

AGENDA
COMMUNICATIONS/MEDIA COMMISSION
Bedford Township Hall
8100 Jackman
May 8, 2017
6:30 P.M.

1. Call to Order/Pledge of Allegiance
2. Approval of Agenda
3. Approval of the minutes of the April 10, 2017 meeting.
4. Presentations
5. Old Business
 - Buckeye broadband follow-up
6. New Business
 - Cable Franchise fee
 - Cable Franchise Agreement
 - Committee expansion recommendation
7. COMMENTS FROM THE PUBLIC: Comments limited to 2 minutes
8. Commissioner's Comments
9. Adjournment

The Township of Bedford will provide necessary reasonable auxiliary aids and services to individuals with disabilities at the meeting upon one week's notice to the Township of Bedford Individuals requiring auxiliary aids or services should contact the Bedford Township Supervisor, Paul Pirrone, 8100 Jackman Road, Box H, Temperance, MI 48182, Phone 734-224-7321.

April 10, 2017

COMMUNICATIONS/MEDIA COMMISSION

Members Present: Nate Elarton, Corey Welch, Greg LaScala, Trudy Hershberger, Lori Welling

Call to Order—6:36pm

Pledge of Allegiance

Approval of Agenda-- MOTION BY TRUDY TO ADD NEWSLETTER TO AGENDA. COREY SUPPORT. MOTION CARRIED.

Approval of Minutes of the March 20, 2017 meeting --MOTION BY COREY. SUPPORT GREG. MOTION CARRIED.

Presentations--NONE

Old Business—NEWSLETTER. DISCUSSION ON USING KAREN DAGGETT’S BEDFORD PRESS. MOTION BY NATE ELARTON TO USE THE BEDFORD PRESS TO DISTRIBUTE THE NEXT BEDFORD TOWNSHIP NEWSLETTER. SUPPORT GREG. MOTION CARRIED.

NATE REPORT THAT HE TALKED TO MICKEY KENT FROM BEDFORD HIGH SCHOOL. THE SCHOOL DOES NOT USE THE EDUCATIONAL CHANNEL GIVEN TO THEM TO BROADCAST ON BUCKEYE CABLE. ALL AGREE THAT NATE SHOULD CHECK WITH SCHOOL SUPERINTENDENT AS RECOMMENDED BY KENT.

TRUDY TALKED TO NANCY GIN ABOUT CHARACTER GENERATOR AND THE USE OF CONTRASTING BACKGROUNDS/GRAPHICS.

DISCUSS ON LOOKING INTO MOBILITY(CHICAGO CONTACT-- REBECCA FALCON) AND SPECTUM FOR FUTURE SERVICE TO BEDFORD RESIDENTS.

FRANCHISE AGREEMENT NEEDS TO BE REVIEWED. WE WILL START TO LOOK OVER SO WE ARE READY FOR NEXT CONTRACT. NEED TO ADDRESS CHARGES SUCH AS PAPER BILL FEES AND MANY OTHER ISSUES.

New Business--NONE

Comments from the Public--NONE

Commissioner’s Comments--NONE

Adjournment –MOTION BY NATE TO ADJOURN. SUPPORT COREY. MOTION CARRIED. MEETING ADJOURNED AT 6:48PM.

NEXT MTG MAY 8TH. Nate will not be able to attend May meeting.

Submitted-- by Lori Welling for Jodi Russ.

LAW OFFICES OF
LENNARD, GRAHAM & GOLDSMITH
A PROFESSIONAL LIMITED LIABILITY COMPANY
222 WASHINGTON STREET
MONROE, MICHIGAN 48161-2146

W. THOMAS GRAHAM
PHILIP D. GOLDSMITH
MARTIN J. KAMPRATH

JAHN F. LANDIS

OF COUNSEL
MICHAEL W. LABEAU
RETIRED CIRCUIT JUDGE

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www.lggattys.com

April 28, 2017

Ms. Trudy L. Hershberger
Bedford Township Clerk
Bedford Township Government Center
8100 Jackman Road
P.O. Box H
Temperance, MI 48182

Bedford Township Communication and Cable Committee
c/o Ms. Trudy L. Hershberger
Bedford Township Government Center
8100 Jackman Road
P.O. Box H
Temperance, MI 48182

RE: Buckeye and Charter Cable Renewals

Dear Trudy and Communication/Cable Committee Members:

I had an occasion to review the long history of cable providing service in Bedford Township recently. I went through all of the many Ordinances that had involved cable providing service going back into the 1970's. There have been many cable providers for Bedford Township. I believe the main Cable Franchise Ordinance/Agreement that involves Buckeye Cable is Ordinance 86. It appears that the term of the Ordinance/Agreement ends on March 22, 2019. Something will need to be done to replace or amend Ordinance 86 and the Cable Agreement. I am enclosing a copy of Ordinance 86, and amending Ordinance 86A-1. These are both Ordinances, and together, they constitute the Agreement with Buckeye.

Further, although we oftentimes forget about this, Charter Communications has a Cable Agreement with Bedford Township for a small portion of the Township. I am enclosing a copy of the paperwork related to Charter Communications, at least what I am aware of and have copies of.

I am sending you a copy of Act 480 of the Michigan Public Acts of 2006, which is the Uniform Video Services Local Franchise Act. This is important, because this State law now controls cable franchises. Buckeye and Bedford Township have been operating under an old Franchise Ordinance/Agreement, because it was "grandfathered in", and that will be the case until March 22, 2019. After that, I am afraid any new agreement will need to comply with Act 480. It just so happens that the arrangement between Charter Communications and Bedford Township does comply, or at least it did in the beginning, with Act 480. It is difficult to read,

Page Two
April 28, 2017

and I did not make a complete study, but it appears this arrangement between Charter Communications and Bedford Township began in 2007, and the term seemed to indicate it was a ten year term. I am not sure whether there has been any extension.

