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February 1, 2008

Honorable Jennifer Granholm
Governor of Michigan

Honorable Members of the Senate
Secretary of the Senate

Honorable Members of the House of Representatives
Clerk of the House of Representatives

The enclosed annual report, *Status of Competition for Video Services in Michigan*, is submitted on behalf of the Michigan Public Service Commission in accordance with Section 12 (2) of the Uniform Video Services Local Franchise Act (2006 PA 480). This report will be made available on the Commission's website at www.michigan.gov/mpsc. The purpose of this report is to describe the status of competition in video services in Michigan. This report also includes information on the responsibilities and activities of the Commission throughout 2007, responses from franchise entities and cable/video service providers, currently pending legislative amendments, as well as the Commission's recommendations.

While the responses from both the providers and franchise entities indicate that there is not an overwhelming amount of video service competition occurring throughout Michigan at this time, there are encouraging signs that competition is beginning to take hold. Of the new providers that entered the video services market in 2007, three of those providers did so as a result of 2006 PA 480. It is important to understand that competition and the entrance of new providers will not occur immediately. However, information that has been provided in this report presents some positive signs that competition is beginning to develop. It should be noted that the report does not include satellite, which may be viewed as another competitor in video service.

The Commission has provided recommendations for legislative revisions pursuant to Section 12 (2) of 2006 PA 480. These recommendations not only provide for better clarification, but also improve the efficiency of implementing 2006 PA 480.

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While there are signs of video service competition developing, the complete status of competition cannot be fully assessed. The Act only became effective on January 1, 2007, and at the earliest, providers began using the Agreement on January 31, 2007. Additional time and information are necessary to evaluate the status of video competition in Michigan as it progresses.

The Commission will continue to monitor the status of video services competition in Michigan, which includes receiving and analyzing information from both franchise entities and cable/video service providers throughout Michigan. The Commission will also continue to assist individual customers, franchise entities, and providers with their questions and/or complaints. Finally, the Commission will continue to inform the Governor and Legislature of these future developments and make the appropriate recommendations for needed legislation.

Very truly yours,

Orjiakor N. Isiogu, Chairman
Michigan Public Service Commission

Monica Martinez, Commissioner
Michigan Public Service Commission

Steven A. Transeth, Commissioner
Michigan Public Service Commission

STATUS OF COMPETITION FOR VIDEO SERVICES IN MICHIGAN

February 1, 2008

Orjiakor N. Isiogu, Chairman
Monica Martinez, Commissioner
Steven A. Transeth, Commissioner

MICHIGAN PUBLIC SERVICE COMMISSION
Department of Labor & Economic Growth
In compliance with Public Act 480 of 2006

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Introduction

On January 1, 2007, the Uniform Video Services Local Franchise Act (2006 PA 480) became effective. For purposes of this report, 2006 PA 480 will be referred to as the "Act." Section 12 (2) of the Act states:

> 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.

This Act directs the Michigan Public Service Commission (Commission) to provide information regarding the status of competition for video services in Michigan, as well as any recommendations for needed legislation to the Governor and Legislature by February 1 of each year. The Commission gathered information regarding the status of competition for video services by sending a survey to video service providers (excluding satellite), as well as franchise entities and organizations that represent franchise entities. This information is explained in further detail within the body of this report.

In addition to the survey information, this report presents information describing the role and activities of the Commission, amendments to the Act that are currently pending in the Legislature, the overall findings and conclusion, and lastly, recommendations for needed legislation.

I. Responsibilities and Activities of the Commission

This section provides an overview and analysis of the responsibilities and activities in which the Commission has been actively involved since the Act became effective. These responsibilities and activities have been divided into the following categories: "Statutory Responsibilities," "Outreach," and "Complaint Handling."

A. Statutory Responsibilities

As previously stated, the Act became effective on January 1, 2007. The Commission was directed to establish a statewide uniform standardized form to be used by both video service providers (providers) and franchise entities. Section 2 (1) of the Act states:

> 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.

The Commission Staff (Staff) developed the *Uniform Video Service Local Franchise Agreement* (UVSLFA) that was formally approved on January 30, 2007 by the Commission in Order U-15169. For purposes of this report, the UVSLFA will be referred to as the "Agreement." Once the Commission approved the Agreement, it was then posted electronically on the Video Franchising page of the Commission's Web site.[1]

The Act also required the Commission to develop a proposed dispute resolution process that was to be submitted to the Legislature no later than June 1, 2007. Section 10 (3) of the Act states:

> The commission shall submit to the legislature no later than June 1, 2007 a proposed process to be added to this act that would allow the commission to review disputes which are not resolved under subsection (2), disputes between a provider and a franchising entity, and disputes between providers.

[1] The Agreement as well as the Act, can be located at: http://www.michigan.gov/mpsc/0,1607,7-159-16372_44800--,00.html.

