and paid within 45 days after the close of the
19 quarter. Each payment shall include a statement explaining the
20 basis for the calculation of the fee.

21 (3) The franchising entity shall not demand any additional
22 fees or charges from a provider and shall not demand the use of any
23 other calculation method other than allowed under this act.

24 (4) For purposes of this section, "gross revenues" means all
25 consideration of any kind or nature, including, without limitation,
26 cash, credits, property, and in-kind contributions received by the
27 provider from subscribers for the provision of video service by the

1 video service provider within the jurisdiction of the franchising
2 entity. Gross revenues shall include all of the following:

3 (a) All charges and fees paid by subscribers for the provision
4 of video service, including equipment rental, late fees,
5 insufficient funds fees, fees attributable to video service when
6 sold individually or as part of a package or bundle, or
7 functionally integrated, with services other than video service.

8 (b) Any franchise fee imposed on the provider that is passed
9 on to subscribers.

10 (c) Compensation received by the provider for promotion or
11 exhibition of any products or services over the video service.

12 (d) Revenue received by the provider as compensation for
13 carriage of video programming on that provider's video service.

14 (e) All revenue derived from compensation arrangements for
15 advertising attributable to the local franchise area.

16 (f) Any advertising commissions paid to an affiliated third
17 party for video service advertising.

18 (5) Gross revenues do not include any of the following:

19 (a) Any revenue not actually received, even if billed, such as
20 bad debt net of any recoveries of bad debt.

21 (b) Refunds, rebates, credits, or discounts to subscribers or
22 a municipality to the extent not already offset by subdivision (a)
23 and to the extent the refund, rebate, credit, or discount is
24 attributable to the video service.

25 (c) Any revenues received by the provider or its affiliates
26 from the provision of services or capabilities other than video
27 service, including telecommunications services, information

1 services, and services, capabilities, and applications that may be
2 sold as part of a package or bundle, or functionally integrated,
3 with video service.

4 (d) Any revenues received by the provider or its affiliates
5 for the provision of directory or internet advertising, including
6 yellow pages, white pages, banner advertisement, and electronic
7 publishing.

8 (e) Any amounts attributable to the provision of video service
9 to customers at no charge, including the provision of such service
10 to public institutions without charge.

11 (f) Any tax, fee, or assessment of general applicability
12 imposed on the customer or the transaction by a federal, state, or
13 local government or any other governmental entity, collected by the
14 provider, and required to be remitted to the taxing entity,
15 including sales and use taxes.

16 (g) Any forgone revenue from the provision of video service at
17 no charge to any person, except that any forgone revenue exchanged
18 for trades, barter, services, or other items of value shall be
19 included in gross revenue.

20 (h) Sales of capital assets or surplus equipment.

21 (i) Reimbursement by programmers of marketing costs actually
22 incurred by the provider for the introduction of new programming.

23 (j) The sale of video service for resale to the extent the
24 purchaser certifies in writing that it will resell the service and
25 pay a franchise fee with respect to the service.

26 (6) In the case of a video service that is bundled or
27 integrated functionally with other services, capabilities, or

1 applications, the portion of the video provider's revenue
2 attributable to the other services, capabilities, or applications
3 shall be included in gross revenue unless the provider can
4 reasonably identify the division or exclusion of the revenue from
5 its books and records that are kept in the regular course of
6 business.

7 (7) Revenue of an affiliate shall be included in the
8 calculation of gross revenues to the extent the treatment of the
9 revenue as revenue of the affiliate has the effect of evading the
10 payment of franchise fees which would otherwise be paid for video
11 service.

12 (8) A video service provider shall pay to the franchising
13 entity as support for reasonable capital cost of public, education,
14 and government access facilities an annual fee equal to 1 of the
15 following:

16 (a) If there is an existing franchise on the effective date of
17 this act, the fee paid to the franchising entity by the incumbent
18 video provider with the largest number of cable service subscribers
19 in the franchising entity as determined by the existing franchise
20 agreement.

21 (b) At the expiration of the existing franchise agreement, the
22 amount required under subdivision (a) not to exceed 1% of gross
23 revenues.

24 (c) If there is no existing franchise agreement, a percentage
25 of gross revenues as established by the franchising entity not to
26 exceed 1% to be determined by a community need assessment.

27 (d) An amount agreed to by the franchising entity and the

1 video service provider.

2 (9) The fee required under subsection (8) shall not exceed the
3 reasonable capital cost of providing the public, education, and
4 government access facilities and shall be applicable to all
5 providers.

6 (10) The fee due under subsection (8) shall be due on a
7 quarterly basis and paid within 45 days after the close of the
8 quarter. Each payment shall include a statement explaining the
9 basis for the calculation of the fee.

