

HOUSE BILL No. 5895

March 21, 2006, Introduced by Reps. Hoogendyk, Accavitti, Sheen, Drolet, Gosselin, Gaffney, Garfield, Brandenburg, Ball, Acciavatti, Hildenbrand, Cushingberry and Pastor and referred to the Committee on Energy and Technology.

A bill to provide for state authority to provide cable and video services; to provide for competition in providing cable and video services; and to prescribe the powers and duties of certain state and local agencies and officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "cable and video competition act".

3 (2) The legislature finds and declares all of the following:

4 (a) The state's economy would be enhanced by investment in new
5 communications and video programming infrastructure, including
6 broadband facilities, fiber optic, and internet protocol
7 technologies.

8 (b) Cable services and video services bring important daily

1 benefits to this state by providing news, education, and
2 entertainment.

3 (c) Competitive cable service providers and competitive video
4 service providers are capable of providing new video programming
5 services and competition to consumers in this state.

6 (d) There has been only minimal competitive entry into the
7 facilities-based video programming market since current franchising
8 requirements in this state were enacted.

9 (e) The cable franchise requirements and associated build-out
10 requirements have acted as a barrier to entry to many new
11 facilities-based entrants, because time to market and reasonable
12 cost of entry are critical for new entrants seeking to compete with
13 the cable incumbents.

14 (f) Under both federal and state law, there is considerable
15 uncertainty concerning whether and to what degree the cable
16 franchise requirements apply to various competitive cable service
17 providers and competitive video service providers, especially to
18 the extent those new entrants are already subject to public right-
19 of-way management under other state regulatory schemes.

20 (g) To remove legal uncertainty with respect to the authority
21 of competitive cable service providers and competitive video
22 service providers to use the public rights-of-way to the extent the
23 cable franchise requirements do not apply, and to promote
24 competitive entry by all competitive cable service providers and
25 competitive video service providers, this state should provide a
26 state-issued authorization for competitive cable service providers
27 and competitive video service providers to deploy their systems and

1 provide cable service and video service to residents of this state.
2 This state-issued grant will allow all competitive cable service
3 providers and video service providers to move forward in making the
4 significant investments required to provide new services and
5 competition for video programming.

6 Sec. 2. As used in this act:

7 (a) "Cable operator" means that term as defined in 47 USC
8 522(5).

9 (b) "Cable service" means that term as defined in 47 USC
10 522(6).

11 (c) "Cable service or video service authorization" means an
12 initial authorization issued by the department, regardless of
13 whether the authorization is designed as a franchise, permit,
14 license, resolution, contract, certificate, agreement, or
15 otherwise, that authorizes the construction and operation of a
16 cable system or video service provider's network in the public
17 rights-of-way to offer cable service or video service to any
18 subscriber in the state.

19 (d) "Cable system" means that term as defined in 47 USC
20 522(7).

21 (e) "Competitive cable service provider" means a person
22 authorized by this act to provide cable service over a cable system
23 other than the incumbent cable operator providing service in the
24 area to be served by the competitive cable service provider or a
25 cable operator authorized by this act to provide cable service over
26 a cable system in areas where it currently does not have an
27 existing franchise agreement as of the effective date of this act.

1 (f) "Competitive cable service provider fee" means the amount
2 paid by a competitive cable service provider under section 7.

3 (g) "Competitive video service provider" means a person
4 authorized by this act to provide video service. This term does not
5 include a cable operator, and a competitive video service provider
6 shall not be considered a cable operator and the facilities of a
7 competitive video service provider shall not be considered a cable
8 system.

9 (h) "Competitive video service provider fee" means the amount
10 paid by a competitive video service provider under section 7.

11 (i) "Department" means the department of state.

12 (j) "Franchising entity" means the local unit of government
13 that requires a franchise to offer cable or video services.

14 (k) "Incumbent cable operator" means a cable operator serving
15 cable subscribers in a particular franchise area within a local
16 unit of government on the effective date of this act.

17 (l) "Local unit of government" means a city, village, or
18 township.

19 (m) "Public rights-of-way" means the area on, below, or above
20 a public roadway, highway, street, public sidewalk, alley,
21 waterway, or utility easements dedicated for compatible uses.

22 (n) "Video programming" means programming provided by, or
23 generally considered comparable to programming provided by, a
24 television broadcast station, as defined in 47 USC 522.

25 (o) "Video service" means video programming services provided
26 through wireline facilities located at least in part in the public
27 rights-of-way without regard to delivery technology, including

1 internet protocol technology. This definition does not include any
2 video programming provided by a commercial mobile service provider
3 defined in 47 USC 332(d) or cable service provided by a competitive
4 cable service provider.

