

HOUSE BILL No. 6456

September 12, 2006, Introduced by Reps. Nofs, Proos, Accavitti, Garfield and Hoogendyk
and referred to the Committee on Energy and Technology.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Cable operator" means that term as defined in 47 USC
3 522(5).

4 (b) "Cable service" means that term as defined in 47 USC
5 522(6).

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

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

2 (e) "Franchising entity" means the local unit of government
3 that requires a franchise to offer video services.

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

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

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

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

15 (j) "Low-income household" means a household with an average
16 annual household income of less than \$35,000.00.

17 (k) "Open video system" or "OVS" means that term as defined in
18 47 USC 573.

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

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

24 (n) "State video service authorization" means the
25 authorization issued by the commission, regardless of whether the
26 authorization is designed as a franchise, permit, license,
27 resolution, contract, certificate, agreement, or otherwise, that

1 authorizes the providing of video services in the state.

2 (o) "Video programming" means that term as defined in 47 USC
3 522(20).

4 (p) "Video service" means video programming, cable services,
5 IPTV, or OVS provided through facilities located at least in part
6 in the public rights-of-way without regard to delivery technology,
7 including internet protocol technology. This definition does not
8 include any video programming provided by a commercial mobile
9 service provider defined in 47 USC 332(d).

10 (q) "Video service provider" or "provider" means an entity
11 authorized by a state video service authorization to provide video
12 service.

13 (r) "Video service provider fee" means the amount paid by a
14 competitive video service provider under section 6.

15 Sec. 2. (1) An incumbent video provider after the expiration
16 of its franchise shall not provide video services in any local unit
17 of government without first obtaining a state video service
18 authorization as provided under this act.

19 (2) A state video service authorization granted under this act
20 shall constitute a franchise for purposes of 47 USC 541(b)(1). To
21 the extent required for purposes of 47 USC 521 to 561 only, the
22 state shall constitute the exclusive franchising authority for
23 video service providers in this state.

24 (3) No local unit of government may require a video service
25 provider to obtain a separate franchise or otherwise impose any fee
26 or franchise requirement except as provided under this act. For
27 purposes of this subsection, a franchise requirement includes,

1 without limitation, any provision regulating rates charged by video
2 service providers or requiring video service providers to satisfy
3 any build-out requirements or deploy any facilities or equipment.

4 (4) Except as otherwise provided under section 5, an incumbent
5 video provider with an existing franchise to provide video service
6 in any local unit of government in this state as of the effective
7 date of this act is not eligible to use or rely upon a state video
8 service authorization to provide video service under this act in
9 any local unit of government where it has an existing franchise
10 agreement until the expiration date of the existing franchise
11 agreement.

12 Sec. 3. (1) On or after 60 days from the effective date of
13 this act, an entity that seeks to provide video service in this
14 state shall file with the commission an application for a state
15 video service authorization.

16 (2) The application shall be in a form as approved by the
17 commission and contain a completed affidavit submitted by the
18 applicant and signed by an officer or general partner of the
19 applicant affirming all of the following:

20 (a) That the applicant has filed or will timely file with the
21 federal communications commission all forms required by that agency
22 in advance of offering video service in this state.

23 (b) That the applicant agrees to comply with all applicable
24 federal and state statutes and regulations.

25 (c) That the applicant agrees to comply with all valid and
26 enforceable local regulations regarding the use and occupation of
27 public rights-of-way in the delivery of the video service,

1 including the police powers of the local units of government in
2 which the service is delivered.

3 (d) An exact description of the video service area footprint
4 to be served, as identified by a geographic information system
5 digital boundary meeting or exceeding national map accuracy
6 standards.

7 (e) The address and telephone number of the applicant's
8 principal place of business.

9 (f) The names of the applicant's principal executive officers
10 and any other persons authorized to represent the applicant before
11 the commission.

12 (g) The date on which the applicant expects to provide video
13 services within the area identified under subdivision (d).

14 (3) The commission shall notify an applicant for a state video
15 service authorization as to whether the applicant's application and
16 affidavit are complete within 15 business days after the date that
17 the application is filed. If the application or affidavit is not
18 complete, the commission shall state in its notice the reasons the
19 application or affidavit, or both, is incomplete. If the
20 application and affidavit are complete, the commission shall have
21 60 days after the submission date of a complete application and
22 affidavit to issue the state video service authorization. If the
23 commission does not notify the applicant regarding the completeness
24 of the application and affidavit or issue the video service
25 authorization within the time periods required under this
26 subsection, the application and affidavit shall be considered
27 complete and the state service authorization issued.