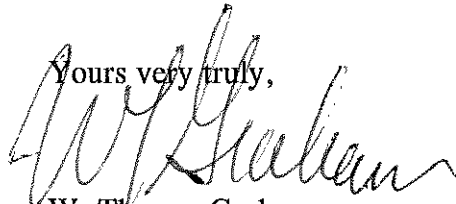
At first, we would all consider the Charter Communications cable arrangement to be unimportant as compared to Buckeye because of the few subscribers in Bedford Township that receive their cable service from Charter Communications. However, that would be a mistake, because it is possible that the monetary arrangement in one cable agreement can affect the monetary arrangement in the other cable agreement. This is because there can be no unfair competition. Paying different franchise fees can be construed as providing unfair competition.

I have talked to the State of Michigan, and I would let you know, in case it becomes important, that I was dealing with the Michigan Public Service Commission, specifically their Video Franchising Section. I dialed up (517) 284-8910, and did talk with some very knowledgeable people about cable arrangements in Bedford Township. Maybe they could help you somewhat. I will help also.

I am providing you with a copy of a blank packet for a standard Cable Franchise Agreement, which is the form I believe Bedford Township will need to use with Buckeye going forward (after the current arrangement terminates). I am also enclosing a copy of the Charter Communications Agreement. It seems to be the same agreement. The first thing I want to highlight, is the fact that Charter negotiated its own franchise fee. It is not clear to me what that franchise fee is, but it might be 3%. It says 3% at the expiration of the Franchise Agreement, and that the current rate will be what was in effect before, so again, I am not sure, but you need to take this into account because if Buckeye is paying 4%, and Charter is paying 3%, that is a potential problem. I would not consider this a problem currently, but it is definitely something to be aware of as you negotiate new agreements with one or both of the cable providers.

Someone might bring up the Metro Act which is Public Act 48 of the Michigan Public Acts of 2002. This has to do with utility companies utilizing the rights-of-way in the Township. Of course, both cable providers use the road rights-of-way. There may be some small payment back to the Township from the State. That is something that I do not believe you need to be concerned with, because it does not have anything to do with cable service and cable franchise fees. I mention it only in case someone else mentions it.

Best of luck. I hope that I have helped you.

Yours very truly,

W. Thomas Graham

WTG/db
Enclosures

BEDFORD TOWNSHIP ORDINANCE NO. 86A-1

AMENDMENT TO CABLE SYSTEM FRANCHISE TO
BUCKEYE CABLEVISION, INC.

An Ordinance enacted pursuant to the authority granted by Michigan Public Act 246 of 1945, as amended, and the Federal Communications Act of 1934, as amended, to amend the Bedford Township Telecommunications System Regulatory Ordinance with Buckeye Cablevision, Inc., regarding Ordinance No. 86, and to amend the franchise provided for therein, in order to clarify any provision regarding funding of local origination broadcasting expenses, to make clear the location of education and general/government studios, and to also confirm that Bedford Township Ordinance No. 79 is repealed in its entirety; and to repeal all ordinances and regulations or parts of ordinances and regulations in conflict thereof; and to provide for the public health, safety and welfare of the citizens and property of the Township of Bedford.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF BEDFORD, COUNTY OF MONROE, STATE OF MICHIGAN, HEREBY ORDAINS:

SECTION 1. CLARIFICATION OF PROVISION REGARDING FUNDING OF LOCAL ORIGINATION BROADCASTING EXPENSES.

Ordinance No. 86 is hereby amended by the deletion of paragraph (h) of SECTION 8, in its entirety, and the inserting in lieu thereof the following new replacement paragraph (h) of SECTION 8:

SECTION 8. COMPENSATION

....(h) The Township and Buckeye understand, acknowledge and agree that the Township may, in its sole discretion, provide local origination programming for broadcast over the channel(s) provided by Buckeye for such purposes. The Township may from time to time in its discretion enter into agreements with Buckeye, and/or any other private, public or educational entity for the provision of local origination programming and/or other related services. Payment of and receipt by the Township of Buckeye's Franchise Fee paid hereunder shall satisfy any obligation of Buckeye to otherwise contribute to any expenses of any local origination programming or studios.

SECTION 2. CLARIFICATION OF PROVISION REGARDING PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS PROGRAMMING.

Ordinance No. 86 is hereby amended by the deletion of SECTION 9, in its entirety, and the inserting in lieu thereof the following new replacement SECTION 9:

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS PROGRAMMING.

Buckeye will provide Bedford Township with two channels on the portion of its system delivered to Township residents. The channel positions for these two channels will be determined through cooperative discussion between Buckeye and the Township. One of those channels will carry educational local origination programming and alpha-numeric information generated from Bedford High School; and the other channel, in the Township's sole discretion, may carry general and governmental local origination programming, alpha-numeric information generated by the Township, and public access, if the Township so determines. The studio(s) for educational local origination programming and alpha-numeric information generated from Bedford High School, shall be physically located at Bedford High School. The studio(s) for the general and governmental local origination programming, alpha-numeric information generated by the Township, and public access if the Township so determines, shall be physically located at the Bedford Township Hall or other municipal building, or at any other location, public or private, designated by the Township. Buckeye will make provisions to enable Township employees to generate alpha-numeric information from the Township studio location, and Bedford Public Schools employees to generate alpha-numeric information from the Bedford Public Schools studio location. Buckeye also will make provisions to obtain the video feeds at both the Bedford Public Schools studio and the Township studio, and transport them to a location so the feeds can be inserted in the video programming Buckeye provides to Township residents. Buckeye and the Township shall negotiate providing digital service on the School and Township channels when digital services are available to subscribers in Bedford.

SECTION 3. REPEAL OF BEDFORD TOWNSHIP ORDINANCE NO. 79.

Bedford Township Ordinance No. 79, as may have been amended, and the franchise granted therein, is hereby repealed, to the extent that it has not been previously repealed, such

that the entire Ordinance No. 79, and the franchise granted therein, including any and all obligations or duties, of whatever nature, which may have been owed by either the Township or Buckeye to the other party under Ordinance No. 79, is hereby repealed in its entirety. All other ordinances and parts of ordinances in conflict with this Ordinance, are, to the extent such conflict, repealed. Bedford Township Ordinance No. 86 is hereby confirmed as the sole ordinance and franchise for Buckeye and its customers in Bedford Township.

