

HOUSE BILL 556

Introduced by Daily, et al.

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| 2/10 | Introduced |
| 2/10 | Referred to Business & Economic Development |
| 2/10 | First Reading |
| 2/10 | Fiscal Note Requested |
| 2/15 | Fiscal Note Received |
| 2/15 | Hearing |
| 2/15 | Tabled in Committee |
| 2/15 | Motion Failed to Take From Committee and Place on 2nd Reading |
| 2/16 | Fiscal Note Printed |

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House BILL NO. 556
INTRODUCED BY *David L. Mendham*
BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A STATE AND LOCAL FRANCHISE FOR THE OPERATION OF A CABLE TELEVISION COMPANY; AUTHORIZING THE PUBLIC SERVICE COMMISSION AND LOCAL GOVERNMENTS TO ISSUE FRANCHISES AND REGULATE CABLE TELEVISION COMPANIES; PROVIDING STANDARDS FOR THE ISSUANCE OF FRANCHISES; PROVIDING FOR THE CONFIRMATION OF EXISTING CABLE TELEVISION CONTRACTS; AMENDING SECTIONS 69-3-101, 69-3-102, AND 69-3-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, effective competition in the cable television market in Montana is nonexistent, and consumers have very limited alternatives to subscribing to cable television; and

WHEREAS, cable television systems in Montana can presently exert an inordinate amount of market power, to the detriment of the public; and

WHEREAS, the United States Congress recently enacted the Cable Television Consumer Protection and Competition Act of 1992 (amending the Communications Act of 1934 and the Cable Communications Policy Act of 1984), which grants significant regulatory jurisdiction to the states; and

1 WHEREAS, the regulation of the rates and service of
2 cable television systems in Montana by the Public Service
3 Commission is in the public interest; and

4 WHEREAS, it is the purpose of the Montana Legislature to
5 establish jurisdiction over the regulation of cable
6 television in the Public Service Commission and local
7 governments of the state to the full extent permitted by
8 federal law; and

9 WHEREAS, it is the intent of the Montana Legislature to
10 adopt dual regulatory jurisdiction in the Public Service
11 Commission and local governments by designating each as the
12 franchising authority for certain specified purposes.

STATEMENT OF INTENT

15 Because [section 9] grants rulemaking authority to the
16 public service commission to adopt rules, a statement of
17 intent is required for this bill. The Cable Television
18 Consumer Protection and Competition Act of 1992 requires the
19 federal communications commission (FCC) to adopt rules
20 regarding cable television regulations by April 3, 1993. The
21 commission and local governments may adopt substantive and
22 procedural rules or ordinances to implement [sections 1
23 through 12] in a manner consistent with the public interest,
24 the federal act, and FCC regulations. Local governments may
25 adopt regulations or ordinances to implement [sections 1

through 12] through their existing authority in 7-1-104.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. It is the intent of the legislature in enacting [sections 1 through 12] to establish jurisdiction in the commission and local governments over cable television rates and service to the full extent permitted by federal law. For this purpose, [sections 1 through 12] designate the commission and local governments as the franchising authorities for separate purposes in the regulation of cable television.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Franchise" means the nonexclusive and revocable authority to operate a cable television system, subject to the provisions of [sections 1 through 12], the rules and orders imposed by the commission, and the regulations or ordinances of local governments.

(2) "Local government" means a county, consolidated government, city, or town.

NEW SECTION. Section 3. Jurisdiction of commission.

(1) The commission has complete regulatory jurisdiction for the issuance of state franchises to cable television companies. The commission also has jurisdiction for the purpose of regulation of cable television in the following

subject areas:

- (a) rates and charges;
- (b) technical operation, performance, and signal quality standards;
- (c) customer service requirements; and
- (d) cable system ownership restrictions, cable system mergers, cable system sales, and transfers of ownership of cable systems.

(2) The commission may issue state franchises to cable television companies. A cable television company shall also obtain a local franchise pursuant to [section 4].

(3) If the federal communications commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by that system are not subject to regulation by the commission.

NEW SECTION. Section 4. Jurisdiction of local governments. (1) Local governments have complete regulatory jurisdiction for the issuance of local franchises to cable television companies within their respective geographic jurisdictions. Local governments also have jurisdiction for the purpose of regulation of cable television companies within their geographic jurisdictions in the following subject areas:

- (a) use of public rights-of-way and easements;
- (b) station carriage requirements;

(c) notice of channel assignment changes and other program service changes pursuant to 47 U.S.C. 544(h);

(d) construction standards and schedules; and

(e) other consumer protection and service matters of a distinct local concern.