5 Sec. 3. (1) The following entities shall possess a cable
6 service or video service authorization:

7 (a) Any entity certificated by the department to provide local
8 exchange service in this state that seeks to operate or operates as
9 a competitive cable service provider or competitive video service
10 provider in its local exchange service area.

11 (b) Any other entity that seeks to operate as a competitive
12 cable service provider or competitive video service provider.

13 (c) Any incumbent cable operator, after the expiration of its
14 franchise, desiring to provide cable or video service in any local
15 unit of government where it had a franchise to provide cable
16 service.

17 (2) To the extent elected by the entity receiving the cable
18 service or video service authorization and required by applicable
19 law, any cable or video service authorization granted by this act
20 or the department shall constitute a franchise for purposes of 47
21 USC 541(b)(1). To the extent required for purposes of 47 USC 521 to
22 561 only, this state shall constitute the exclusive franchising
23 authority for competitive cable service providers and competitive
24 video service providers in this state.

25 (3) No franchising entity may require a competitive cable
26 service provider or competitive video service provider to obtain a
27 separate franchise or otherwise impose any fee or franchise

1 requirement except as provided under this act. For purposes of this
2 subsection, a franchise requirement includes, without limitation,
3 any provision regulating rates charged by competitive cable service
4 providers or competitive video service providers or requiring
5 competitive cable service providers or competitive video service
6 providers to satisfy any build-out requirements or deploy any
7 facilities or equipment.

8 (4) An incumbent cable operator with an existing franchise to
9 provide cable service in any local unit of government in this state
10 as of the effective date of this act is not eligible to use or rely
11 upon a state authorization to provide cable service or video
12 service under this act in any local unit of government where it has
13 an existing franchise agreement until the expiration date of the
14 existing franchise agreement.

15 (5) Except as otherwise provided under this act, competitive
16 cable service providers and competitive video service providers
17 shall possess and enjoy the same rights as incumbent cable
18 operators and other providers of video programming.

19 Sec. 4. (1) An entity that seeks to provide cable service or
20 video service in this state after the effective date of this act
21 shall file an application for cable service or video service
22 authorization with the department as required by this section. An
23 entity providing cable service or video service under an existing
24 franchise agreement with a franchising entity is not subject to
25 this section with respect to the franchising entity until the
26 franchise agreement expires.

27 (2) The application shall contain a completed affidavit

1 submitted by the applicant and signed by an officer or general
2 partner of the applicant affirming all of the following:

3 (a) That the applicant has filed or will timely file with the
4 federal communications commission all forms required by that agency
5 in advance of offering cable service or video service in this
6 state.

7 (b) That the applicant agrees to comply with all applicable
8 federal and state statutes and regulations.

9 (c) That the applicant agrees to comply with all valid and
10 enforceable municipal regulations regarding the use and occupation
11 of public rights-of-way in the delivery of the cable service or
12 video service, including the police powers of the municipalities in
13 which the service is delivered.

14 (d) A general description of the cable or video service area
15 footprint to be served.

16 (e) The location of the applicant's principal place of
17 business and the names of the applicant's principal executive
18 officers.

19 (3) The department shall notify an applicant for a cable or
20 video service authorization whether the applicant's application and
21 affidavit are complete before the fifteenth business day after the
22 applicant submits the application. If the application and affidavit
23 are complete, the department shall have 30 business days after
24 submission by the applicant to issue the service authorization. If
25 the department does not notify the applicant regarding the
26 completeness of the application and affidavit or issue the service
27 authorization within the time periods required under this

1 subsection, the application and affidavit shall be considered
2 complete and the service authorization issued upon the expiration
3 of the thirtieth day.

4 (4) The cable service or video service authorization issued by
5 the department shall contain all of the following:

6 (a) A grant of authority to provide cable service or video
7 service in the service area footprint as requested in the
8 application.

9 (b) A grant of authority to use and occupy the public rights-
10 of-way in the delivery of that service, subject to the laws of this
11 state, including the police powers of the municipalities in which
12 the service is delivered.

13 (c) A statement that the grant of authority is subject to
14 lawful operation of the cable service or video service by the
15 applicant or its successor in interest.

16 (5) The cable service or video service authorization issued by
17 the department is fully transferable to any successor in interest
18 to the applicant to which is it initially granted. A notice of
19 transfer shall be filed with the department and the relevant local
20 unit of government within 15 business days of the completion of the
21 transfer.

