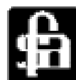

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BILL ANALYSIS

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Senate Bill 190 (as reported without amendment) *(as passed by the Senate)*
Sponsor: Senator Buzz Thomas
Committee: Energy Policy and Public Utilities

Date Completed: 2-24-09

RATIONALE

Public Act 480 of 2006 created the Uniform Video Services Local Franchise Act to revise the way video service (i.e., cable television) is provided in local units of government. Previously, video service providers had to negotiate contracts with individual local units ("franchising entities"). The new Act required the Public Service Commission (PSC) to establish a standard local franchise agreement to be used by all providers in all franchising entities.

The Act also required each video service provider to establish a dispute resolution process for its customers, and required the PSC to submit to the Legislature by June 1, 2007, a proposed process that would allow the Commission to review disputes not resolved through an individual provider's process, disputes between a provider and a franchising entity, and disputes between providers. In May 2007, the Commission issued a proposal containing a multistage approach and distinct processes for disputes between providers and customers, and those between providers or between a provider and a franchising entity. It has been suggested that the proposal be added to the Act.

CONTENT

The bill would amend the Uniform Video Services Local Franchise Act to establish a process for the resolution of disputes between a customer and a video service provider, between providers, and between a provider and a franchising entity (i.e., the local unit of government in which a provider offers video service through a franchise).

Provider/Customer Dispute

The Act requires each video service provider to establish a dispute resolution process for its customers, and notify them of it. Under the bill, each provider would have to notify its customers at least annually, and include the process on its website.

Under the bill, before a customer could file a complaint with the PSC (as described below), the customer first would have to attempt to resolve the dispute through the provider's established resolution process. If the dispute could not be resolved, the customer could file a complaint with the PSC. The provider would have to give the customer the Commission's toll-free customer service number and website address.

The PSC would have to handle a complaint involving a dispute between a customer and a provider as described below.

An attempt to resolve the dispute first would have to be made through an informal resolution process. Upon receiving a complaint, the PSC would have to forward it to the provider and attempt to mediate a resolution informally. The provider would have 10 business days to respond and offer a resolution. If the dispute could not be resolved through the informal process, the customer could file a formal complaint. A formal complaint would have to be in writing and state the section or sections of the Act that the customer alleged the provider had violated, sufficient facts to support the allegations, and the exact relief sought from the provider. The formal complaint would have to comply with the requirements for a

written complaint filed under the Michigan Telecommunications Act (MTA).

If the dispute involved an amount of $5,000 or less, the PSC would have to appoint a mediator within seven business days of the date the complaint was filed. The mediator would have to make recommendations for resolution within 30 days from the date of appointment. Within 10 days of the date of the recommendations, any named party in the complaint could request a contested case in the same manner as provided under the MTA.

If the dispute involved an amount greater than $5,000, the complaint would have to be resolved by a contested case hearing as provided under the MTA.

Provider/Provider or Provider/Franchising Entity Dispute

Under the bill, if a dispute were between a provider and a franchising entity or between two or more providers, an attempt to resolve it first would have to be made through an informal resolution process. If a provider or franchising entity believed that a violation of the Act or the franchising agreement had occurred, the provider or franchising entity could begin an informal complaint process with the PSC. The provider or franchising entity could file with the PSC a written notice of dispute identifying the nature of the dispute, request an informal resolution, and serve the notice of dispute on the other party. Commission staff would have to conduct an informal mediation in an attempt to resolve the dispute. If a satisfactory resolution were not achieved, any named party could file a formal complaint.

A formal complaint would have to be in writing and would have to state the section or sections of the Act or parts of the franchising agreement that the party alleged had been violated, sufficient facts to support the allegations, and the relief requested. A provider's or franchising entity's attorney would have to submit to the PSC a written formal complaint that contained all information, testimony, exhibits, or other documents and information within the moving party's possession on which the party intended to rely to support the complaint. For 60 days after the complaint was filed, the parties would have to attempt alternative means of resolving it. If the parties could not agree on an alternative means within 10 days after the complaint was filed, the PSC would have to order mediation. Within 60 days from the date mediation was ordered, the mediator would have to issue a recommended settlement. Within seven days after that, each party would have to file with the PSC a written acceptance or rejection. If the parties accepted the recommendation, it would become the final order in the contested case. If a party rejected or failed to respond within seven days, the complaint would proceed to a contested case hearing in the same manner as provided in the MTA.

A party that rejected the recommended settlement would have to pay the opposing party's actual costs of proceeding to a contested case hearing, including attorney fees, unless the PSC's final order were more favorable to the rejecting party than the recommended settlement. A final order would be considered more favorable if it differed by at least 10% from the recommended settlement in favor of the rejecting party.

If the recommendation were not accepted, the individual Commissioners could not be informed of the recommended settlement until they had issued their final order.

MCL 484.3310

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In addition to the statutory requirement that video service providers establish a dispute resolution process for their customers, it is necessary to enact the PSC's proposed dispute resolution process for several reasons. Customer complaints to the PSC have doubled over the past year. While the PSC generally has functioned well as an intermediary in helping customers, franchising entities, and providers resolve disputes, its power to act is limited without explicit statutory authorization. The Commission cannot impose any binding resolution. There are a handful of outstanding disputes remaining between providers and franchising entities that

cannot be resolved without codification of a resolution process. It is imperative that the law provide an appropriate mechanism to address the full breadth of billing, service quality, and contractual complaints that may arise.

In developing its proposal, the PSC considered dispute resolution processes for other telecommunications and energy issues and solicited comments and suggestions from various stakeholders. The result proposes a tiered system consisting of informal mediation and formal complaint phases designed to avoid costly, time-consuming litigation. It is similar to existing dispute resolution processes under the MTA and the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act, and thus should be familiar to providers and franchising entities. Adoption of the proposal would help ensure that conflicts are resolved in a timely, equitable, and cost-effective manner.

Response: The legislation would not require that customer bills include contact information for the PSC. Under regulations of the Federal Communications Commission, bills must include the franchising entity's phone number so that customers may lodge complaints. Under the Uniform Video Services Local Franchise Act, however, local units can do little to address these grievances. If an official dispute resolution process were to be adopted, it would be appropriate to include the Commission's phone number so customers could contact the proper entity.

Opposing Argument

Under the bill, a party that rejected a proposed settlement would have to pay the other party's costs of proceeding to a contested case hearing if the final order were not more favorable to the rejecting party. This provision potentially could burden local units, which typically are at a financial disadvantage compared to the large corporations that provide video service. The dispute resolution processes under the MTA and the METRO Act, upon which the proposed process is based, do not contain this requirement.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The Michigan Public Service Commission has a dispute resolution process in place for customers; thus, the process in the bill for customers would impose no additional costs. The bill would implement the requirements of the Act by establishing a process for dispute resolution between providers and between providers and franchisers. This proposed dispute resolution has the potential to reduce costs by requiring the parties to use alternative dispute resolution methods before moving to a contested case hearing.

The Public Service Commission is funded primarily by assessments and fees paid by regulated industries. The authorization to charge video service providers these fees is included in Section 6(13); however, the section includes a sunset of December 31, 2009.

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

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