1 (4) The state video service authorization shall be in a form
2 approved by the commission and contain all of the following:

3 (a) A grant of authority to provide video service in the
4 service area footprint as provided in the application.

5 (b) A grant of authority to use and occupy the public rights-
6 of-way in the delivery of the video service, subject to the laws of
7 this state, including the police powers of the local unit of
8 government in which the service is delivered.

9 (c) A statement that the grant of authority is subject to
10 lawful operation of the video service by the applicant or its
11 successor in interest.

12 (5) The state video service authorization issued by the
13 commission is fully transferable to any successor in interest to
14 the applicant to which is it initially granted. A notice of
15 transfer shall be filed with the commission and the relevant local
16 unit of government within 15 business days of the completion of the
17 transfer.

18 (6) The state video service authorization issued by the
19 commission may be terminated or the video service area footprint
20 may be modified by the provider by submitting notice to the
21 commission and the relevant local unit of government.

22 (7) If any of the information contained in the application
23 changes, the provider shall notify the commission and the relevant
24 local units of government within 30 days from the date the change
25 occurs.

26 (8) The state video service authorization shall be for a
27 period of 10 years from the date it is issued. Before the

1 expiration of the initial authorization or any subsequent renewals,
2 the provider may apply for an additional 10-year authorization
3 under this section.

4 (9) The commission's authority to administer this act is
5 limited to the powers and duties explicitly provided for under this
6 act.

7 Sec. 4. (1) A video service provider shall designate a
8 sufficient amount of capacity on its network to provide for the
9 same number of public, educational, and governmental access
10 channels as are activated and provided within a local unit of
11 government by an incumbent video provider under the terms of any
12 franchise in effect as of the effective date of this act. For the
13 purposes of this section, a public, educational, or governmental
14 channel is deemed activated if it is being utilized for public,
15 educational, or governmental programming within the local unit of
16 government for at least 8 hours per day.

17 (2) In the event that no public, educational, and governmental
18 channel is provided within a local unit of government not receiving
19 any video services on the effective date of this act, a new video
20 service provider to the local unit of government shall designate a
21 sufficient amount of capacity on its network to provide for 1 or
22 more public, educational, and governmental channels.

23 (3) Any public, educational, or governmental channel provided
24 under this section that is not utilized by the local unit of
25 government for at least 8 hours per day for 3 consecutive months
26 may no longer be made available to the local unit of government and
27 may be programmed at the provider's discretion. At such time as the

1 local unit of government can certify a schedule for at least 8
2 hours of daily programming for a period of 3 consecutive months,
3 the provider shall restore the previously reallocated channel.

4 (4) The public, educational, and governmental channels shall
5 be carried on the basic or lowest service tier. To the extent
6 feasible, the public, educational, and governmental channels shall
7 not be separated numerically from other channels carried on the
8 basic or lowest service tier and the channel number shall be the
9 same as those used by the incumbent video provider unless
10 prohibited by federal law.

11 (5) The local unit of government shall ensure that all
12 transmissions, content, or programming to be retransmitted by a
13 video service provider is provided in a manner or form that is
14 capable of being accepted and retransmitted by a provider, without
15 requirement for additional alteration or change in the content by
16 the provider, over the particular network of the provider, which is
17 compatible with the technology or protocol utilized by the provider
18 to deliver services.

19 (6) Where technically feasible, a video service provider under
20 this act and an incumbent video provider shall interconnect their
21 video systems for the purpose of providing applicable programming
22 for the respective services areas. Interconnection may be
23 accomplished by direct cable, microwave link, satellite, or other
24 reasonable method of connection. Video service providers and
25 incumbent video providers shall negotiate in good faith, and
26 incumbent video providers may not withhold interconnection.

27 (7) The local unit of government is solely responsible for all

1 content provided over designated public, educational, or
2 governmental channels. A video service provider shall not exercise
3 any editorial control over any programming on any channel designed
4 for public, educational, or governmental use or on any other
5 channel required by law or a binding agreement with the local unit
6 of government.

7 (8) A video service provider is not subject to any civil or
8 criminal liability for any program carried on any channel
9 designated for public, educational, or governmental use or on any
10 other channel.

