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City of Detroit

CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker, Director
Research & Analysis Division Staff

DATE: October 30, 2009

RE: **CABLE COMMISSION**

This memo is being written in response to Councilman Kwame Kenyatta's inquiry of October 8, 2009, about whether the Detroit Cable Communications Commission should exist. The following is Research and Analysis Division's (RAD's) analysis of this question.

The Detroit Cable Communications Commission (the Commission) and its staff are charged with a wide variety of tasks under Chapter 9.5 of the City Code. Many of these responsibilities require experienced and sophisticated personnel to competently oversee the city-cable provider relationship, and to make sure that the federal and state regulations that control the communications industry and its practices are adhered to. Effective January 1, 2007, the Michigan State legislature passed the Telephone, Telegraph, and Radio Uniform Video Services Local Franchise Act, *MCL 484.3301 et seq.* (Attachment 1). This Act provides standardized procedures and requirements for cable franchise agreements between local governmental entities and cable providers. While these statutes set some parameters for the parties involved in a cable franchise agreement, they do not diminish the requirement for diligent oversight and participation from the local governmental agency. In fact, MCL 484.3313 even provides for local governments and video service providers to enter into a voluntary franchise agreement with terms different from those provisions of the Act.

Currently, the Detroit Cable Communications Commission monitors AT&T and Comcast's compliance with the terms of their respective franchise agreements, makes recommendations for improvement to the companies' systems, encourages the development of Public, Educational and Governmental (PEG) access, and monitors subscriber programming service. While the Act provides for a customer complaint mechanism through the cable company and ultimately the

Michigan Cable Commission, the local governmental entity still has a right to investigate citizen complaints and assist in the resolution of those reported problems. The Detroit Cable Commission currently serves this function.

The Commission, primarily through its staff, monitors the cable companies to make sure they comply with FCC and Michigan regulations. Commission staff maintains the character generated messages for the Cable system, monitors the Cable systems construction and maintenance schedules, and examines the cable companies' rates for conformity with FCC and Michigan regulations. The Act requires that the local governmental agency provide public, educational and governmental (PEG) programming for public access channels, and if it fails to do so, the cable provider can use those channels for its own programming format. The Cable Commission produces all PEG programming for Channel 10 in compliance with the Act. The Commission staff handles matters directed to it by the Commissioners and is comprised of numerous sections, including compliance, government access programming, system performance, community liaison and engineering.

Mandated by City Ordinance, the Cable Communications Commission is made up of members selected by both the Mayor and City Council. The Cable Commission's combined executive and legislative branch governing structure works to bring balance and equity to local government's most valuable mass communication mediums; two (2) access television channels that are capable of instantaneous communication with the city's electorate. This is a critical and rare collaborative effort in municipal government, and was recognized as such by both branches of government from its inception. Logically in the absence of a cable commission, under the existing framework of the city charter, the role of overseeing the tasks that the cable commission is currently performing would flow to the mayor. No doubt this outcome would be unacceptable to Council.

Again, the question posed by Council is: Should the Commission continue to exist? It is clear that maintaining a cable commission is not an absolute legal necessity. But, in its absence, who or what would fill the void created by dismantling the cable commission? And how would that entity be governed? RAD's research has shown most major municipalities across the nation have maintained a cable commission to regulate the activities of the cable operations functioning in their jurisdictions. Maintaining an entity that specializes in protecting and supporting the citizens' needs as it relates to cable services seems essential.

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CHAPTER 484 TELEPHONE, TELEGRAPH, AND RADIO
UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT

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MCLS § 484.3301 (2009)

MCL § 484.3301

§ 484.3301. Short title; definitions.

Sec. 1. (1) This act shall be known and may be cited as the "uniform video services local franchise act".
(2) As used in this act:
(a) "Cable operator" means that term as defined in *47 USC 522*(5).
(b) "Cable service" means that term as defined in *47 USC 522*(6).
(c) "Cable system" means that term as defined in *47 USC 522*(7).
(d) "Commission" means the Michigan public service commission.
(e) "Franchising entity" means the local unit of government in which a provider offers video services through a franchise.
(f) "Household" means a house, an apartment, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters.
(g) "Incumbent video provider" means a cable operator serving cable subscribers or a telecommunication provider providing video services through the provider's existing telephone exchange boundaries in a particular franchise area within a local unit of government on the effective date of this act.
(h) "IPTV" means internet protocol television.
(i) "Local unit of government" means a city, village, or township.
(j) "Low-income household" means a household with an average annual household income of less than $35,000.00 as determined by the most recent decennial census.
(k) "Open video system" or "OVS" means that term as defined in *47 USC 573*.
(l) "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
(m) "Public rights-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.
(n) "Uniform video service local franchise agreement" or "franchise agreement" means the franchise agreement required under this act to be the operating agreement between each franchising entity and video provider in this state.
(o) "Video programming" means that term as defined in *47 USC 522*(20).
(p) "Video service" means video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in *47 USC 332*(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.