(2) A local government may issue local franchises to cable television companies. A cable television company shall also obtain a state franchise from the commission pursuant to [section 3].

(3) Local governments may assess franchise fees pursuant to 47 U.S.C. 542.

NEW SECTION. Section 5. State and local franchises required. Except as provided in [section 11], a cable television company may not provide cable television service in the state unless the company petitions for and is awarded both a state franchise from the commission and a local franchise from the appropriate local government.

NEW SECTION. Section 6. Compliance by cable television companies required. In addition to the requirements of state and local franchises, a cable television company shall comply with the rules and orders of the commission and with the regulations and ordinances of local governments.

NEW SECTION. Section 7. Franchising standards. (1) The commission and local governments may consider the following factors in determining whether to grant, deny, renew, amend,

suspend, or cancel a franchise of a cable television company:

(a) the company's financial, technical, and other qualifications to provide cable television service;

(b) the company's past business operations, including customer services, quality of service, and construction practices;

(c) the company's past compliance with all relevant state and federal policies and laws and commission and local government rules, orders, and franchise provisions;

(d) the company's proposed services and whether those services will satisfy all relevant state and federal policies and laws and commission and local government rules, orders, and conditions; and

(e) other public interest considerations.

(2) In addition to the considerations in subsection (1), the commission may consider the company's proposed initial rates and charges.

NEW SECTION. Section 8. Federal certification of state and local authorities. The commission and local governments may each petition the federal communications commission for certification as the authorized franchising authority for the matters within their respective jurisdictions.

NEW SECTION. Section 9. Rulemaking authority. The commission may adopt rules to implement [sections 1 through

1 12].

2 **NEW SECTION. Section 10.** No preemption of laws
3 governing anticompetitive activity. [Sections 1 through 12]
4 do not preempt, amend, or otherwise affect any right,
5 liability, or obligation of a cable television company
6 arising from any federal or state law regarding unfair
7 business practices or anticompetitive activity.

8 **NEW SECTION. Section 11.** Certificate of confirmation
9 required for existing companies. (1) A cable television
10 company that was lawfully engaged in actual operation of a
11 cable television system in the state pursuant to an existing
12 local franchise or otherwise on July 1, 1993, may continue
13 its operations subject to the provisions of any local
14 franchise and the requirements of this section.

15 (2) On or before December 1, 1993, the company shall
16 file an application for a certificate of confirmation with
17 the commission and with all local governments in which the
18 company provides cable television service. The company shall
19 state under oath in its applications that the company was
20 lawfully engaged in cable television operations on July 1,
21 1993, and describe the geographic extent of the operations.
22 The commission and the appropriate local government shall
23 issue a certificate of confirmation without further review
24 if they find that the statements of the company as required
25 by this section are true and correct.

1 (3) In order to continue its operations, the company
2 shall comply with [sections 1 through 12] and all rules,
3 orders, regulations, ordinances, and conditions imposed by
4 the commission and local governments pursuant to the
5 authority granted by [sections 1 through 12].

6 (4) A certificate of confirmation issued pursuant to
7 this section is considered a franchise subject to the other
8 provisions of [sections 1 through 12].

9 (5) A cable television company lawfully engaged in
10 actual operation of a cable television system in the state
11 pursuant to an existing local franchise or otherwise on July
12 1, 1993, that fails to file an application for a certificate
13 of confirmation by December 1, 1993, as required by this
14 section, shall cease operation unless the company requests
15 franchises pursuant to [sections 5 and 7] and the franchises
16 are granted by January 1, 1995.

17 **NEW SECTION. Section 12.** Validity of existing
18 contracts. Contracts for the operation of cable television
19 systems in effect on [the effective date of this act]
20 continue in effect but are subject to the provisions of
21 [sections 1 through 12] and the rules, orders, regulations,
22 ordinances, and conditions imposed by the commission and any
23 local government.

24 **Section 13.** Section 69-3-101, MCA, is amended to read:

25 "69-3-101. Meaning of term "public utility". (1) The

term "public utility", within the meaning of this chapter, shall--embrace embraces every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now--or--hereafter--may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) cable television service;

~~(f)~~ (g) regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; or

(c) a person exempted from regulation as a public utility as provided in 69-3-111."