11 (9) Except as otherwise provided in subsection (10), a
12 provider shall provide subscribers access to the signals of the
13 local broadcast television licensed by the federal communications
14 commission to serve those subscribers over the air. This section
15 does not apply to a low power station unless the station is a
16 qualified low power station as defined under 47 USC 534(h)(2). A
17 provider is required to only carry digital broadcast signals to the
18 extent that a broadcast television station has the right under
19 federal law or regulation to demand carriage of the digital
20 broadcast signals by a cable operator on a cable system.

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

25 (11) A provider shall transmit, without degradation, the
26 signals a local broadcast station delivers to the provider. A
27 provider is not required to provide a television or radio station

1 valuable consideration in exchange for carriage.

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

3 (a) Discriminate among or between broadcast stations and
4 programming providers with respect to transmission of their
5 signals, taking into account any consideration afforded the
6 provider by the programming provider or broadcast station. In no
7 event shall the signal quality as retransmitted by the provider be
8 required to be superior to the signal quality of the broadcast
9 stations as received by the provider from the broadcast television
10 station.

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

13 (13) A provider shall not be required to utilize the same or
14 similar reception technology as the broadcast stations or
15 programming providers.

16 (14) A provider that delivers audio or video programming to
17 its subscribers shall include all programming providers in a
18 subscriber programming guide, if any, that lists program schedules.

19 (15) A video service provider shall comply with all federal
20 communications commission requirements including the distribution
21 and notification of emergency messages over the emergency alert
22 system.

23 Sec. 5. (1) No existing franchise agreement with a franchising
24 entity shall be renewed or extended upon the expiration date of the
25 agreement as of the effective date of this act.

26 (2) An incumbent video provider that holds a franchise with a
27 franchising entity is entitled to seek a state video service

1 authorization in the area designated in the existing franchise
2 under either of the following conditions:

3 (a) Upon the expiration of the existing franchise.

4 (b) Upon both the incumbent video provider and the franchising
5 entity agreeing to terminate the franchise prior to the expiration
6 date of the agreement.

7 Sec. 6. (1) Not less than 30 days before the construction or
8 placement of equipment or the infrastructure necessary to provide
9 video services to a local unit of government under a state video
10 service authorization, the provider shall notify in writing the
11 local unit of government that the provider will be offering video
12 services within the footprint submitted to the commission under
13 section 3(2)(d).

14 (2) Except as otherwise provided in this section, a video
15 service provider shall calculate and pay an annual video service
16 provider fee to each local unit of government. The fee shall be
17 equal to 1 of the following, whichever is less:

18 (a) A percentage of gross revenues established by the local
19 unit of government, not to exceed 5%, that has been filed with the
20 commission under subsection (4).

21 (b) The lowest percentage of gross revenues paid to the local
22 unit of government by any incumbent video provider.

23 (3) All fees due under this section shall be due on a
24 quarterly basis and paid within 45 days after the close of the
25 quarter. Each payment shall include a statement explaining the
26 basis for the calculation of the fee.

27 (4) The commission shall annually request from each local unit

1 of government in the state the percentage of gross revenues sought
2 under this section for the fee required under subsection (2)(a).
3 For jurisdictions not responding, the amount shall be set at 5%.

4 (5) No fee is due under subsection (2) until the local unit of
5 government provides supporting documentation to the commission of
6 the percentages paid by each incumbent video provider.

7 (6) The local unit of government shall not demand any
8 additional fees or charges from a provider and shall not demand the
9 use of any other calculation method other than allowed under this
10 act.

11 (7) Except as otherwise provided under subsection (8), if an
12 incumbent video provider continues to provide video services after
13 the expiration of an existing franchise as provided under section
14 5, the operator shall be subject to the fees required under
15 subsection (2)(a) or (b).

16 (8) If an incumbent video provider requests to terminate a
17 franchise under section 5(2)(b) and the local unit of government
18 does not consent to the termination, upon the expiration of the
19 franchise, if the provider continues to provide video services as
20 allowed under section 5(2)(a), the annual video service provider
21 fee shall be as follows:

22 (a) The first 3% of gross revenues payable to the commission
23 to be deposited in the general fund to be credited to the
24 commission to offset the cost of administering this act.

25 (b) Any additional percentage over the amount required under
26 subdivision (a) not to exceed 2% payable to the local unit of
27 government. The fee required under this subdivision and subdivision

1 (a) shall not exceed the percentage established under subsection
2 (4).

3 (c) The fee for public, educational, and governmental channels
4 required under subsection (13) shall be payable to the local unit
5 of government.