SECTION 4. SEVERABILITY.

This Ordinance, and the various parts, sentences, paragraphs, sections, subsections, phrases, and clauses thereof are hereby declared to be severable, and if any of them are adjudged to be unconstitutional or invalid, it is hereby provided that the remainder of the Ordinance shall not be affected.

SECTION 5. EFFECTIVE DATE.


This Ordinance shall be effective immediately after it or a summary of it has been published in a newspaper of general circulation in the Township of Bedford.

BEDFORD TOWNSHIP BOARD,
BEDFORD TOWNSHIP,
COUNTY OF MONROE,
STATE OF MICHIGAN

By: 

Robert Schockman
Bedford Township Clerk

AUTHENTICATED:

By: 

Walt Wilburn
Bedford Township Supervisor

I, Robert Schockman, do hereby certify that I am the duly elected and acting Township Clerk of the Township of Bedford, and I do hereby certify that this Ordinance was adopted by the Township Board of the Township of Bedford, Monroe County, Michigan, at a regular meeting of the Township Board held at the Bedford Township Hall, Temperance, Michigan, on the 3 day of October, 2006.

The vote on said Ordinance, 7 members being present and 0 members being absent, was as follows:

Members' Last Names

Voting in Favor:

<u>Francis</u>	<u>Meyer</u>
<u>O'Dell</u>	<u>Schockman</u>
<u>Steiner</u>	<u>Steinman</u>
<u>Wilburn</u>	

Voting Against:

<u></u>	<u></u>
<u></u>	<u></u>

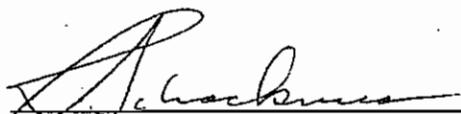
Abstained:

<u></u>	<u></u>
<u></u>	<u></u>

Absent:

<u></u>	<u></u>
<u></u>	<u></u>

Dated: October 3, 2006



Robert Schockman
Bedford Township Clerk

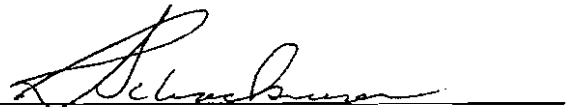
ATTEST:



Walt Wilburn
Bedford Township Supervisor

I, Robert Schockman, certify that I am the clerk of the Township of Bedford, and I do hereby certify that this Ordinance, or a summary thereof, was published on the 14 day of October, 2006 in the Monroe Evening News, Monroe County, Michigan, a newspaper of general circulation in the Township of Bedford, within thirty (30) days after adoption of the Ordinance.

Dated: October 14, 2006



Robert Schockman
Bedford Township Clerk

ATTEST:



Walt Wilburn
Bedford Township Supervisor

ADOPTED: October 3, 2006

PUBLISHED: October 14, 2006

EFFECTIVE: October 15, 2006

MJK/alm
LGGPLC/Bedford.ord/buckeye.86A-1
REV 9/13/06

Ked

**RESOLUTION TO MAINTAIN BEDFORD TOWNSHIP
CABLE SYSTEM FRANCHISE TO BUCKEYE CABLEVISION, INC. PURSUANT TO
SECTION 13 OF THE UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT**

I. Statements in Support of Resolution

THE TOWNSHIP BOARD OF THE TOWNSHIP OF BEDFORD, COUNTY OF MONROE, STATE OF MICHIGAN, STATES:

WHEREAS, the Uniform Video Services Local Franchise Act ("the Act"), that being Michigan Public Act 480 of 2006, became effective on or about January 1, 2007; and,

WHEREAS, the Act was established to provide for uniform video service local franchises, to promote competition in providing video services in this state, to ensure local control of rights-of-way, to provide for fees payable to local units of government, to provide for local programming, to prescribe the powers and duties of certain state and local agencies and officials, and to provide for penalties; and,

WHEREAS, pursuant to Section 13 of the Act, that being M.C.L. § 484.3313, the Township Board of the Township of Bedford is authorized to enter into a voluntary franchise agreement that includes terms and conditions different than those required under the Uniform Video Services Local Franchise Act; and,

WHEREAS, the Township Board of the Township of Bedford did adopt the Cable System Franchise to Buckeye Cablevision, Inc. Ordinance, that being Bedford Township Ordinance No. 86, on March 4, 1999, and amended said Ordinance on October 6, 2006; and,


WHEREAS, the Township Board of the Township of Bedford and Buckeye Cablevision, Inc. intend to maintain their current agreement as it is stated in the Bedford Township Cable System Franchise to Buckeye Cablevision, Inc. Ordinance, as amended pursuant to Ordinance No. 86A-1, and as further amended;

II. Resolution


NOW, THEREFORE, THE TOWNSHIP BOARD OF THE TOWNSHIP OF BEDFORD HEREBY RESOLVES AS FOLLOWS:

RESOLVED, pursuant to Section 13 of the Uniform Video Services Local Franchise Act, that being Michigan Public Act 480 of 2006, the Township of Bedford and Buckeye Cablevision, Inc. shall continue to operate under the terms and conditions established in the Cable System Franchise to Buckeye Cablevision, Inc. Ordinance, that being Bedford Township Ordinance No. 86, as amended by Ordinance No. 86A-1, and as further amended.

THE TOWNSHIP BOARD, BEDFORD
TOWNSHIP, COUNTY OF MONROE,
STATE OF MICHIGAN

By: 
Robert Schockman,
Bedford Township Clerk

AUTHENTICATED:


Walt Wilburn,
Bedford Township Supervisor


I, Robert Schockman, do hereby certify that I am the duly elected and acting Township Clerk of the Township of Bedford, and I do hereby certify that this Resolution was adopted by the Township Board of the Township of Bedford, Monroe County, Michigan, at a regular meeting of the Township Board held at the Bedford Township Hall, Temperance, Bedford Township, Michigan, on the 15 day of May, 2007.