22 (6) The cable service or video service authorization issued by
23 the department may be terminated or its cable or video service area
24 footprint may be modified by the cable service provider or video
25 service provider by submitting notice to the department and the
26 relevant local unit of government.

27 Sec. 5. (1) A competitive video service provider and

1 competitive cable service provider shall provide distribution
2 capacity and make reasonable, technically feasible efforts to
3 retransmit community programming, but shall not be subject to any
4 requirements under 47 USC 531. An incumbent cable operator that
5 elects to obtain a video service authorization at the expiration of
6 its existing franchise shall continue to comply with all community
7 programming obligations of its franchise and be subject to 47 USC
8 531.

9 (2) The local unit of government shall ensure that all
10 transmissions, content, or programming to be retransmitted by a
11 holder of a state authorization to provide cable service or video
12 service is provided or submitted to the competitive cable service
13 provider or competitive video service provider in a manner or form
14 that is capable of being accepted and retransmitted by a provider,
15 without requirement for additional alteration or change in the
16 content by the provider, over the particular network of the
17 competitive cable service provider or competitive video service
18 provider, which is compatible with the technology or protocol
19 utilized by the competitive cable service provider or competitive
20 video service provider to deliver services.

21 (3) Where technically feasible, the holder of a service
22 authorization under this act and an incumbent cable operator shall
23 interconnect their cable or video systems for the purpose of
24 providing applicable programming for the respective services areas.
25 Interconnection may be accomplished by direct cable, microwave
26 link, satellite, or other reasonable method of connection. Holders
27 of a service authorization and incumbent cable operators shall

1 negotiate in good faith, and incumbent cable operators may not
2 withhold interconnection.

3 (4) The local unit of government is solely responsible for all
4 content provided over designated public, educational, or
5 governmental channels. A competitive video service provider and
6 competitive cable service provider shall not exercise any editorial
7 control over any programming on any channel designed for public,
8 educational, or governmental use or on any other channel required
9 by law or a binding agreement with the local franchising authority.

10 (5) A competitive video service provider and competitive cable
11 service provider are not subject to any civil or criminal liability
12 for any program carried on any channel designated for public,
13 educational, or governmental use or on any other channel.

14 Sec. 6. (1) As used in this section, "provider" means a
15 provider of competitive video services or a provider of basic local
16 exchange service as defined in section 102(b) of the Michigan
17 telecommunication act, 1991 PA 179, MCL 484.2102, that has more
18 than 500,000 access lines in service in this state and that
19 delivers audio programming with localized content or video
20 programming to its subscribers in those service areas where the
21 provider is not regulated as a cable system operator of a cable
22 system under federal law. Provider does not include a programming
23 provider.

24 (2) Except as otherwise provided in subsection (3), a provider
25 shall provide subscribers access to the signals of the local
26 broadcast television and radio stations licensed by the federal
27 communications commission to serve those subscribers over the air.

1 This section does not apply to a low power station unless the
2 station is a qualified low power station as defined under 47 USC
3 534(h)(2). A provider is required to only carry digital broadcast
4 signals to the extent that a broadcast television station has the
5 right under federal law or regulation to demand carriage of the
6 digital broadcast signals by a cable operator on a cable system.

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

12 (4) A provider shall transmit, without degradation, the
13 signals a local broadcast station delivers to the provider. A
14 provider is not required to provide a television or radio station
15 valuable consideration in exchange for carriage.

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

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

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

27 (6) A provider shall not be required to utilize the same or

1 similar reception technology as the broadcast stations or
2 programming providers.

3 (7) A provider that delivers audio or video programming to its
4 subscribers shall include all programming providers in a subscriber
5 programming guide, if any, that lists program schedules.

6 Sec. 7. (1) A competitive cable service provider or
7 competitive video service provider shall provide notice to each
8 franchising entity with jurisdiction in any locality in which a
9 competitive cable service provider or competitive video service
10 provider begins to offer cable service or video service.

11 (2) In any locality in which a competitive cable service
12 provider offers cable service or a competitive video service
13 provider offers video service on a commercial basis, the
14 competitive cable service provider or competitive video service
15 provider shall calculate and pay the competitive cable service
16 provider or competitive video service provider fee to the
17 franchising entity with jurisdiction in that locality upon the
18 franchising entity's written request. The fee shall be equal to the
19 lesser of 5% of gross revenues or the lowest percentage of gross
20 revenues paid to the franchising entity by any incumbent cable
21 operator providing cable service. If the franchising entity makes a
22 request, the competitive cable service provider or competitive
23 video service provider fee shall be due on a quarterly basis, 45
24 days after the close of the quarter. If mailed, the fee is
25 considered paid on the date it is postmarked. The franchising
26 entity may not demand any additional fees or charges from the
27 competitive cable service provider or competitive video service

1 provider and may not demand the use of any other calculation method
2 other than allowed under this act. No fee is due under this section
3 until the franchising entity certifies and provides supporting
4 documentation of the percentages of gross revenues paid by each
5 incumbent cable operator.

