

HOUSE BILL No. 5459

September 23, 2009, Introduced by Rep. Geiss and referred to the Committee on Energy and Technology.

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

1 there is no existing franchise agreement, an amount equal to the
2 percentage of gross revenues as established by the franchising
3 entity not to exceed 5% and shall be applicable to all providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) Any tax, fee, or assessment of general applicability
26 imposed on the customer or the transaction by a federal, state, or
27 local government or any other governmental entity, collected by the

1 provider, and required to be remitted to the taxing entity,
2 including sales and use taxes.

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

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

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

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

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

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

26 (8) In addition to the fee required under subsection (1), a
27 video service provider shall pay to the franchising entity as

1 support for the cost of public, education, and government access
2 facilities and services an annual fee equal to 1 of the following:

3 (a) If there is an existing franchise on ~~the effective date of~~
4 ~~this act~~ **JANUARY 1, 2007**, the fee paid to the franchising entity by
5 the incumbent video provider with the largest number of cable
6 service subscribers in the franchising entity as determined by the
7 existing franchise agreement.

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

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

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

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

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

22 (11) A video service provider is entitled to a credit applied
23 toward the fees due under subsection (1) for all funds allocated to
24 the franchising entity from annual maintenance fees paid by the
25 provider for use of public rights-of-way, minus any property tax
26 credit allowed under section 8 of the metropolitan extension
27 telecommunications rights-of-way oversight act, 2002 PA 48, MCL

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

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

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

- 1 total assessment under this subsection shall not exceed
- 2 \$1,000,000.00 annually. This subsection does not apply after
- 3 December 31, ~~2009~~**2014**.