



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 190 (as enacted)  
Sponsor: Senator Buzz Thomas  
Senate Committee: Energy Policy and Public Utilities  
House Committee: Energy and Technology

**PUBLIC ACT 4 of 2009**

Date Completed: 4-15-09

**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 was suggested that these procedures be added to the Act.

**CONTENT**

**The bill amended 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).**

The bill took effect on April 2, 2009.

**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 must notify its customers at least annually, and include the process on its website.

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

The bill requires the PSC to handle a complaint involving a dispute between a customer and a provider as described below.

An attempt to resolve the dispute first must be made through an informal resolution process. Upon receiving a complaint, the PSC must forward it to the provider and attempt to mediate a resolution informally. The provider has 10 business days to respond and offer a resolution. If the dispute cannot be resolved through the informal process, the customer may file a formal complaint. A formal complaint must be in writing and state the section or sections of the 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 must comply with the requirements for a written complaint filed under the Michigan Telecommunications Act (MTA).

If the dispute involves an amount of \$5,000 or less, the PSC must appoint a mediator within seven business days of the date the complaint is filed. The mediator must 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 may request a contested case in the same manner as provided under the MTA.

If the dispute involves an amount greater than \$5,000, the complaint must 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 is between a provider and a franchising entity or between two or more providers, an attempt to resolve it first must be made through an informal resolution process. If a provider or franchising entity believes that a violation of the Act or the franchising agreement has occurred, the provider or franchising entity may begin an informal complaint process with the PSC. The provider or franchising entity must 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 will conduct an informal mediation in an attempt to resolve the dispute. If a satisfactory resolution is not achieved, any named party may file a formal complaint.

A formal complaint to the PSC must be in writing and must state the section or sections of the Act or parts of the franchising agreement that the party alleges have been violated, sufficient facts to support the allegations, and the relief requested. The complaint also must 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 60 days after the complaint is filed, the parties must attempt alternative means of resolving it. If the parties cannot agree on the alternative

means within 10 days after the complaint is filed, the PSC must order mediation. Within 60 days from the date mediation is ordered, the mediator must issue a recommended settlement. Within seven days after that, each party must file with the PSC a written acceptance or rejection. If the parties accept the recommendation, it must become the final order in the contested case. If a party rejects or fails to respond within seven days, the complaint must proceed to a contested case hearing in the same manner as provided in the MTA.

A party that rejects the recommended settlement must pay the opposing party's actual costs of proceeding to a contested case hearing, including a reasonable, nonexcessive attorney fee, unless the PSC's final order is more favorable to the rejecting party than the recommended settlement. A final order is considered more favorable if it differs by at least 10% from the recommended settlement in favor of the rejecting party.

If the recommendation is not accepted, the individual Commissioners may not be informed of the recommended settlement until they have 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, the dispute resolution process proposed by the PSC needs to be in the statute 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. Unless authorized to do so, the Commission cannot impose any binding resolution. 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. Also, a handful of outstanding disputes remain

between providers and franchising entities that could not be resolved without codification of a resolution process.

section includes a sunset of December 31, 2009.

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

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 produced 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. The process will help ensure that conflicts are resolved in a timely, equitable, and cost-effective manner.

### **Opposing Argument**

Under the bill, a party that rejects a proposed settlement must pay the other party's costs of proceeding to a contested case hearing if the final order is not more favorable to the rejecting party. This provision might 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 bill's process is based, do not contain this requirement.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The Michigan Public Service Commission has had a dispute resolution process in place for customers; thus, the process in the bill for customers will impose no additional costs. The bill implements the requirements of the Act by establishing a process for dispute resolution between providers and between providers and franchisers. This 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

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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.