6 (3) For purposes of this section, "gross revenues" means all
7 consideration of any kind or nature, including, without limitation,
8 cash, credits, property, and in-kind contributions received by the
9 provider from subscribers for the provision of cable service over a
10 cable system by a competitive cable provider or video service by a
11 competitive video service provider within the franchising entity's
12 jurisdiction. Competitive cable service providers and competitive
13 video service providers shall be subject to and only be required to
14 pay either the competitive cable service provider fee or the
15 competitive video service provider fee but in no event will a
16 provider be subject to both the competitive cable service and
17 competitive video service provider fees. Gross revenues do not
18 include any of the following:

19 (a) Revenues not actually received, even if billed, such as
20 bad debt.

21 (b) Revenues received by any affiliate or any other person in
22 exchange for supplying goods or services used by the provider to
23 provide cable service or video service.

24 (c) Refunds, rebates, or discounts or other price adjustments
25 made to subscribers, leased access providers, advertisers, or any
26 other local unit of government that reduce the amount of gross
27 revenues received by a competitive video service provider or

1 competitive cable service provider. This subdivision does not
2 include any discounts, refunds, and other price adjustments that
3 are allocated to the video or cable service segment of the
4 provider's services for the purpose of decreasing the amount of the
5 competitive video service provider fee.

6 (d) Regardless of whether the services are bundled, packaged,
7 or functionally integrated with cable service or video service, any
8 revenues from services not classified as cable service or video
9 service, including, without limitation, revenue received from
10 telecommunications services, revenue received from information
11 services, revenue received in connection with advertising, revenue
12 received in connection with home shopping services, or any other
13 revenues attributed by the competitive cable service provider or
14 competitive video service provider to noncable service or nonvideo
15 service in accordance with the provider's books and records kept in
16 the regular course of business and any applicable laws, rules,
17 regulations, standards, or orders.

18 (e) Any revenue paid by subscribers to home shopping
19 programmers directly from the sale of merchandise through any home
20 shopping channel offered as part of the cable services or video
21 services.

22 (f) The sale of cable services or video services for resale in
23 which the purchaser is required to collect the service provider fee
24 from the purchaser's subscriber.

25 (g) Any tax or fee of general applicability imposed upon the
26 competitive cable service provider or competitive video service
27 provider or upon subscribers by a city, state, federal, or any

1 other governmental entity and required to be collected by the
2 competitive cable service provider or competitive video service
3 provider and remitted to the taxing entity and including the fees
4 specified in this section.

5 (h) The provision of cable services or video services to
6 public institutions, public schools, or governmental entities at no
7 charge.

8 (i) Any forgone revenue from the competitive cable service
9 provider's or competitive video service provider's provision of
10 free or reduced-cost video service to any subscriber, including a
11 governmental, educational, or health care institution.

12 (j) Sales of real property, capital assets, or surplus
13 equipment.

14 (k) Reimbursement by programmers of marketing costs incurred
15 by the competitive cable service provider or competitive video
16 service provider for the introduction or promotion of new
17 programming.

18 (l) Directory, internet, or video services advertising revenue,
19 including, but not limited to, yellow page, white page, banner
20 advertisement, and electronic publishing.

21 (m) Copyright fees.

22 (n) Security deposits collected from subscribers.

23 (o) Late payment fees or charges, insufficient funds check
24 charges, and other charges assessed to recover the costs of
25 collecting delinquent payments.

26 (p) Revenues received from the installation, repair,
27 maintenance, sale, or lease of equipment.

1 (4) A competitive provider of cable service or a competitive
2 provider of video service shall pay to the franchising entity as
3 support for public, education, and government programming a fee
4 equal to the lesser of 1% of gross revenues or the amount paid on a
5 cash basis per subscriber for support for public, education, and
6 government programming to the franchising entity by the incumbent
7 cable operator with the largest number of cable service subscribers
8 in the franchising entity. The fee shall be due on a quarterly
9 basis, not more than 45 days after the close of the quarter for
10 gross revenues received during the calendar quarter. If mailed, the
11 fee is considered paid on the date it is postmarked. The
12 franchising entity shall provide data to the competitive cable
13 service provider or competitive video service provider necessary to
14 calculate the fees due under this subsection no less than 30 days
15 before the payments of the fees are due.