10 (11) A video service provider is entitled to a credit applied
11 toward the fees due under subsection (1) for all funds allocated to
12 the franchising entity from annual maintenance fees paid by the
13 provider for use of public rights-of-way, minus any property tax
14 credit approved by the commission, under section 8 of the
15 metropolitan extension telecommunications rights-of-way oversight
16 act, 2002 PA 48, MCL 484.3108. The credits shall be applied on a
17 monthly pro rata basis beginning in the first month of each
18 calendar year in which the franchising entity receives its
19 allocation of funds. The credit allowed under this subsection shall
20 be calculated by multiplying the number of linear feet occupied by
21 the provider in the public rights-of-way of the franchising entity
22 by 5 cents.

23 (12) All determinations and computations made under this
24 section shall be pursuant to generally accepted accounting
25 principles.

26 Sec. 7. (1) No more than every 24 months, a franchising entity
27 may perform reasonable audits of the video service provider's

1 calculation of the fees paid under section 6 to the franchising
2 entity during the preceding 24-month period only. All records
3 reasonably necessary for the audits shall be made available by the
4 provider at the location where the records are kept in the ordinary
5 course of business. The franchising entity and the video service
6 provider shall each be responsible for their respective costs of
7 the audit. Any additional amount due verified by the franchising
8 entity shall be paid by the provider within 30 days of the
9 franchising entity's submission of an invoice for the sum. If the
10 sum exceeds 5% of the total fees which the audit determines should
11 have been paid for the 24-month period, the provider shall pay the
12 franchising entity's reasonable costs of the audit.

13 (2) Any claims by a franchising entity that fees have not been
14 paid as required under section 6, and any claims for refunds or
15 other corrections to the remittance of the provider, shall be made
16 within 3 years from the date the compensation is remitted.

17 (3) Any video service provider may identify and collect the
18 amount of the video service provider fee as a separate line item on
19 the regular bill of each subscriber.

20 (4) A video service provider may identify and collect the
21 amount of the public, education, and government programming fee as
22 a separate line item on the regular bill of a subscriber.

23 Sec. 8. (1) A franchising entity shall allow a video service
24 provider to install, construct, and maintain a video service or
25 communications network within a public right-of-way and shall
26 provide the provider with open, comparable, nondiscriminatory, and
27 competitively neutral access to the public right-of-way.

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

3 (a) The authorization or placement of a video service or
4 communications network in public rights-of-way.

5 (b) Access to a building.

6 (c) A municipal utility pole attachment.

7 (3) A franchising entity may impose on a video service
8 provider a permit fee only to the extent it imposes such a fee on
9 incumbent video providers, and any fee shall not exceed the actual,
10 direct costs incurred by the franchising entity for issuing the
11 relevant permit. A fee under this section shall not be levied if
12 the video service provider already has paid a permit fee of any
13 kind in connection with the same activity that would otherwise be
14 covered by the permit fee under this section or is otherwise
15 authorized by law or contract to place the facilities used by the
16 video service provider in the public rights-of-way or for general
17 revenue purposes.

18 Sec. 9. (1) A video service provider shall not deny access to
19 service to any group of potential residential subscribers because
20 of the race or income of the residents in the local area in which
21 the group resides.

22 (2) It is a defense to an alleged violation of subsection (1)
23 if the provider has met either of the following conditions:

24 (a) Within 3 years of the date it began providing video
25 service under this act, at least 25% of households with access to
26 the provider's video service are low-income households.

27 (b) Within 5 years of the date it began providing video

1 service under this act and from that point forward, at least 30% of
2 the households with access to the provider's video service are low-
3 income households.

4 (3) If a video services provider is using telecommunication
5 facilities to provide video services and has more than 1,000,000
6 telecommunication access lines in this state, the provider shall
7 provide access to its video service to a number of households equal
8 to at least 25% of the households in the provider's
9 telecommunication service area in the state within 3 years of the
10 date it began providing video service under this act and to a
11 number not less than 50% of these households within 6 years. A
12 video service provider is not required to meet the 50% requirement
13 in this subsection until 2 years after at least 30% of the
14 households with access to the provider's video service subscribe to
15 the service for 6 consecutive months.

16 (4) Each provider shall file an annual report with the
17 franchising entity and the commission regarding the progress that
18 has been made toward compliance with subsections (2) and (3).

19 (5) Except for satellite service, a video service provider may
20 satisfy the requirements of this section through the use of
21 alternative technology that offers service, functionality, and
22 content, which is demonstrably similar to that provided through the
23 provider's video service system and may include a technology that
24 does not require the use of any public right-of-way. The technology
25 utilized to comply with the requirements of this section shall
26 include local public, education, and government channels and
27 messages over the emergency alert system as required under section

1 4.

2 (6) A video service provider may apply to the franchising
3 entity, and, in the case of subsection (3), the commission, for a
4 waiver of or for an extension of time to meet the requirements of
5 this section if 1 or more of the following apply:

6 (a) The inability to obtain access to public and private
7 rights-of-way under reasonable terms and conditions.

8 (b) Developments or buildings not being subject to competition
9 because of existing exclusive service arrangements.

10 (c) Developments or buildings being inaccessible using
11 reasonable technical solutions under commercial reasonable terms
12 and conditions.

