

SENATE 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).

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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

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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.

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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 <<

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15 >> a
16 commercial mobile service provider defined in 47 USC 332(d) or
17 provided solely as part of, and via, a service that enables users
18 to access content, information, electronic mail, or other services
19 offered over the public internet.

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

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

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

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

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

8 (a) The name of the provider.

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

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

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

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

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

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

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

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

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

14 (j) A requirement that the provider comply with all federal
15 communications commission requirements involving the distribution
16 and notification of federal, state, and local emergency messages
17 over the emergency alert system applicable to cable operators.

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

20 (l) A requirement that the provider comply with all customer
21 service rules of the federal communications commission under 47 CFR
22 76.309(c) applicable to cable operators and applicable provisions
23 of the Michigan consumers protection act, 1976 PA 331, MCL 445.901
24 to 445.922.

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

27 (n) A requirement that the provider comply with in-home wiring

1 and consumer premises wiring rules of the federal communications
2 commission applicable to cable operators.

3 (o) A requirement that an incumbent video provider comply with
4 the terms which provide insurance for right-of-way related
5 activities that are contained in its last cable franchise or
6 consent agreement from the franchising entity entered before the
7 effective date of this act.

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

11 (q) A grant of authority by the franchising entity to use and
12 occupy the public rights-of-way in the delivery of the video
13 service, subject to the laws of this state and the police powers of
14 the franchising entity.

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

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

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

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

1 (3) A franchising entity shall have 30 days after the
2 submission date of a complete franchise agreement to approve the
3 agreement. If the franchising entity does not notify the provider
4 regarding the completeness of the franchise agreement or approve
5 the franchise agreement within the time periods required under this
6 subsection, the franchise agreement shall be considered complete
7 and the franchise agreement approved.

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

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

18 (6) If any of the information contained in the franchise
19 agreement changes, the provider shall timely notify the franchising
20 entity.

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

26 (8) As a condition to obtaining or holding a franchise, a
27 franchising entity shall not require a video service provider to

1 obtain any other franchise, assess any other fee or charge, or
2 impose any other franchise requirement than is allowed under this
3 act. For purposes of this subsection, a franchise requirement
4 includes, but is not limited to, a provision regulating rates
5 charged by video service providers, requiring the video service
6 providers to satisfy any build-out requirements, or a requirement
7 for the deployment of any facilities or equipment.

8 Sec. 4. (1) A video service provider shall designate a
9 sufficient amount of capacity on its network to provide for the
10 same number of public, education, and government access channels
11 that are in actual use on the incumbent video provider system on
12 the effective date of this act or as provided under subsection
13 (14).

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

22 (3) The franchising entity shall ensure that all
23 transmissions, content, or programming to be retransmitted by a
24 video service provider is provided in a manner or form that is
25 capable of being accepted and retransmitted by a provider, without
26 requirement for additional alteration or change in the content by
27 the provider, over the particular network of the provider, which is

1 compatible with the technology or protocol utilized by the provider
2 to deliver services.

3 (4) A video service provider may request that an incumbent
4 video provider interconnect with its video system for the sole
5 purpose of providing access to video programming that is being
6 provided over public, education, and government channels for a
7 franchising entity that is served by both providers. Where
8 technically feasible, interconnection shall be allowed under an
9 agreement of the parties. The video service provider and incumbent
10 video provider shall negotiate in good faith and may not
11 unreasonably withhold interconnection. Interconnection may be
12 accomplished by any reasonable method as agreed to by the
13 providers. The requesting video service provider shall pay the
14 construction, operation, maintenance, and other costs arising out
15 of the interconnection, including the reasonable costs incurred by
16 the incumbent provider.

17 (5) The person producing the broadcasts is solely responsible
18 for all content provided over designated public, education, or
19 government channels. A video service provider shall not exercise
20 any editorial control over any programming on any channel designed
21 for public, education, or government use.

22 (6) A video service provider is not subject to any civil or
23 criminal liability for any program carried on any channel
24 designated for public, education, or government use.

25 (7) Except as otherwise provided in subsection (8), a provider
26 shall provide subscribers access to the signals of the local
27 broadcast television station licensed by the federal communications

1 commission to serve those subscribers over the air. This section
2 does not apply to a low power station unless the station is a
3 qualified low power station as defined under 47 USC 534(h)(2). A
4 provider is required to only carry digital broadcast signals to the
5 extent that a broadcast television station has the right under
6 federal law or regulation to demand carriage of the digital
7 broadcast signals by a cable operator on a cable system.

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

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

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

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

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

27 (11) A provider shall not be required to utilize the same or

1 similar reception technology as the broadcast stations or
2 programming providers.