In favor of the Resolution:


7

Against the Resolution:

0


Robert Schockman,
Bedford Township Clerk

ATTEST:


Walt Wilburn,
Bedford Township Supervisor

LDG
Buckeye/cablers

CABLE SYSTEM FRANCHISE RESOLUTION ACKNOWLEDGMENT

NOW COMES, Buckeye Cablevision, Inc., an Ohio Corporation, authorized to do business in the State of Michigan, by and through its President, W.H. Carstensen, who hereby acknowledges and agrees as follows:

A copy of Bedford Township's proposed Resolution to maintain Bedford Township Cable System Franchise to Buckeye Cablevision, Inc. pursuant to Section 13 of the Uniform Video Services Local Franchise Act, adopted or about to be adopted on the 15th day of May, 2007, has been received and examined by Buckeye Cablevision, Inc.

WITNESSETH:

BUCKEYE CABLEVISION, INC.

[Signature]

By: W.H. Carstensen

Carstensen

Title: PRESIDENT

STATE OF Ohio)
) ss.
COUNTY OF Lucas)

I hereby certify that on ~~this~~ ~~XXXXXX~~ ~~day of~~ ~~MAY~~ June 6, 2007, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared W.H. Carstensen, known to me to be the President of Buckeye Cablevision, Inc., and that he acknowledged executing the foregoing instrument in the presence of two subscribing witnesses freely and voluntarily under the authority vested in him under the by-laws of Buckeye Cablevision, Inc., and that the seal affixed thereto is the true corporation seal of Buckeye Cablevision, Inc.

WITNESS, my hand and the official seal in the County and State aforesaid, this ~~XXXX~~ 6th day of ~~May~~ June, 2007.

[Signature]
Penny Kay Perrine, Notary Public
Lucas County, Ohio
My Commission Expires: 05/23/12
Acting in the County of Lucas

**RESOLUTION TO REPEAL PRIOR INCONSISTENT MERCOM, INC.
RESOLUTION AND TO ADOPT UNIFORM VIDEO SERVICE LOCAL FRANCHISE
AGREEMENT WITH CC MICHIGAN, LLC, d/b/a, CHARTER COMMUNICATIONS
(PREVIOUSLY MERCOM, INC.)**

I. Statements in Support of Resolution

THE TOWNSHIP BOARD OF THE TOWNSHIP OF BEDFORD, COUNTY OF MONROE, STATE OF MICHIGAN, STATES:

WHEREAS, Bedford Township granted Mercom, Inc., d/b/a River Raisin Cablevision, a cable franchise and various rights of way pursuant to the "Resolution Granting Mercom, Inc. a Right-of-way and Municipal Consent to Place Communications Facilities with the Boundaries of Bedford Township, County of Monroe, State of Michigan" on or about December 17, 1996.

WHEREAS, the Uniform Video Services Local Franchise Act ("the Act"), that being Michigan Public Act 480 of 2006, became effective on or about January 1, 2007; and,

WHEREAS, the Act was established to provide for uniform video service local franchises, to promote competition in providing video services in this state, to ensure local control of rights-of-way, to provide for fees payable to local units of government, to provide for local programming, to prescribe the powers and duties of certain state and local agencies and officials, and to provide for penalties; and,

WHEREAS, pursuant to the Act, CC Michigan, LLC (d/b/a Charter Communications) applied to Bedford Township for a cable franchise by submitting the Uniform Video Service Local Franchise Agreement, pursuant to Public Act 480 of 2006; and,

WHEREAS, the Township Board of the Township of Bedford and CC Michigan, LLC (d/b/a Charter Communications) intend to enter into the Uniform Video Service Local Franchise Agreement pursuant to Public Act 480 of 2006;

II. Resolution

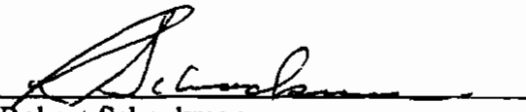
NOW, THEREFORE, THE TOWNSHIP BOARD OF THE TOWNSHIP OF BEDFORD HEREBY RESOLVES AS FOLLOWS:

RESOLVED, the Resolution adopted by the Township Board of the Township of Bedford on December 17, 1996, entitled, "Resolution Granting Mercom, Inc. a Right-of-way and Municipal Consent to Place Communications Facilities with the Boundaries of Bedford Township, County of Monroe, State of Michigan" is hereby repealed, and further

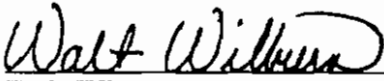
RESOLVED, pursuant to the Uniform Video Services Local Franchise Act, that being Michigan Public Act 480 of 2006, the Township Board of the Township of Bedford hereby approves, directs and authorizes the Supervisor and Clerk to execute and enter into the standard Uniform Video Service Local Franchise Agreement with CC Michigan, LLC (d/b/a Charter Communications).

THE TOWNSHIP BOARD, BEDFORD
TOWNSHIP, COUNTY OF MONROE,
STATE OF MICHIGAN

By:


Robert Schockman,
Bedford Township Clerk

AUTHENTICATED:


Walt Wilburn,
Bedford Township Supervisor

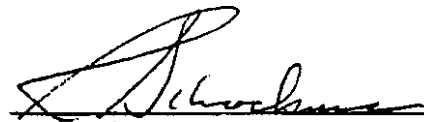
I, Robert Schockman, do hereby certify that I am the duly elected and acting Township Clerk of the Township of Bedford, and I do hereby certify that this Resolution was adopted by the Township Board of the Township of Bedford, Monroe County, Michigan, at a regular meeting of the Township Board held at the Bedford Township Hall, Temperance, Bedford Township, Michigan, on the 10th day of July, 2007.

In favor of the Resolution:


7

Against the Resolution:

0


Robert Schockman,
Bedford Township Clerk

ATTEST:


Walt Wilburn,
Bedford Township Supervisor

LDG
Bedford/chartercablers

UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT
Act 480 of 2006

AN ACT to provide for uniform video service local franchises; to promote competition in providing video services in this state; to ensure local control of rights-of-way; to provide for fees payable to local units of government; to provide for local programming; to prescribe the powers and duties of certain state and local agencies and officials; and to provide for penalties.