(q) "Video service provider" or "provider" means a person authorized under this act to provide video service.
(r) "Video service provider fee" means the amount paid by a video service provider or incumbent video provider under section 6.

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 1, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:
Section 6, above referred to, is *§ 484.3306*.

Legal periodicals:
Owens, Libraries and Legal Research: Aces Internet Resources, *86 Mich BJ 56*.

LexisNexis

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MCLS § 484.3302 (2009)

MCL § 484.3302

§ 484.3302. Uniform video service local franchise agreement; form; provisions.

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

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

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

(a) The name of the provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) The penalties provided for under section 14.

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 2, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:

Sections 3, 4, 6, and 14, above referred to, are *§§ 484.3303*, *484.3304*, *484.3306*, and *484.3314*.

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MCLS § 484.3303 (2009)

MCL § 484.3303

§ 484.3303. Franchise agreement with local unit of government; notice of completion; approval; transferability; termination or modification; notice of change in information; duration of franchise; renewal; certain conditions prohibited.

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

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

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

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

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

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

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

(8) As a condition to obtaining or holding a franchise, a franchising entity shall not require a video service provider to obtain any other franchise, assess any other fee or charge, or impose any other franchise requirement than is allowed under this act. For purposes of this subsection, a franchise requirement includes, but is not limited to, a provision regulating rates charged by video service providers, requiring the video service providers to satisfy any build-out requirements, or a requirement for the deployment of any facilities or equipment.

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 3, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:
Section 9, above referred to, is *§ 484.3309*.

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LEXSTAT MICODE 484.3304

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MCLS § 484.3304 (2009)

MCL § 484.3304

§ 484.3304. Public, education, and government access channels; availability; manner of retransmission; interconnection; editorial control; liability; access to signals of local broadcast television station; prohibited conduct by provider; use of reception technology; use for noncommercial purposes; applicability of subsections (7) to (11); request specifying number of channels in actual use.

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

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

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

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

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

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

(7) Except as otherwise provided in subsection (8), a provider shall provide subscribers access to the signals of the local broadcast television station licensed by the federal communications commission to serve those subscribers over the air. This section does not apply to a low-power station unless the station is a qualified low-power station as defined under *47 USC 534*(h)(2). A provider is required to only carry digital broadcast signals to the extent that a broadcast television station has the right under federal law or regulation to demand carriage of the digital broadcast signals by a cable operator on a cable system.

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

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

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

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

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

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

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

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

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 4, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:

Section 13, above referred to, is *§ 484.3313*.

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MCLS § 484.3305 (2009)

MCL § 484.3305

§ 484.3305. Renewal or extension of existing franchise agreement; unreasonable and unenforceable provisions; burdensome terms, conditions, or requirements.

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

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

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

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

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

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

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 5, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:

Section 13, above referred to, is *§ 484.3313.*

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LEXSTAT MICODE 484.3306

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MCLS § 484.3306 (2009)

MCL § 484.3306

§ 484.3306. Video service provider fee; payment; "gross revenues" defined; calculation; additional fee; credits; assessment; inapplicability of subsection after December 31, 2009.

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

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

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

(2) The fee due under subsection (1) shall be due on a quarterly 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.