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

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

9 (14) If a franchising entity seeks to utilize capacity
10 designated under subsection (1) or an agreement under section 13 to
11 provide access to video programming over 1 or more public,
12 governmental, and education channels, the franchising entity shall
13 give the provider a written request specifying the number of
14 channels in actual use on the incumbent video provider's system or
15 specified in the agreement entered into under section 13. The video
16 service provider shall have 90 days to begin providing access as
17 requested by the franchising entity.

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

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

24 (a) Terminate the existing franchise agreement before the
25 expiration date of the agreement and enter into a new franchise
26 under a uniform video service local franchise agreement.

27 (b) Continue under the existing franchise agreement amended to

1 include only those provisions required under a uniform video
2 service local franchise.

3 (c) Continue to operate under the terms of an expired
4 franchise until a uniform video service local franchise agreement
5 takes effect. An incumbent video provider has 120 days after the
6 effective date of this act to file for a uniform video service
7 local franchise agreement.

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

12 (4) If a franchising entity authorizes 2 or more video service
13 providers through an existing franchise, a uniform video service
14 local franchise agreement, or an agreement under section 13, the
15 franchising entity shall not enforce any term, condition, or
16 requirement of any franchise agreement that is more burdensome than
17 the terms, conditions, or requirements contained in another
18 franchise agreement.

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

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

26 (b) At the expiration of an existing franchise agreement or if
27 there is no existing franchise agreement, an amount equal to the

1 percentage of gross revenues as established by the franchising
2 entity not to exceed 5% and shall be applicable to all providers.

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

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

10 (4) For purposes of this section, "gross revenues" means all
11 consideration of any kind or nature, including, without limitation,
12 cash, credits, property, and in-kind contributions received by the
13 provider from subscribers for the provision of video service by the
14 video service provider within the jurisdiction of the franchising
15 entity. Gross revenues shall include all of the following:

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

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

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

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

27 (e) All revenue derived from compensation arrangements for

1 advertising attributable to the local franchise area.

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

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

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

7 (b) Refunds, rebates, credits, or discounts to subscribers or
8 a municipality to the extent not already offset by subdivision (a)
9 and to the extent the refund, rebate, credit, or discount is
10 attributable to the video service.

11 (c) Any revenues received by the provider or its affiliates
12 from the provision of services or capabilities other than video
13 service, including telecommunications services, information
14 services, and services, capabilities, and applications that may be
15 sold as part of a package or bundle, or functionally integrated,
16 with video service.

17 (d) Any revenues received by the provider or its affiliates
18 for the provision of directory or internet advertising, including
19 yellow pages, white pages, banner advertisement, and electronic
20 publishing.

21 (e) Any amounts attributable to the provision of video service
22 to customers at no charge, including the provision of such service
23 to public institutions without charge.

24 (f) Any tax, fee, or assessment of general applicability
25 imposed on the customer or the transaction by a federal, state, or
26 local government or any other governmental entity, collected by the
27 provider, and required to be remitted to the taxing entity,

1 including sales and use taxes.

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

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

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

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

12 (6) In the case of a video service that is bundled or
13 integrated functionally with other services, capabilities, or
14 applications, the portion of the video provider's revenue
15 attributable to the other services, capabilities, or applications
16 shall be included in gross revenue unless the provider can
17 reasonably identify the division or exclusion of the revenue from
18 its books and records that are kept in the regular course of
19 business.

20 (7) Revenue of an affiliate shall be included in the
21 calculation of gross revenues to the extent the treatment of the
22 revenue as revenue of the affiliate has the effect of evading the
23 payment of franchise fees which would otherwise be paid for video
24 service.

25 (8) In addition to the fee required under subsection (1), a
26 video service provider shall pay to the franchising entity as
27 support for the cost of public, education, and government access

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1 facilities <<and services>> an annual fee equal to 1 of the following:

2 (a) If there is an existing franchise on the effective date of
3 this act, the fee paid to the franchising entity by the incumbent
4 video provider with the largest number of cable service subscribers
5 in the franchising entity as determined by the existing franchise
6 agreement.

7 (b) At the expiration of the existing franchise agreement, the
8 amount required under subdivision (a) not to exceed 2% of gross
9 revenues.

10 (c) If there is no existing franchise agreement, a percentage
11 of gross revenues as established by the franchising entity not to
12 exceed 2% to be determined by a community need assessment.

13 (d) An amount agreed to by the franchising entity and the
14 video service provider.

15 (9) The fee required under subsection (8) shall be applicable
16 to all providers.