History: 2006, Act 480, Eff. Jan. 1, 2007.

The People of the State of Michigan enact:

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: 2006, Act 480, Eff. Jan. 1, 2007.

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 (c).
- (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 (c).
- (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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Iff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

***** 484.3306 Subsection (13) does not apply after December 31, 2009 *****

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, barter, 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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

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)(f):

(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: 2006, Act 480, Eff. Jan. 1, 2007;—Am. 2009, Act 4, Imd. Eff. Apr. 2, 2009.

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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

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: 2006, Act 480, Eff. Jan. 1, 2007.

484.3314 Violation; remedies and penalties; costs; appeal and review.

Sec. 14. (1) After notice and hearing, if the commission finds that a person has violated this act, the commission shall order remedies and penalties to protect and make whole persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Except as otherwise provided under subdivision (b), order the person to pay a fine for the first offense of not less than \$1,000.00 or more than \$20,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than \$2,000.00 or more than \$40,000.00.

(b) If the video service provider has less than 250,000 telecommunication access lines in this state, order the person to pay a fine for the first offense of not less than \$200.00 or more than \$500.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than \$500.00 or more than \$1,000.00.

(c) If the person has received a uniform video service local franchise, revoke the franchise.

(d) Issue cease and desist orders.

(2) Notwithstanding subsection (1), a fine shall not be imposed for a violation of this act if the provider has otherwise fully complied with this act and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the provider.

(3) If the commission finds that a party's complaint or defense filed under this section is frivolous, the commission shall award to the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and their attorney.

(4) Any party of interest shall have the same rights to appeal and review an order or finding of the commission under this act as provided under the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2604.

History: 2006, Act 480, Eff. Jan. 1, 2007.

***** 484.3315 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 2015 *****

484.3315 Costs to commission in exercising duties; assessment of amount against each video service provider; limitation; deduction; credit of payments to special account; applicability of section.

Sec. 15. (1) Effective January 1, 2010, 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 that amount 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 total assessment under this section shall not exceed \$1,000,000.00 annually.

(2) For the state fiscal year commencing October 1, 2009 and annually thereafter, there shall be deducted from any amount to be assessed under subsection (1) an amount equal to the difference by which the actual expenditures of the commission attributable to exercising its duties under this act for the previous fiscal year are less than the amount assessed against each video service provider in the previous fiscal year. The deductions shall be made in the same proportion as the original assessment in subsection (1).

(3) All money paid into the state treasury by a video service provider under subsection (1) shall be credited to a special account, to be utilized solely to finance the cost to the commission of exercising its duties under this act.

(4) This section does not apply after December 31, 2015.

History: Add. 2009, Act 191, Imd. Eff. Dec. 22, 2009.

INSTRUCTIONS FOR UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

Pursuant to 2006 Public Act 480, MCL 484.3301 *et seq*, any Video Service Provider seeking to provide video service in one or more service areas in the state of Michigan after January 30, 2007, shall file an application for a Uniform Video Service Local Franchise Agreement with the Local Unit of Government ("Franchising Entity") that the Provider wishes to service. Pursuant to Section 2(2) of 2006 PA 480, "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." Procedures applicable to incumbent video service providers are set forth below.

As of the effective date (January 1, 2007) of the Act, no existing franchise agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the agreement. The incumbent video Provider, at its option, may continue to provide video services to the Franchising Entity by electing to do one of the following:

1. 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.
2. Continue under the existing franchise agreement amended to include only those provisions required under a uniform video service local franchise.
3. Continue to operate under the terms of an expired franchise until a uniform video service local franchise agreement takes effect. An incumbent video Provider with an expired franchise on the effective date has 120 days after the effective date of the Act to file for a uniform video service local franchise agreement.

On the effective date (January 1, 2007) of the 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.

If, at a subsequent date, the Provider would like to provide video service to an additional Local Unit of Government, the Provider must file an additional application with that Local Unit of Government.

The forms shall meet the following requirements:

- The Provider must complete both the "Uniform Video Service Local Franchise Agreement" and "Attachment 1 - Uniform Video Service Local Franchise Agreement" forms if they are seeking a new/renewed Franchise Agreement, and send the forms by mail (certified, registered, first-class, return receipt requested, or by a nationally recognized overnight delivery service) to the appropriate Franchising Entity. Until otherwise officially notified by the Franchising Entity, the forms shall be sent to the Clerk or any official with the responsibilities or functions of the Clerk in the Franchising Entity. **"Attachment 2 - Uniform Video Service Local Franchise Agreement" is not required to be filed at this time unless it is being used regarding amendments, terminations, or transfers pertaining to an existing Uniform Video Service Local Franchise Agreement. (Refer to Sections X to XII of the Agreement, as well as Section 3(4-6) of the Act.)**
- Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and **MUST BE KEPT CONFIDENTIAL.**
 1. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:

"[insert PROVIDER'S NAME]
[CONFIDENTIAL INFORMATION]"

2. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.
3. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

- Responses to all questions must be provided and must be amended appropriately when changes occur.
- All responses must be printed out, typed, signed/dated (where appropriate), and mailed (certified, registered, first class, return receipt requested, or by a national recognized overnight delivery service) to the appropriate party.
- The Agreement and Attachments are templates. Tab through the documents and fill in as appropriate, use the appropriate "dropdown box" (City/Village/Township) when indicated.
- For sections that need explanation, if the Provider runs out of space, the Provider should then submit the application with typed attachments that are clearly identified.
- The 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. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."
- 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. The Provider shall notify both the Franchising Entity and the Michigan Public Service Commission of such an approved and completed Agreement by completing **Attachment 3 - Uniform Video Service Local Franchise Agreement**.
- For changes to an existing Uniform Video Service Local Franchise Agreement (amendments, transfers, or terminations), the Provider must complete the "**Attachment 2 - Uniform Video Service Local Franchising Entity**" form, and send the form to the appropriate Franchising Entity.
- For information that is to be submitted to the Michigan Public Service Commission, please use the following address:

Michigan Public Service Commission
Attn: Video Franchising
P.O. Box 30221
Lansing, MI 48909

Fax: (517) 284-8200

Questions should be directed to the Telecommunications Division, Michigan Public Service Commission at (517) 284-8190.