Section 14. Section 69-3-102, MCA, is amended to read:

"69-3-102. Supervision and regulation of public utilities. The commission ~~is hereby invested with~~ has full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and, except as provided in [sections 1 through 12], to the exclusion of the jurisdiction, regulation, and control of such public utilities by any municipality, town, or village."

Section 15. Section 69-3-201, MCA, is amended to read:

"69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, cable television service, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility ~~shall~~ must be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful."

NEW SECTION. Section 16. Codification instruction.

[Sections 1 through 12] are intended to be codified as an integral part of Title 69, and the provisions of Title 69

1 apply to [sections 1 through 12].

2 NEW SECTION. **Section 17.** Severability. If a part of
3 [this act] is invalid, all valid parts that are severable
4 from the invalid part remain in effect. If a part of [this
5 act] is invalid in one or more of its applications, the part
6 remains in effect in all valid applications that are
7 severable from the invalid applications.

8 NEW SECTION. **Section 18.** Effective date. [This act] is
9 effective on passage and approval.

 -End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0556, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: HB0556 provides that the Montana Public Service Commission must regulate the rates and service adequacy of cable television providers in Montana. It also provides a dual franchising system by which local governments and the commission may issue franchises that allow cable television providers to provide service in Montana.

ASSUMPTIONS:

1. The bill is significant legislation that affects cable television providers in Montana.
2. The commission would be required to regulate fully the rates and service adequacy of cable television providers. Such regulation may entail processing and analyzing rate cases on a periodic basis for several cable television providers.
3. Processing and analyzing tariff filings and rate cases for an industry is as complex as the underlying industry. Several, but not all of the analytical steps may be: Cost of capitol analysis, rate base analysis, income statement analysis, income tax analysis, interstate allocations analysis, customer analysis and rate design analysis.
4. One grade 16 revenue requirements analyst, a half-time grade 14 rate design analyst, a half-time grade 15 attorney and a half-time grade 8 clerk/typist/complaints worker will be needed on an on going basis to do this work. These positions would be filled on November 1, 1993. Additionally, to set up and equip offices and train these professional will require additional start up funding in the first year of the biennium.
5. The commission estimates that there are \$34,520,402 in basic cable television gross revenues that would be subject to regulation. It estimates subscribership to basic cable services at 58% of the 275,546 households that it estimates are passed by cable TV lines in Montana. The annual revenues of \$34,520,402 times the PSC tax rate of .24% would yield general fund revenues of \$82,848. This amount would be used to offset budget appropriations which are made for PSC regulatory activities.

FISCAL IMPACT:

| | FY '94 | | | FY '95 | | |
|----------------------|--------------------|---------------------|-------------------|--------------------|---------------------|-------------------|
| <u>Expenditures:</u> | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> |
| FTE | 0 | 1.67 | 1.67 | 0 | 2.5 | 2.5 |
| Personnel Services | 0 | 50,420 | 50,420 | 0 | 75,630 | 75,630 |
| Equipment | 0 | 12,147 | 12,147 | 0 | 0 | 0 |
| Remodeling | 0 | 11,200 | 11,200 | 0 | 0 | 0 |
| Operating Expenses | <u>0</u> | <u>7,500</u> | <u>7,500</u> | <u>0</u> | <u>6,400</u> | <u>6,400</u> |
| Total | 0 | 81,267 | 81,267 | 0 | 82,030 | 82,030 |

Funding:

| | | | | | | |
|-------------------|---|--------|--------|---|--------|--------|
| General Fund (01) | 0 | 81,267 | 81,267 | 0 | 82,030 | 82,030 |
|-------------------|---|--------|--------|---|--------|--------|

Revenues:

| | | | | | | |
|------------------|---|--------|--------|---|--------|--------|
| PSC Fee (Change) | 0 | 81,267 | 81,267 | 0 | 82,030 | 82,030 |
|------------------|---|--------|--------|---|--------|--------|

(Continued)

David Lewis 2-15-93
 DAVID LEWIS, BUDGET DIRECTOR
 Office of Budget and Program Planning

2/16/93
 FRITZ DAILY, PRIMARY SPONSOR
 Fiscal Note for HB0556, as introduced

HB 556

Net Impact: Zero. The PSC budget to regulate the cable television providers would be off set by an equal dollar amount of tax monies collected from the cable television providers.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Uncertain. Some municipalities have entered into franchise agreements under current law. This bill would increase the number of franchising municipalities. New Section 4 (3) allows local governments to assess franchise fees pursuant to 47 U.S.C. 542, or up to 5% of a cable operator's gross annual revenues.

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