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

19 (11) A video service provider is entitled to a credit applied
20 toward the fees due under subsection (1) for all funds allocated to
21 the franchising entity from annual maintenance fees paid by the
22 provider for use of public rights-of-way, minus any property tax
23 credit allowed under section 8 of the metropolitan extension
24 telecommunications rights-of-way oversight act, 2002 PA 48, MCL
25 484.3108. The credits shall be applied on a monthly pro rata basis
26 beginning in the first month of each calendar year in which the
27 franchising entity receives its allocation of funds. The credit

1 allowed under this subsection shall be calculated by multiplying
2 the number of linear feet occupied by the provider in the public
3 rights-of-way of the franchising entity by the lesser of 5 cents or
4 the amount assessed under the metropolitan extension
5 telecommunications right-of-way oversight act, 2002 PA 48, MCL
6 484.3101 to 484.3120. A video service provider is not eligible for
7 a credit under this subsection unless the provider has taken all
8 property tax credits allowed under the metropolitan extension
9 telecommunications right-of-way oversight act, 2002 PA 48, MCL
10 484.3101 to 484.3120.

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

14 (13) The commission within 30 days after the enactment into
15 law of any appropriation to it shall ascertain the amount of the
16 appropriation attributable to the actual costs to the commission in
17 exercising its duties under this act and shall be assessed against
18 each video service provider doing business in this state. Each
19 provider shall pay a portion of the total assessment in the same
20 proportion that its number of subscribers for the preceding
21 calendar year bears to the total number of video service
22 subscribers in the state. The first assessment made under this act
23 shall be based on the commission's estimated number of subscribers
24 for each provider in the year that the appropriation is made. The
25 total assessment under this subsection shall not exceed
26 \$1,000,000.00 annually. This subsection does not apply after
27 December 31, 2009.

1 Sec. 7. (1) No more than every 24 months, a franchising entity
2 may perform reasonable audits of the video service provider's
3 calculation of the fees paid under section 6 to the franchising
4 entity during the preceding 24-month period only. All records
5 reasonably necessary for the audits shall be made available by the
6 provider at the location where the records are kept in the ordinary
7 course of business. The franchising entity and the video service
8 provider shall each be responsible for their respective costs of
9 the audit. Any additional amount due verified by the franchising
10 entity shall be paid by the provider within 30 days of the
11 franchising entity's submission of an invoice for the sum. If the
12 sum exceeds 5% of the total fees which the audit determines should
13 have been paid for the 24-month period, the provider shall pay the
14 franchising entity's reasonable costs of the audit.

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

19 (3) Any video service provider may identify and collect as a
20 separate line item on the regular monthly bill of each subscriber
21 an amount equal to the percentage established under section 6(1)
22 applied against the amount of the subscriber's monthly bill.

23 (4) A video service provider may identify and collect as a
24 separate line item on the regular monthly bill of each subscriber
25 an amount equal to the percentage established under section 6(8)
26 applied against the amount of the subscriber's monthly bill.

27 Sec. 8. (1) A franchising entity shall allow a video service

1 provider to install, construct, and maintain a video service or
2 communications network within a public right-of-way and shall
3 provide the provider with open, comparable, nondiscriminatory, and
4 competitively neutral access to the public right-of-way.

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

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

9 (b) Access to a building owned by a governmental entity.

10 (c) A municipal utility pole attachment.

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

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

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

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

4 (b) Within 5 years of the date it began providing video
5 service under this act and from that point forward, at least 30% of
6 the households with access to the provider's video service are low-
7 income households.

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

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

23 (5) Except for satellite service, a video service provider may
24 satisfy the requirements of this section through the use of
25 alternative technology that offers service, functionality, and
26 content, which is demonstrably similar to that provided through the
27 provider's video service system and may include a technology that

1 does not require the use of any public right-of-way. The technology
2 utilized to comply with the requirements of this section shall
3 include local public, education, and government channels and
4 messages over the emergency alert system as required under section
5 4.

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

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

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

14 (c) Developments or buildings being inaccessible using
15 reasonable technical solutions under commercial reasonable terms
16 and conditions.

17 (d) Natural disasters.

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

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

26 (8) Notwithstanding any other provision of this act, a video
27 service provider using telephone facilities to provide video

1 service is not obligated to provide such service outside the
2 provider's existing telephone exchange boundaries.

3 (9) Notwithstanding any other provision of this act, a video
4 service provider shall not be required to comply with, and a
5 franchising entity may not impose or enforce, any mandatory build-
6 out or deployment provisions, schedules, or requirements except as
7 required by this section.

8 Sec. 10. (1) A video service provider shall not do in
9 connection with the providing of video services to its subscribers
10 and the commission may enforce compliance with any of the following
11 to the extent that the activities are not covered by section
12 2(3)(l):

13 (a) Make a statement or representation, including the omission
14 of material information, regarding the rates, terms, or conditions
15 of providing video service that is false, misleading, or deceptive.
16 As used in this subdivision, "material information" includes, but
17 is not limited to, all applicable fees, taxes, and charges that
18 will be billed to the subscriber, regardless of whether the fees,
19 taxes, or charges are authorized by state or federal law.