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

THIS UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT ("Agreement") is made, pursuant to 2006 PA 480, MCL 484.3301 *et seq.* (the "Act") by and between the City of [insert NAME of City/Village/Township], a Michigan municipal corporation (the "Franchising Entity"), and [insert NAME of Video Service Provider], a [insert STATE of incorporation/formation] corporation doing business as [insert DBA name].

I. Definitions

For purposes of this Agreement, the following terms shall have the following meanings as defined in the 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. "FCC" means the Federal Communications Commission.
- G. "Gross Revenue" means that term as described in Section 6(4) of the Act and in Section VI(D) of the Agreement.
- H. "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.
- I. "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.
- J. "IPTV" means internet protocol television.
- K. "Local unit of government" means a city, village, or township.
- L. "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.
- M. "METRO Act" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 *et seq.*
- N. "Open video system" or "OVS" means that term as defined in 47 USC 573.
- O. "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
- P. "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.
- Q. "Term" means the period of time provided for in Section V of this Agreement.
- R. "Uniform video service local franchise agreement" or "franchise agreement" means the franchise agreement required under the Act to be the operating agreement between each franchising entity and video provider in this state.
- S. "Video programming" means that term as defined in 47 USC 522(20).
- T. "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.
- U. "Video service provider" or "Provider" means a person authorized under the Act to provide video service.
- V. "Video service provider fee" means the amount paid by a video service provider or incumbent video provider under Section 6 of the Act and Section VI of this Agreement.

II. Requirements of the Provider

- A. An unfranchised Provider will not provide video services in any local unit of government without first obtaining a uniform video service local franchise agreement as provided under **Section 3 of the Act** (except as otherwise provided by the Act).
- B. The Provider shall file in a timely manner with the Federal Communications Commission all forms required by that agency in advance of offering video service in Michigan.
- C. The Provider agrees to comply with all valid and enforceable federal and state statutes and regulations.
- D. 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.
- E. The Provider shall 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.
- F. The Provider shall comply with the public, education, and government programming requirements of Section 4 of the Act.
- G. The Provider shall 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 Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
 - i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(1)(cc); MCL 445.903(1)(ff) through (jj); MCL 445.903(2); MCL 445.905; MCL 445.906; MCL 445.907; MCL 445.908; MCL 445.910; MCL 445.911; MCL 445.914; MCL 445.915; MCL 445.916; MCL 445.918.
- H. The Provider agrees to comply with in-home wiring and consumer premises wiring rules of the Federal Communications Commission applicable to cable operators.
- I. The Provider shall comply with the Consumer Privacy Requirements of 47 USC 551 applicable to cable operators.
- J. If the Provider is an incumbent video provider, it shall 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 the Act.
- K. The Provider agrees that before offering video services within the boundaries of a local unit of government, the video Provider shall enter into a Franchise Agreement with the local unit of government as required by the Act.
- L. The Provider understands that as the effective date of the Act, no existing Franchise Agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the Agreement.
- M. The Provider provides an exact description of the video service area footprint to be served, pursuant to **Section 2(3)(e) of the Act**. 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 **Section 2(3)(e) of the Act** must be noted. The Provider will provide this information in Attachment 1 - Uniform Video Service Local Franchise Agreement.
- N. The Provider is required to pay the Provider fees pursuant to **Section 6 of the Act**.

III. Provider Providing Access

- A. The 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.
- B. It is a defense to an alleged violation of Paragraph A if the Provider has met either of the following conditions:
 - i. Within 3 years of the date it began providing video service under the Act and the Agreement; at least 25% of households with access to the Provider's video service are low-income households.
 - ii. Within 5 years of the date it began providing video service under the Act and Agreement and from that point forward, at least 30% of the households with access to the Provider's video service are low-income households.
- C. **[If the Provider is using telecommunication facilities]** to provide video services and has more than 1,000,000 telecommunication access lines in Michigan, 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 Michigan within 3 years of the date it began providing video service under the Act and Agreement and to a number not less than 50% of these households within 6 years. **The video service Provider is not required to meet the 50% requirement in this paragraph 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.**

- D. The Provider may apply to the Franchising Entity, and in the case of paragraph C, 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:
- i. The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.
 - ii. Developments or buildings not being subject to competition because of existing exclusive service arrangements.
 - iii. Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
 - iv. Natural disasters
 - v. Factors beyond the control of the Provider
- E. 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.
- F. The Provider shall file an annual report with the Franchising Entity and the Commission regarding the progress that has been made toward compliance with paragraphs B and C.
- G. Except for satellite service, the provider may satisfy the requirements of this paragraph and Section 9 of the Act 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 Paragraph II(E) of this Agreement.

IV. Responsibility of the Franchising Entity

- A. The Franchising Entity hereby grants authority to the Provider to provide Video Service in the Video Service area footprint, as described in this Agreement and Attachments, as well as the Act.
- B. The Franchising Entity hereby grants authority to the Provider to use and occupy the Public Rights-of-way in the delivery of Video Service, subject to the laws of the state of Michigan and the police powers of the Franchising Entity.
- C. The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by the 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. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."
- D. The 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 **Section 3(3) of the Act**, the Franchise Agreement shall be considered complete and the Franchise Agreement approved.
- i. If time has expired for the Franchising Entity to notify the Provider, The Provider shall send (via mail: certified or registered, or by fax) notice to the Franchising Entity and the Commission, using Attachment 3 of this Agreement.
- E. The Franchising Entity shall allow a 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.
- F. The Franchising Entity may not discriminate against a video service provider to provide video service for any of the following:
- i. The authorization or placement of a video service or communications network in public right-of-way.
 - ii. Access to a building owned by a governmental entity.
 - iii. A municipal utility pole attachment.
- G. The Franchising Entity may impose on a 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 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 Provider in the public right-of-way or for general revenue purposes.