13 (d) Natural disasters.

14 (e) Factors beyond the control of the provider.

15 (7) The franchising entity or commission may grant the waiver
16 or extension only if the provider has made substantial and
17 continuous effort to meet the requirements of this section. If an
18 extension is granted, the franchising entity or commission shall
19 establish a new compliance deadline. If a waiver is granted, the
20 franchising entity or commission shall specify the requirement or
21 requirements waived.

22 (8) Notwithstanding any other provision of this act, a video
23 service provider using telephone facilities to provide video
24 service is not obligated to provide such service outside the
25 provider's existing telephone exchange boundaries.

26 (9) Notwithstanding any other provision of this act, a video
27 service provider shall not be required to comply with, and a

1 franchising entity may not impose or enforce, any mandatory build-
2 out or deployment provisions, schedules, or requirements except as
3 required by this section.

4 Sec. 10. (1) Each video service provider shall establish a
5 dispute resolution process for its customers. Each provider shall
6 maintain a local or toll-free telephone number for customer service
7 contact.

8 (2) The commission shall establish a process to review
9 disputes which are not resolved under subsection (1), disputes
10 between a provider and a franchising entity, and disputes between
11 providers.

12 (3) Each provider shall notify its customers of the dispute
13 resolution process created under this section.

14 Sec. 11. (1) Except under the terms of a mandatory protective
15 order, trade secrets and commercial or financial information
16 submitted under this act to the franchising entity or commission
17 are exempt from the freedom of information act, 1976 PA 442, MCL
18 15.231 to 15.246.

19 (2) If information is disclosed under a mandatory protective
20 order, then the franchising entity or commission may use the
21 information for the purpose for which it is required, but the
22 information shall remain confidential.

23 (3) There is a rebuttable presumption that costs studies,
24 customer usage data, marketing studies and plans, and contracts are
25 trade secrets or commercial or financial information protected
26 under subsection (1). The burden of removing the presumption under
27 this subsection is with the party seeking to have the information

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1 disclosed.

2 Sec. 12. (1) The commission's authority to administer this act
3 is limited to the powers and duties explicitly provided for under
4 this act, and the commission shall not have the authority to
5 regulate or control a provider under this act as a public utility.

6 (2) The commission shall file a report with the governor and
7 legislature by February 1 of each year that shall include
8 information on the status of competition for video services in this
9 state and recommendations for any needed legislation.

10 Sec. 13. This act does not prohibit a local unit of government
11 and a video service provider from entering into a voluntary
12 franchise agreement that includes terms and conditions different
13 than those required under this act, including, but not limited to,
14 a reduction in the franchise fee in return for the video service
15 provider making available to the franchising entity services,
16 equipment, capabilities, or other valuable consideration. This
17 section does not apply unless for each provider servicing the
18 franchise entity it is technically feasible and commercially
19 practicable to comply with similar terms and conditions in the
20 franchise agreement [and it is offered to] the other provider.

21 Sec. 14. (1) After notice and hearing, if the commission finds
22 that a person has violated this act, the commission shall order
23 remedies and penalties to protect and make whole persons who have
24 suffered damages as a result of the violation, including, but not
25 limited to, 1 or more of the following:

26 (a) Except as otherwise provided under subdivision (b), order
27 the person to pay a fine for the first offense of not less than

1 \$1,000.00 or more than \$20,000.00. For a second and any subsequent
2 offense, the commission shall order the person to pay a fine of not
3 less than \$2,000.00 or more than \$40,000.00.

4 (b) If the video service provider has less than 250,000
5 telecommunication access lines in this state, order the person to
6 pay a fine for the first offense of not less than \$200.00 or more
7 than \$500.00. For a second and any subsequent offense, the
8 commission shall order the person to pay a fine of not less than
9 \$500.00 or more than \$1,000.00.

10 (c) If the person has received a uniform video service local
11 franchise, revoke the franchise.

12 (d) Issue cease and desist orders.

13 (2) Notwithstanding subsection (1), a fine shall not be
14 imposed for a violation of this act if the provider has otherwise
15 fully complied with this act and shows that the violation was an
16 unintentional and bona fide error notwithstanding the maintenance
17 of procedures reasonably adopted to avoid the error. Examples of a
18 bona fide error include clerical, calculation, computer
19 malfunction, programming, or printing errors. An error in legal
20 judgment with respect to a person's obligations under this act is
21 not a bona fide error. The burden of proving that a violation was
22 an unintentional and bona fide error is on the provider.

23 (3) If the commission finds that a party's complaint or
24 defense filed under this section is frivolous, the commission shall
25 award to the prevailing party costs, including reasonable attorney
26 fees, against the nonprevailing party and their attorney.

27 (4) Any party of interest shall have the same rights to appeal

1 and review an order or finding of the commission under this act as
2 provided under the Michigan telecommunications act, 1991 PA 179,
3 MCL 484.2101 to 484.2604.