20 (b) Charge a customer for a subscribed service for which the
21 customer did not make an initial affirmative order. Failure to
22 refuse an offered or proposed subscribed service is not an
23 affirmative order for the service.

24 (c) If a customer has canceled a service, charge the customer
25 for service provided after the effective date the service was
26 canceled.

27 (d) Cause a probability of confusion or a misunderstanding as

1 to the legal rights, obligations, or remedies of a party to a
2 transaction by making a false, deceptive, or misleading statement
3 or by failing to inform the customer of a material fact, the
4 omission of which is deceptive or misleading.

5 (e) Represent or imply that the subject of a transaction will
6 be provided promptly, or at a specified time, or within a
7 reasonable time, if the provider knows or has reason to know that
8 it will not be so provided.

9 (f) Cause coercion and duress as a result of the time and
10 nature of a sales presentation.

11 (2) Each video service provider shall establish a dispute
12 resolution process for its customers. Each provider shall maintain
13 a local or toll-free telephone number for customer service contact.

14 (3) The commission shall submit to the legislature no later
15 than June 1, 2007 a proposed process to be added to this act that
16 would allow the commission to review disputes which are not
17 resolved under subsection (2), disputes between a provider and a
18 franchising entity, and disputes between providers.

19 (4) Each provider shall notify its customers of the dispute
20 resolution process created under this section.

21 Sec. 11. (1) Except under the terms of a mandatory protective
22 order, trade secrets and commercial or financial information
23 submitted under this act to the franchising entity or commission
24 are exempt from the freedom of information act, 1976 PA 442, MCL
25 15.231 to 15.246.

26 (2) If information is disclosed under a mandatory protective
27 order, then the franchising entity or commission may use the

1 information for the purpose for which it is required, but the
2 information shall remain confidential.

3 (3) There is a rebuttable presumption that costs studies,
4 customer usage data, marketing studies and plans, and contracts are
5 trade secrets or commercial or financial information protected
6 under subsection (1). The burden of removing the presumption under
7 this subsection is with the party seeking to have the information
8 disclosed.

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

13 (2) The commission shall file a report with the governor and
14 legislature by February 1 of each year that shall include
15 information on the status of competition for video services in this
16 state and recommendations for any needed legislation. A video
17 service provider shall submit to the commission any information
18 requested by the commission necessary for the preparation of the
19 annual report required under this subsection. The obligation of a
20 video service provider under this subsection is limited to the
21 submission of information generated or gathered in the normal
22 course of business.

23 Sec. 13. This act does not prohibit a local unit of government
24 and a video service provider from entering into a voluntary
25 franchise agreement that includes terms and conditions different
26 than those required under this act, including, but not limited to,
27 a reduction in the franchise fee in return for the video service

1 provider making available to the franchising entity services,
2 equipment, capabilities, or other valuable consideration. This
3 section does not apply unless for each provider servicing the
4 franchise entity it is technically feasible and commercially
5 practicable to comply with similar terms and conditions in the
6 franchise agreement and it is offered to the other provider.

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

12 (a) Except as otherwise provided under subdivision (b), order
13 the person to pay a fine for the first offense of not less than
14 \$1,000.00 or more than \$20,000.00. For a second and any subsequent
15 offense, the commission shall order the person to pay a fine of not
16 less than \$2,000.00 or more than \$40,000.00.

17 (b) If the video service provider has less than 250,000
18 telecommunication access lines in this state, order the person to
19 pay a fine for the first offense of not less than \$200.00 or more
20 than \$500.00. For a second and any subsequent offense, the
21 commission shall order the person to pay a fine of not less than
22 \$500.00 or more than \$1,000.00.

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

25 (d) Issue cease and desist orders.

26 (2) Notwithstanding subsection (1), a fine shall not be
27 imposed for a violation of this act if the provider has otherwise

1 fully complied with this act and shows that the violation was an
2 unintentional and bona fide error notwithstanding the maintenance
3 of procedures reasonably adopted to avoid the error. Examples of a
4 bona fide error include clerical, calculation, computer
5 malfunction, programming, or printing errors. An error in legal
6 judgment with respect to a person's obligations under this act is
7 not a bona fide error. The burden of proving that a violation was
8 an unintentional and bona fide error is on the provider.

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

13 (4) Any party of interest shall have the same rights to appeal
14 and review an order or finding of the commission under this act as
15 provided under the Michigan telecommunications act, 1991 PA 179,
16 MCL 484.2101 to 484.2604.

17 Enacting section 1. This act takes effect January 1, 2007.