- H. The Franchising Entity shall not require the provider to obtain any other franchise, assess any other fee or charge, or impose any other franchise requirement than is allowed under the Act and this Agreement. For purposes of this Agreement, 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.
- I. Notwithstanding any other provision of the Act, the Provider shall not be required to comply with, and the Franchising Entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by **Section 9 of the Act**.
- J. The Franchising Entity is subject to the penalties provided for under Section 14 of the Act.

V. Term

- A. This Franchise Agreement shall be for a period of 10 years from the date it is issued. The date it is issued shall be calculated either by (a) the date the Franchising Entity approved the Agreement, provided it did so within 30 days after the submission of a complete franchise agreement, or (b) the date the Agreement is deemed approved pursuant to **Section 3(3) of the Act**, if the Franchising Entity either fails to notify the Provider regarding the completeness of the Agreement or approve the Agreement within the time periods required under that subsection.
- B. Before the expiration of the initial Franchise Agreement or any subsequent renewals, the Provider may apply for an additional 10-year renewal under **Section 3(7) of the Act**.

VI. Fees

- A. 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:
 - i. If there is an existing Franchise Agreement, an amount equal to the percentage of gross revenue paid to the Franchising Entity by the incumbent video Provider with the largest number of subscribers in the Franchising Entity.
 - ii. At the expiration of an existing Franchise Agreement or if there is no existing Franchise Agreement, an amount equal to the percentage of gross revenue as established by the Franchising Entity of _____% (percentage amount to be inserted by Franchising Entity which shall not exceed 5%) and shall be applicable to all providers
- B. The fee 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.
- C. 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 the Act.
- D. 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.
 - 1. **Gross revenues shall include all of the following:**
 - i. 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.
 - ii. Any franchise fee imposed on the Provider that is passed on to subscribers.
 - iii. Compensation received by the Provider for promotion or exhibition of any products or services over the video service.
 - iv. Revenue received by the Provider as compensation for carriage of video programming on that Provider's video service.
 - v. All revenue derived from compensation arrangements for advertising to the local franchise area.
 - vi. Any advertising commissions paid to an affiliated third party for video service advertising.
 - 2. **Gross revenues do not include any of the following:**
 - i. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt.
 - ii. Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset by subdivision (D)(i) and to the extent the refund, rebate, credit, or discount is attributable to the video service.

- iii. 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 functionality integrated, with video service.
 - iv. 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.
 - v. 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.
 - vi. 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.
 - vii. 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.
 - viii. Sales of capital assets or surplus equipment.
 - ix. Reimbursement by programmers of marketing costs actually incurred by the Provider for the introduction of new programming.
 - x. 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.
- E. 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.
- F. 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.
- G. The Provider is entitled to a credit applied toward the fees due under **Section 6(1) of the Act** 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 (METRO 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 **METRO Act**. The Provider is not eligible for a credit under this section unless the provider has taken all property tax credits allowed under the **METRO Act**.
- H. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
- I. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, 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.
- J. The 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) of the Act**, applied against the amount of the subscriber's monthly bill.
- K. 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 the Act.

VII. Public, Education, and Government (PEG) Channels

- A. The 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 the Act** or as provided under **Section 4(14) of the Act**.
- B. 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 a 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.
- C. 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.

- D. The person producing the broadcast is solely responsible for all content provided over designated public, education, or government channels. The video service Provider shall not exercise any editorial control over any programming on any channel designed for public, education, or government use.
- E. The 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.
- F. If a Franchising Entity seeks to utilize capacity pursuant to **Section 4(1) of the Act** or an agreement under **Section 13 of the Act** to provide access to video programming over one or more PEG 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 of the Act**. The video service Provider shall have 90 days to begin providing access as requested by the Franchising Entity. The number and designation of PEG access channels shall be set forth in an addendum to this agreement effective 90 days after the request is submitted by the Franchising Entity.
- G. A PEG channel shall only be used for noncommercial purposes.

VIII. PEG Fees

- A. The video service Provider shall also pay to the Franchising Entity as support for the cost of PEG access facilities and services an annual fee equal to one of the following options:
 - 1. If there is an existing Franchise on the effective date of the Act, the fee (enter the fee amount _____) 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;
 - 2. At the expiration of the existing Franchise Agreement, the amount required under (1) above, which is _____% of gross revenues. (The amount under (1) above is not to exceed 2% of gross revenues);
 - 3. If there is no existing Franchise Agreement, a percentage of gross revenues as established by the Franchising Entity and to be determined by a community need assessment, is _____% of gross revenues. (The percentage that is established by the Franchising Entity is not to exceed 2% of gross revenues.); and
 - 4. An amount agreed to by the Franchising Entity and the video service Provider.
- B. The fee required by this section shall be applicable to all providers, pursuant to Section 6(9) of the Act.
- C. The fee 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.
- D. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
- E. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, 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.
- F. The 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) of the Act**, applied against the amount of the subscriber's monthly bill.
- G. 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 the Act.

IX. Audits

- A. 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 of the Act** 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 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.
- B. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, 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.

X. Termination and Modification

This 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 of the Act**, by the Provider by submitting notice to the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XI. Transferability

This 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. The Provider will use Attachment 2, when notifying the Franchising Entity. The successor in interest will assume the rights and responsibilities of the original provider and will also be required to complete their portion of the Transfer Agreement located within Attachment 2.

XII. Change of Information

If any of the information contained in the Franchise Agreement changes, the Provider shall timely notify the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XIII. Confidentiality

Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and **MUST BE KEPT CONFIDENTIAL**.