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

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

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

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

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

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

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

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

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

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

(b) Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset by subdivision (a) and to the extent the refund, rebate, credit, or discount is attributable to the video service.
(c) Any revenues received by the provider or its affiliates from the provision of services or capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionally integrated, with video service.
(d) Any revenues received by the provider or its affiliates for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.
(e) Any amounts attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge.
(f) Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the provider, and required to be remitted to the taxing entity, including sales and use taxes.
(g) Any forgone revenue from the provision of video service at no charge to any person, except that any forgone revenue exchanged for trades, barters, services, or other items of value shall be included in gross revenue.
(h) Sales of capital assets or surplus equipment.
(i) Reimbursement by programmers of marketing costs actually incurred by the provider for the introduction of new programming.
(j) The sale of video service for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect to the service.
(6) In the case of a video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the video provider's revenue attributable to the other services, capabilities, or applications shall be included in gross revenue unless the provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
(7) Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate has the effect of evading the payment of franchise fees which would otherwise be paid for video service.
(8) In addition to the fee required under subsection (1), a video service provider shall pay to the franchising entity as support for the cost of public, education, and government access facilities and services an annual fee equal to 1 of the following:
(a) If there is an existing franchise on the effective date of this act, the fee paid to the franchising entity by the incumbent video provider with the largest number of cable service subscribers in the franchising entity as determined by the existing franchise agreement.
(b) At the expiration of the existing franchise agreement, the amount required under subdivision (a) not to exceed 2% of gross revenues.
(c) If there is no existing franchise agreement, a percentage of gross revenues as established by the franchising entity not to exceed 2% to be determined by a community need assessment.
(d) An amount agreed to by the franchising entity and the video service provider.
(9) The fee required under subsection (8) shall be applicable to all providers.
(10) The fee due under subsection (8) shall be due on a quarterly 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.
(11) A video service provider is entitled to a credit applied toward the fees due under subsection (1) for all funds allocated to the franchising entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under section 8 of the metropolitan extension telecommunications rights-of-way oversight act, *2002 PA 48, MCL 484.3108*. The credits shall be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the franchising entity receives its allocation of funds. The credit allowed under this subsection shall be calculated by multiplying the number of linear feet occupied by the provider in the public rights-of-way of the franchising entity by the lesser of 5 cents or the amount assessed under the metropolitan extension telecommunications rights-of-way oversight act, *2002 PA 48, MCL 484.3101* to *484.3120*. A video service provider is not eligible for a credit under this subsection unless the provider has taken all property tax credits allowed under the metropolitan extension telecommunications rights-of-way oversight act, *2002 PA 48, MCL 484.3101* to *484.3120*.
(12) All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
(13) The commission within 30 days after the enactment into law of any appropriation to it shall ascertain the amount of the appropriation attributable to the actual costs to the commission in exercising its duties under this act and shall be assessed against each video service provider doing business in this state. Each provider shall pay a portion of the total

assessment in the same proportion that its number of subscribers for the preceding calendar year bears to the total number of video service subscribers in the state. The first assessment made under this act shall be based on the commission's estimated number of subscribers for each provider in the year that the appropriation is made. The total assessment under this subsection shall not exceed $1,000,000.00 annually. This subsection does not apply after December 31, 2009.

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 6, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Telecommunications Taxes

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MCLS § 484.3307 (2009)

MCL § 484.3307

§ 484.3307. Audits; claims for unpaid fees or refunds; identification and collection as separate line item.

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

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

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

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 7, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:

Section 6, above referred to, is *§ 484.3306*.

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MCLS § 484.3308 (2009)

MCL § 484.3308

§ 484.3308. Installation, construction, and maintenance of video service or communications network within public right-of-way; access; fee; limitation.

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

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

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

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

(c) A municipal utility pole attachment.

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 8, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

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CHAPTER 484 TELEPHONE, TELEGRAPH, AND RADIO
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MCLS § 484.3309 (2009)

MCL § 484.3309

§ 484.3309. Denial of service access due to race or income; defense to violation of subsection (1); video service requirements; number of households; report on compliance with subsections (2) and (3); use of alternative technology; waiver or time extension; service outside provider's existing telephone exchange boundaries not required; mandatory build-out or deployment provisions, schedules, or requirements.

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

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

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

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

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

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

(5) Except for satellite service, a video service provider may satisfy the requirements of this section through the use of alternative technology that offers service, functionality, and content, which is demonstrably similar to that provided through the provider's video service system and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels and messages over the emergency alert system as required under section 4.

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

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

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

(c) Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
(d) Natural disasters.
(e) Factors beyond the control of the provider.
(7) The franchising entity or commission may grant the waiver or extension only if the provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the franchising entity or commission shall establish a new compliance deadline. If a waiver is granted, the franchising entity or commission shall specify the requirement or requirements waived.
(8) Notwithstanding any other provision of this act, a video service provider using telephone facilities to provide video service is not obligated to provide such service outside the provider's existing telephone exchange boundaries.
(9) Notwithstanding any other provision of this act, a video service provider shall not be required to comply with, and a franchising entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 9, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

NOTES:

Statutory references:
Section 4, above referred to, is *§ 484.3304*.

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MCLS § 484.3310 (2009)

MCL § 484.3310

§ 484.3310. Prohibited conduct; establishment of dispute resolution process; notice to customers; filing of complaint; manner of dispute resolution.

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

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

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

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

(d) Cause a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction by making a false, deceptive, or misleading statement or by failing to inform the customer of a material fact, the omission of which is deceptive or misleading.

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

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

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

(3) Each provider shall notify its customers not less than annually of the dispute resolution process created under this section. Each provider shall include the dispute resolution process on its website.

(4) Before a customer can file a complaint with the commission under subsection (5), the customer shall first attempt to resolve the dispute through the dispute resolution process established by the provider under subsection (2). If the dispute cannot be resolved by the provider's dispute resolution process, the customer may file a complaint with the commission under subsection (5). The provider shall provide the customer with the commission's toll-free customer service number and website address.