6 (9) For purposes of this section, "gross revenues" means all
7 consideration of any kind or nature, including, without limitation,
8 cash, credits, property, and in-kind contributions received by the
9 provider from subscribers for the provision of video service by the
10 video service provider within the jurisdiction of the local unit of
11 government. Gross revenues shall include all of the following:

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

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

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

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

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

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

27 (10) Gross revenues do not include any of the following:

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

3 (b) Refunds, rebates, credits, or discounts to subscribers or
4 a municipality to the extent not already offset by subdivision (a)
5 and to the extent the refund, rebate, credit, or discount is
6 attributable to the video service.

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

13 (d) Any revenues received by the provider or its affiliates
14 for the provision of directory or internet advertising, including
15 yellow pages, white pages, banner advertisement, and electronic
16 publishing.

17 (e) Any amounts attributable to the provision of video service
18 to customers at no charge, including the provision of such service
19 to public institutions without charge.

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

25 (g) Any forgone revenue from the provision of video service at
26 no charge to any person, except that any forgone revenue exchanged
27 for trades, barter, services, or other items of value shall be

1 included in gross revenue.

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

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

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

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

16 (12) Revenue of an affiliate shall be included in the
17 calculation of gross revenues to the extent the treatment of the
18 revenue as revenue of the affiliate has the effect of evading the
19 payment of franchise fees which would otherwise be paid for video
20 service.

21 (13) A video service provider shall pay to the local unit of
22 government as support for public, education, and government
23 programming an annual fee equal to the lesser of 1% of gross
24 revenues, the percentage of gross revenues required of an incumbent
25 video provider by a local unit of government, or the amount paid on
26 a cash basis per subscriber for support for public, education, and
27 government programming to the local unit of government by the

1 incumbent video provider with the largest number of cable service
2 subscribers in the local unit of government. The fee shall be due
3 on a quarterly basis, not more than 45 days after the close of the
4 quarter for gross revenues received during the calendar quarter.
5 The local unit of government shall provide data to the video
6 service provider necessary to calculate the fees due under this
7 subsection no less than 30 days before the payments of the fees are
8 due.

9 (14) A video service provider is entitled to a credit applied
10 toward the fees due under subsection (2) or (8) for all funds
11 allocated to the local unit of government from annual maintenance
12 fees paid by the provider for use of public rights-of-way under
13 section 8 of the metropolitan extension telecommunications rights-
14 of-way oversight act, 2002 PA 48, MCL 484.3108. The credits shall
15 be applied on a monthly pro rata basis beginning in the first month
16 of each calendar year in which the local unit of government
17 receives its allocation of funds.

18 Sec. 7. (1) No more than every 24 months, a local unit of
19 government may perform reasonable audits of the video service
20 provider's calculation of the fees paid to the local unit of
21 government during the preceding 24-month period only. All records
22 reasonably necessary for the audits shall be made available by the
23 provider at the location where the records are kept in the ordinary
24 course of business. The local unit of government and the video
25 service provider shall each be responsible for their respective
26 costs of the audit. Any additional amount due verified by the local
27 unit of government shall be paid by the provider within 30 days of

1 the local unit of government's submission of an invoice for the
2 sum. If the sum exceeds 5% of the total fees which the audit
3 determines should have been paid for the 24-month period, the
4 provider shall pay the local unit of government's reasonable costs
5 of the audit. If the audit finds that the provider has not
6 underpaid the video service provider fee, the local unit of
7 government shall pay the provider's reasonable costs of the audit.

8 (2) Any claims by a local unit of government that fees have
9 not been paid as required under section 6, and any claims for
10 refunds or other corrections to the remittance of the provider,
11 shall be made within 3 years from the date the compensation is
12 remitted.

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

16 (4) A video service provider may identify and collect the
17 amount of the public, educational, and government programming
18 support fee as a separate line item on the regular bill of a
19 subscriber.

20 Sec. 8. (1) A local unit of government shall allow a state
21 video service provider to install, construct, and maintain a
22 communications network within a public right-of-way and shall
23 provide the provider with open, comparable, nondiscriminatory, and
24 competitively neutral access to the public right-of-way.

25 (2) A local unit of government may not discriminate against a
26 video service provider to provide video service for any of the
27 following:

1 (a) The authorization or placement of a communications network
2 in public rights-of-way.

3 (b) Access to a building.