- A. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:
 "[insert PROVIDER'S NAME]
 [CONFIDENTIAL INFORMATION]"
- B. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.
- C. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

XIV. Complaints/Customer Service

- A. The Provider shall establish a dispute resolution process for its customers. Provider shall maintain a local or toll-free telephone number for customer service contact.
- B. The Provider shall be subjected to the penalties, as described under **Section 14 of the Act**, and the Franchising Entity and Provider may be subjected to the dispute process as described in **Section 10 of the Act**.
- C. Each Provider shall annually notify its customers of the dispute resolution process required under **Section 10 of the Act**. Each Provider shall include the dispute resolution process on its website.
- D. Before a customer may file a complaint with the Commission under **Section 10(5) of the Act**, the customer shall first attempt to resolve the dispute through the dispute resolution process established by the Provider in **Section 10(2) of the Act**.
- E. A complaint between a customer and a Provider shall be handled by the Commission pursuant to the process as described in **Section 10(5) of the Act**.
- F. A complaint between a Provider and a franchising entity or between two or more Providers shall be handled by the Commission pursuant to the process described in **Section 10(6) of the Act**.
- G. In connection with providing video services to the subscribers, a provider shall not do any act prohibited by Section 10(1)(a-f) of the Act. The Commission may enforce compliance to the extent that the activities are not covered by **Section 2(3)(l) in the Act**.

Any notices to be given under this Franchise Agreement shall be in writing and delivered to a Party personally, by facsimile or by certified, registered, or first-class mail, with postage prepaid and return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

If to the Franchising Entity:
(must provide street address)

If to the Provider:
(must provide street address)

Township of Bedford:

8100 Jackman, P.O. Box H

Temperance, MI, 48182

CUID MI1906

Attn: Robert Schockman, Clerk

Fax No.: 734-847-7809

Charter Communications

12405 Powerscourt Drive

St. Louis, Missouri 63131

Attn: Legal Department

Fax No.: 314-965-6640

Or such other addresses or facsimile numbers as the Parties may designate by written notice from time to time.

XVI. Miscellaneous

- A. **Governing Law.** This Franchise Agreement shall be governed by, and construed in accordance with, applicable Federal laws and laws of the State of Michigan.
- B. **The parties to this Franchise Agreement** are subject to all valid and enforceable provisions of the Act.
- C. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.
- D. **Power to Enter.** Each Party hereby warrants to the other Party that it has the requisite power and authority to enter into this Franchise Agreement and to perform according to the terms hereof.
- E. **The Provider and Franchising Entity** are subject to the provisions of 2006 Public Act 480.

Township of Bedford, a Michigan Municipal Corporation

By Walt Wilburn
Walt Wilburn
Print Name
Township Supervisor
Title
Address
8100 Jackman, PO Box H
City, State, Zip
Temperance, MI. 48182
Phone
~~734-864-6032~~ 734-847-6791
Fax
734-847-7809
Email
supervisor@bedfordmi.org

CC Michigan, LLC, a Delaware Limited Liability Corporation corporation doing business as Charter Communications

By Mary White
Print Name
Mary White
Title
Central Division President
Address
8413 Excelsior Drive, Suite 120
City, State, Zip
Madison, WI 53717
Phone
608-826-1324
Fax
608-833-0288
Email

FRANCHISE AGREEMENT (*Franchising Entity to Complete*)

Date submitted: _____

Date completed and approved: _____

ATTACHMENT 1

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT
(Pursuant To 2006 Public Act 480)
(Form must be typed)

Date: 3/16/2007		
Applicant's Name: CC Michigan, LLC, dba Charter Communications		
Address 1: 12405 Powerscourt Drive		
Address 2:		Phone: 314-965-0555
City: St. Louis	State: Missouri	Zip: 63131
Federal I.D. No. (FEIN): 13-4029981		

Company executive officers:

Name(s): Neil Smit
Title(s): Chief Executive Officer

Person(s) authorized to represent the company before the Franchising Entity and the Commission:

Name: Vickie Jacobs/ Tim Ransberger		
Title: Director, Charter Communications		
Address: 7372 Davison Rd, Davison, MI. 48423		
Phone: 810-652-1409	Fax: 810-652-1433	Email: vickie.jacobs@chartercom.com

Describe the video service area footprint as set forth in Section 2(3e) of the Act. (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.)

The area provided service is the Township of Bedford. Upon request, Charter Communications shall provide route maps showing the location of the Cable System, to the Municipality, access to "as-built" maps, and updated route maps to reflect any changes. Municipality shall give Grantee a minimum of 48 hours notice of a request to view "as-built" maps, unless there exists an emergency situation requiring earlier viewing. Charter Communications' Local Office and Engineering Contact information (engineering drawings / "as-built" map address) is listed below. This information also applies to 24-hour emergencies:

Technical Operations Manager Name: Lloyd Collins
Local Address: 7372 Davison Road
City, State, Zip: Davison, MI 48423
Phone: 810-652-1422
Fax: 810-654-9471
E-Mail: lloyd.collins@chartercom.com

[Option A: for Providers that Options B and C are not applicable, a description based on a geographic information system digital boundary meeting or exceeding national map accuracy standards]

[Option B: for Providers with 1,000,000 or more access lines in Michigan using telecommunication facilities to provide Video Service, a description based on entire wire centers or exchanges located in the Franchising Entity]

[Option C: for an Incumbent Video Service Provider, it satisfies this requirement by allowing the Franchising Entity to seek right-of-way information comparable to that required by a permit under the METRO Act as set forth in its last cable franchise or consent agreement from the Franchising Entity entered into before the effective date of the Act]

Pursuant to Section 2(3)(d) of the Act, if the Provider is not an incumbent video Provider, provide the date on which the Provider expects to provide video services in the area identified under Section 2(3)(e) (the Video Service Area Footprint).

Date:

For All Applications:

Verification
(Provider)

I, Mary White, of lawful age, and being first duly sworn, now states: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

Name and Title (printed): Mary White, Central Division President

Signature:

Date:

(Franchising Entity)

Bedford Township, a Michigan municipal corporation

By

Walt Wilburn

Print Name

Township Supervisor

Title

Address

8100 Jackman, PO Box H

City, State, Zip

Temperance, MI. 48182

Phone

~~734-864-6036~~ 734-847-6791

Fax

734-847-7809

Email

supervisor@bedfordmi.org

Date

7/10/07

ATTACHMENT 1