

SENATE BILL No. 397

March 19, 2009, Introduced by Senators THOMAS, HUNTER, CHERRY, OLSHOVE, CLARK-COLEMAN, SCOTT, JACOBS, GLEASON, BASHAM, SWITALSKI and BARCIA and referred to the Committee on Energy Policy and Public Utilities.

A bill to amend 2006 PA 480, entitled
"Uniform video services local franchise act,"
by amending section 6 (MCL 484.3306).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (b) At the expiration of an existing franchise agreement or if
9 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~~ **THAT** would otherwise be paid for
24 video 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

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

2 (a) ~~If there is~~ **A PROVIDER IS OPERATING UNDER** an existing
3 franchise **AGREEMENT** ~~on the effective date of this act~~ **JANUARY 1,**
4 **2007,** ~~the fee paid to the franchising entity by the incumbent video~~
5 ~~provider with the largest number of cable service subscribers in~~
6 ~~the franchising entity~~ **THE PROVIDER SHALL PAY THE FEE** as determined
7 by the existing franchise agreement **UNTIL THE AGREEMENT EXPIRES.**

8 (b) At the expiration of the existing franchise agreement, ~~the~~
9 ~~amount required under subdivision (a)~~ **AN AMOUNT AS ESTABLISHED BY**
10 **THE FRANCHISING ENTITY** not to exceed 2% of gross revenues.

11 (c) If there is no existing franchise agreement ~~, a percentage~~
12 ~~of gross revenues~~ **OR AT SUCH TIME ON OR AFTER JANUARY 1, 2007 THAT**
13 **A PROVIDER ENTERS INTO OR POSSESSES A UNIFORM VIDEO SERVICE LOCAL**
14 **FRANCHISE AGREEMENT, AN AMOUNT** as established by the franchising
15 entity not to exceed 2% ~~to be determined by a community need~~
16 ~~assessment~~ **OF GROSS REVENUES.**

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

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

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

25 (11) A video service provider is entitled to a credit applied
26 toward the fees due under subsection (1) for all funds allocated to
27 the franchising entity from annual maintenance fees paid by the

1 provider for use of public rights-of-way, minus any property tax
2 credit allowed under section 8 of the metropolitan extension
3 telecommunications rights-of-way oversight act, 2002 PA 48, MCL
4 484.3108. The credits shall be applied on a monthly pro rata basis
5 beginning in the first month of each calendar year in which the
6 franchising entity receives its allocation of funds. The credit
7 allowed under this subsection shall be calculated by multiplying
8 the number of linear feet occupied by the provider in the public
9 rights-of-way of the franchising entity by the lesser of 5 cents or
10 the amount assessed under the metropolitan extension
11 telecommunications rights-of-way oversight act, 2002 PA 48, MCL
12 484.3101 to 484.3120. A video service provider is not eligible for
13 a credit under this subsection unless the provider has taken all
14 property tax credits allowed under the metropolitan extension
15 telecommunications rights-of-way oversight act, 2002 PA 48, MCL
16 484.3101 to 484.3120.

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

20 (13) The commission within 30 days after the enactment into
21 law of any appropriation to it shall ascertain the amount of the
22 appropriation attributable to the actual costs to the commission in
23 exercising its duties under this act and shall be assessed against
24 each video service provider doing business in this state. Each
25 provider shall pay a portion of the total assessment in the same
26 proportion that its number of subscribers for the preceding
27 calendar year bears to the total number of video service

1 subscribers in the state. The first assessment made under this act
2 shall be based on the commission's estimated number of subscribers
3 for each provider in the year that the appropriation is made. The
4 total assessment under this subsection shall not exceed
5 \$1,000,000.00 annually. This subsection does not apply after
6 December 31, 2009.