16 (5) The competitive cable service provider or competitive
17 video service provider is entitled to a credit applied toward the
18 fees due under this section for all funds allocated to the local
19 unit of government from annual maintenance fees paid by the
20 provider for use of public rights-of-way under section 8 of the
21 metropolitan extension telecommunications rights-of-way oversight
22 act, 2002 PA 48, MCL 484.3108. The credits shall be applied on a
23 monthly pro rata basis beginning in the first month of each
24 calendar year in which the local unit of government receives its
25 allocation of funds.

26 Sec. 8. (1) No more than once per year, a franchising entity
27 may perform reasonable audits of the competitive cable service

1 provider's or competitive video service provider's calculation of
2 the fees paid to the franchising entity under section 7 during the
3 preceding 12-month period only. All records reasonably necessary
4 for the audits shall be made available by the holder of
5 authorization at the location where the records are kept in the
6 ordinary course of business. The franchising entity and the
7 competitive cable service provider or competitive video service
8 provider shall each be responsible for their respective costs of
9 the audit. Any additional amount due verified by the holder of an
10 authorization and the franchising entity shall be paid within 30
11 days of the franchising entity's submission of an invoice for the
12 sum. If the sum exceeds 5% of the total fees which the audit
13 determines should have been paid for the 12-month period, the
14 holder shall pay the franchising entity's reasonable costs of the
15 audit.

16 (2) Any claims by a franchising entity that fees have not been
17 paid as required under section 7, and any claims for refunds or
18 other corrections to the remittance of the holder, shall be made
19 within 3 years and 45 days of the end of the quarter for which
20 compensation is remitted.

21 (3) Any competitive cable service provider or competitive
22 video service provider may identify and collect the amount of the
23 competitive cable service provider or competitive video service
24 provider fee as a separate line item on the regular bill of each
25 subscriber.

26 (4) A competitive cable service provider or competitive video
27 service provider may identify and collect the amount of the public,

1 educational, and government programming support fee as a separate
2 line item on the regular bill of a subscriber.

3 Sec. 9. (1) A local unit of government shall allow the holder
4 of a state authorization to provide cable service or video service
5 to install, construct, and maintain a communications network within
6 a public right-of-way and shall provide the holder of a state
7 authorization to provide cable service or video service with open,
8 comparable, nondiscriminatory, and competitively neutral access to
9 the public right-of-way.

10 (2) A local unit of government may not discriminate against
11 the holder of a state authorization to provide cable service or
12 video service for any of the following:

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

15 (b) Access to a building.

16 (c) A municipal utility pole attachment.

17 (3) A local unit of government may impose on a competitive
18 cable service provider or competitive video service provider a
19 permit fee only to the extent it imposes such a fee on incumbent
20 cable operators, and any fee may not exceed the actual, direct
21 costs incurred by the franchising entity for issuing the relevant
22 permit. In no event may a fee under this section be levied if the
23 competitive cable service provider or competitive video service
24 provider already has paid a permit fee of any kind in connection
25 with the same activity that would otherwise be covered by the
26 permit fee under this section or is otherwise authorized by law or
27 contract to place the facilities used by the competitive cable

1 service provider or competitive video service provider in the
2 public rights-of-way or for general revenue purposes.

3 Sec. 10. (1) A competitive cable service provider or
4 competitive video service provider that has been granted a state
5 authorization to provide cable service or video service may not
6 deny access to service to any group of potential residential
7 subscribers because of the income of the residents in the local
8 area in which such group resides. A provider does not violate this
9 section if it schedules the construction of its network and
10 deployment of its services based on good faith projections of
11 anticipated revenues and rates of subscription to provide cable.

12 (2) The holder of a state authorization to provide cable
13 service or video service may use direct-to-home satellite service
14 or another alternative technology that provides comparable content,
15 service, and functionality to satisfy the requirements of this
16 section.

17 (3) Notwithstanding any other provision of this act, the
18 holder of a cable service or video service authorization shall not
19 be required to comply with, and a local unit of government may not
20 impose or enforce, any mandatory build-out or deployment
21 provisions, schedules, or requirements.

22 Sec. 11. The department shall file a report with the governor
23 and legislature by February 1 of each year that shall include all
24 of the following:

25 (a) The status of competition for cable and video services in
26 this state.

27 (b) Recommendations for legislation, if any.

1 (c) Actions taken by the commission to implement the
2 provisions of this act.

3 (d) Information regarding all state authorization grants under
4 this act.

5 Sec. 12. This act shall only be enforced by a court of
6 competent jurisdiction.