(5) A complaint filed under this section involving a dispute between a customer and a provider shall be handled by the commission in the following manner:

(a) An attempt to resolve the dispute shall first be made through an informal resolution process. Upon receiving a complaint, the commission shall forward the complaint to the provider and attempt to informally mediate a resolution. The provider shall have 10 business days to respond and offer a resolution. If the dispute cannot be resolved through the informal process, the customer can file a formal complaint under subdivision (b).

(b) A formal complaint filed under this subdivision shall be in writing and shall state the section or sections of this act that the customer alleges the provider has violated, sufficient facts to support the allegations, and the exact relief sought from the provider. The formal complaint shall comply with the same requirements of a written complaint filed under section 203 of the Michigan telecommunications act, *1991 PA 179, MCL 484.2203*. The complaint shall be resolved by 1 of the following:

(i) If the dispute involves an amount of $5,000.00 or less, the commission shall appoint a mediator within 7 business days of the date the complaint is filed. The mediator shall make recommendations for resolution within 30 days from the date of appointment. Within 10 days of the date of the mediator's recommendations, any named party in the complaint may request a contested case as provided under subparagraph (ii).

(ii) If the dispute involves an amount greater than $5,000.00, a contested case hearing in the same manner as provided under section 203 of the Michigan telecommunications act, *1991 PA 179, MCL 484.2203*.

(6) If the dispute is between a provider and a franchising entity or between 2 or more providers, the dispute will be resolved in the following manner:

(a) An attempt to resolve the dispute shall first be made through an informal resolution process. If a provider or franchising entity believes that a violation of this act or the franchising agreement has occurred, the provider or franchising entity may begin an informal complaint process with the commission. The provider or the franchising entity shall file with the commission a written notice of dispute identifying the nature of the dispute, request an informal dispute resolution, and serve the notice of dispute on the other party. Commission staff will conduct an informal mediation in an attempt to resolve the dispute. If a satisfactory resolution to the dispute is not achieved, any named party in the complaint may file a formal complaint under subdivision (b).

(b) A formal complaint to the commission filed under this subdivision shall be in writing and shall state the section or sections of this act or parts of the franchising agreement that the party alleges have been violated, sufficient facts to support the allegations, the relief requested, and shall further contain all information, testimony, exhibits, or other documents and information within the moving party's possession on which the party intends to rely to support the complaint. For a period of 60 days after the date the complaint is filed, the parties shall attempt alternative means of resolving the complaint. If the parties cannot agree on the alternative means within 10 days after the date the complaint is filed, the commission shall order mediation. Within 60 days from the date mediation is ordered, the mediator shall issue a recommended settlement. Within 7 days after the date the recommended settlement is issued, each party shall file with the commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case. If a party rejects or fails to respond within 7 days to the recommended settlement, then the complaint shall proceed to a contested case hearing in the same manner as provided under section 203 of the Michigan telecommunications act, *1991 PA 179, MCL 484.2203*. A party that rejects the recommended settlement shall pay the opposing party's actual costs of proceeding to a contested case hearing, including a reasonable, nonexcessive attorney fee, unless the final order of the commission is more favorable to the rejecting party than the recommended settlement. A final order is considered more favorable if it differs by 10% or more from the recommended settlement in favor of the rejecting party. If the recommendation is not accepted, the individual commissioners shall not be informed of the recommended settlement until they have issued their final order.

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 10, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Amended by Pub Acts 2009, No. 4, imd eff April 2, 2009.

NOTES:

Effect of amendment notes:

The 2009 amendment deleted former subsection (3) which read: "The commission shall submit to the legislature no later than June 1, 2007 a proposed process to be added to this act that would allow the commission to review disputes which are not resolved under subsection (2), disputes between a provider and a franchising entity, and disputes between providers."; redesignated and revised former subsection (4) as (3) from text which read: "Each provider shall notify its customers of the dispute resolution process created under this section."; and added subsections (4)-(6).

Statutory references:
Section 2, above referred to, is *§ 484.3302*.

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MCLS § 484.3311 (2009)

MCL § 484.3311

§ 484.3311. Confidentiality.

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

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

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 11, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

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MCLS § 484.3312 (2009)

MCL § 484.3312

§ 484.3312. Administration of act; limitations; report.

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

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 12, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

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MCLS § 484.3313 (2009)

MCL § 484.3313

§ 484.3313. Voluntary franchise agreement.

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

HISTORY: Act 480, 2006, p 1881; imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.

Pub Acts 2006, No. 480, § 13, imd eff December 21, 2006, by enacting § 1 eff January 1, 2007.