4 (c) A municipal utility pole attachment.

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

16 Sec. 9. (1) A video service provider that has been granted a
17 state video service authorization may not deny access to service to
18 any group of potential residential subscribers because of the
19 income of the residents in the local area in which the group
20 resides.

21 (2) A provider is considered to have complied with subsection
22 (1) if the following conditions are met:

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

26 (b) Within 5 years of the date it began providing video
27 service under this act and from that point forward, at least 30% of

1 the households with access to the provider's video service are low-
2 income households.

3 (3) A video services provider that has been granted a state
4 video services authorization under this act shall provide access to
5 its video service to a number of households equal to at least 35%
6 of the households in the provider's service area within 3 years of
7 the date it began providing video service under this act and to a
8 number not less than 50% of these households within 5 years. The
9 provider shall file a report with the commission no later than the
10 5 years required by this subsection demonstrating compliance with
11 this subsection and subsection (2).

12 (4) A video service provider may satisfy the requirements of
13 this section through the use of alternative technology that offers
14 service, functionality, and content, which is demonstrably similar
15 to that provided through the provider's video service system and
16 may include a technology that does not require the use of any
17 public right-of-way. The technology utilized to comply with the
18 requirements of this section shall include local public,
19 educational, and governmental channels and messages over the
20 emergency alert system as required under section 4.

21 (5) A video service provider may apply to the commission for a
22 waiver of or for an extension of time to meet the requirements of
23 this section if 1 or more of the following apply:

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

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

1 (c) Developments or buildings being inaccessible using
2 reasonable technical solutions under commercial reasonable terms
3 and conditions.

4 (d) Natural disasters.

5 (e) Factors beyond the control of the holder.

6 (6) The commission may grant the waiver or extension only if
7 the provider has made substantial and continuous effort to meet the
8 requirements of this section. If an extension is granted, the
9 commission shall establish a new compliance deadline. If a waiver
10 is granted, the commission shall specify the requirement or
11 requirements waived.

12 (7) Notwithstanding any other provision of this act, a video
13 service provider using telephone facilities to provide video
14 service is not obligated to provide such service outside the
15 provider's existing telephone exchange boundaries.

16 (8) Notwithstanding any other provision of this act, a video
17 service provider shall not be required to comply with, and a local
18 unit of government may not impose or enforce, any mandatory build-
19 out or deployment provisions, schedules, or requirements.

20 Sec. 10. (1) Each provider authorized to provide video service
21 under this act shall establish a dispute resolution process for its
22 customers. Each provider shall maintain a local or toll-free
23 telephone number for customer service contact.

24 (2) The commission shall establish a process to review
25 disputes which are not resolved under subsection (1), disputes
26 between a provider and a local unit of government, and disputes
27 between providers.

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

3 Sec. 11. (1) Except under the terms of a mandatory protective
4 order, trade secrets and commercial or financial information
5 submitted under this act to the commission or a local unit of
6 government are exempt from the freedom of information act, 1976 PA
7 442, MCL 15.231 to 15.246.

8 (2) If information is disclosed under a mandatory protective
9 order, then the commission or local unit of government may use the
10 information for the purpose for which it is required, but shall
11 remain confidential.

12 (3) There is a rebuttable presumption that costs studies,
13 customer usage data, marketing studies and plans, and contracts are
14 trade secrets or commercial or financial information protected
15 under subsection (1). The burden of removing the presumption under
16 this subsection is with the party seeking to have the information
17 disclosed.

18 Sec. 12. The commission shall file a report with the governor
19 and legislature by February 1 of each year that shall include all
20 of the following:

21 (a) The status of competition for video services in this
22 state.

23 (b) Recommendations for legislation, if any.

24 (c) Actions taken by the commission to implement the
25 provisions of this act.

26 (d) Information regarding all state video service
27 authorizations granted under this act.

1 Sec. 13. (1) After notice and hearing, if the commission finds
2 that a person has violated this act, the commission shall order
3 remedies and penalties to protect and make whole persons who have
4 suffered damages as a result of the violation, including, but not
5 limited to, 1 or more of the following:

6 (a) Order the person to pay a fine for the first offense of
7 not less than \$20,000.00 or more than \$30,000.00. For a second and
8 any subsequent offense, the commission shall order the person to
9 pay a fine of not less than \$30,000.00 or more than \$50,000.00.

10 (b) If the person has received a state video service
11 authorization, revoke the authorization.

12 (c) 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.