The Commission's January 9, 2007 Order in Case No. U-15168 requested public comments and suggestions, as well as responses to those comments[2] to assist in developing the proposed dispute resolution process. The Commission also issued a press release on January 9, 2007 making the public aware of this Commission Order.

Upon receiving comments, suggestions, and responses from providers and other interested parties, as well as drawing upon the Commission's own experience and knowledge with handling utility complaints, the Staff developed the Proposed Dispute Resolution Process.[3] This proposed process can be located on the Video Franchising page of the Commission's Web site.[4] The Commission submitted the Proposed Dispute Resolution Process to the Legislature and Governor on May 31, 2007, and it is currently pending legislative approval.

In addition to the statutory requirements that have already been listed, the Act provides that the Commission shall receive and rule on waiver requests from providers for an extension to the requirements as stated in Section 9 of the Act; receive annual reports from providers describing their progress (as required in Section 9); and lastly, the Commission was given the authority to order remedies and penalties if it finds a violation of the Act.

B. Outreach

Throughout 2007, Staff reached out to organizations, providers, and the public to help educate and raise awareness of the new Agreement and the Act. During the year, Staff met with several organizations.[5]

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[2] Comments and suggestions to the Commission were filed by February 8, 2007, responses to those comments and suggestions were submitted to the Commission by March 1, 2007.

[3] This proposed process addresses complaints that may arise between a provider and a customer, a provider and a franchise entity, and lastly, a complaint between two providers.

[4] The web page is located at: http://www.michigan.gov/mpsc/0,1607,7-159-16372_44800---,00.html.

[5] These organizations include but are not limited to the following: the Michigan Alliance for Community Media (ACM), the Michigan Chapter of National Association of Telecommunications Officers and Advisors (NATOA), the Society of Broadcast Engineers, the Michigan Administrative Law Section, and also NARUC (National Association of Regulatory Utility Commissions).

In addition to the group events, Staff also met on an individual basis with several providers, as well as associations that represent communities, and community officials themselves. Staff met with the Michigan Township Association, as well as the Michigan Municipal League to discuss their thoughts and concerns. Also, on February 20, 2007, a meeting[6] was held at the Commission offices to discuss the Act, as well as the Agreement.

Lastly, along with Staff working diligently to meet, educate, and discuss the concerns with all parties involved, the Commission continues to make information publicly available on its Web site. A Web page that is specific to Video Franchising was created.[7] Several links are found on the web page, which provides users with access to the Act, the Proposed Dispute Resolution Process, the Agreement, as well as the franchise entity and provider survey forms. The link also provides users with Commission contact information, which can be utilized if a user has questions or complaints. In addition to the Web page, the Commission has a toll-free telephone number (866-552-7725) dedicated solely to video franchising.

C. Complaint / Inquiry Handling

Since February 1, 2007, the Commission has received and responded to complaints from individual customers, providers, and franchise entities. Complaints cover a variety of issues that include but are not limited to: billing problems, service outages, customer service, missed appointments, delayed service, rates/fees, franchise agreement disputes, channel line-up concerns, competition, equipment/cable line problems, and Public, Education, and Government programming (PEG) complaints. While the Commission's Proposed Dispute Resolution Process is pending in the Legislature, the Commission is using the proposed process to respond to

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[6] Those who attended the meeting included providers and their appointed representatives, city/township officials, organizations/attorneys that represented those communities, as well as representatives from State agencies such as the Attorney General's office and the METRO Authority.

[7] The Web page can be located at: http://www.michigan.gov/mpsc/0,1607,7-159-16372_44800---,00.html.

complaints on an informal basis. Legislative approval is required in order for the formal process to be fully enabled.

During 2007, the Commission received seven formal complaints regarding issues between providers and franchise entities. Of the seven formal complaints that were filed and docketed, four are now closed and three are pending. As with all formal complaints that are filed with the Commission, all information regarding the specific cases can be located electronically on the Commission's Web site.

The Commission has also received hundreds of individual customer complaints. From February 1, 2007 to January 11, 2008, the Commission received 776 complaints on video franchising. This does not include the number of inquiries from customers who did not wish to provide their name or contact information. The top four most commonly filed complaints are shown in Figure 1 below:

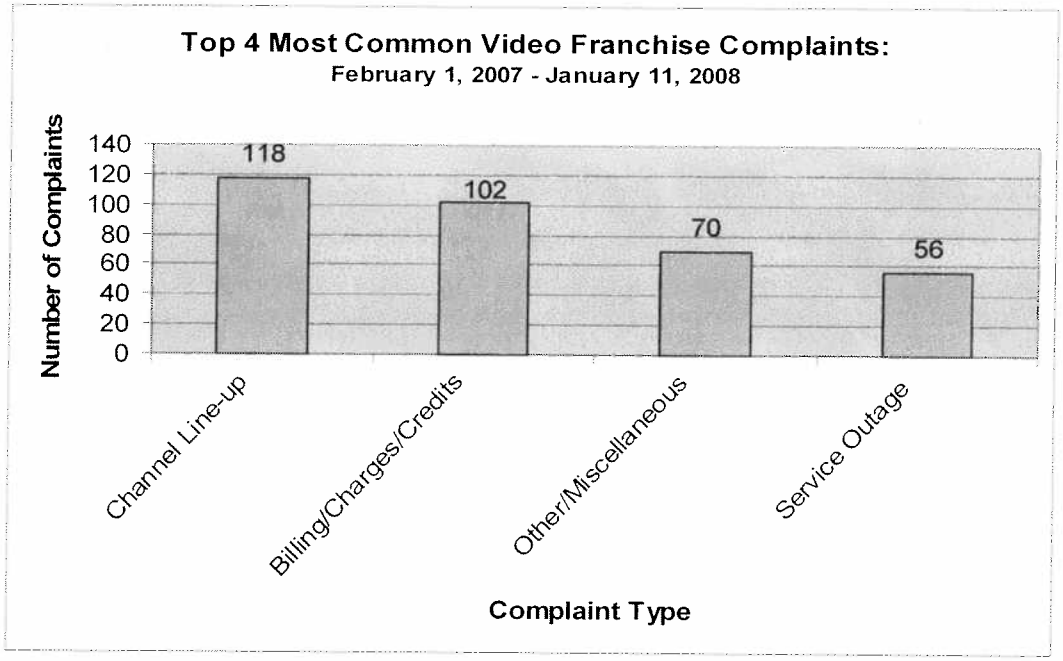


Figure 1
Source: MPSC Complaint Data

Excluded from Figure 1 are complaints related to Public, Education and Government channel changes. Recently, Comcast Cable Communications (Comcast) proposed a change to the formatting of PEG channels on its system, changing the PEG channels into a digital format instead of their traditional analog format.[8] While Comcast maintains that it continues to offer the PEG channels on the Basic Tier, customers will now need a cable card-enabled or QAM[9] television set, or a digital box to be able to view these channels. From December 4, 2007 to January 11, 2008, the Commission received a total of 445 complaints regarding the Comcast PEG formatting change. Of the 445 complaints, 312 customers provided their name and contact information, while the remaining 133 customers did not provide their name and address information, but wanted to voice their concerns. The Commission has also received letters from nine franchise entities, as well as from a cable board that represents four franchise entities, indicating that they have passed resolutions voicing their displeasure with the proposed change in the PEG formatting and asking that this change be reversed. Information is not available to the Commission regarding how many additional customers may have contacted Comcast and/or their community offices directly, without filing a complaint with the Commission, or how many additional city and township resolutions may have been passed.

[8] On January 14, 2008, the City of Dearborn and Meridian Township filed a lawsuit against Comcast in both federal and circuit court, in regard to Comcast's proposed changes to the PEG channels. Preliminary injunctions were granted, and a new hearing date was scheduled for January 22, 2008. This lawsuit is still pending.
[9] QAM stands for "quadrature amplitude modulation."

While Staff has received, and continues to receive, cable/video complaints from customers regarding numerous providers, below is a breakdown of the three providers with the most complaints filed with the Commission. [10]

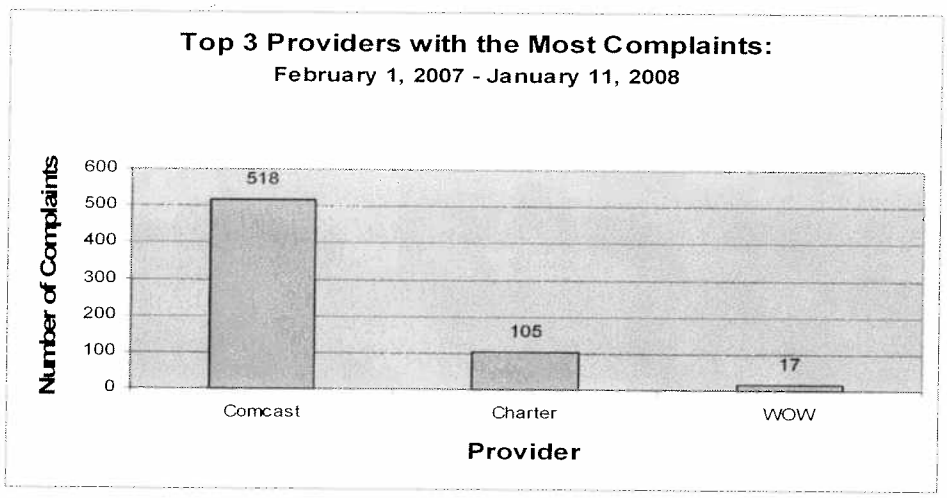
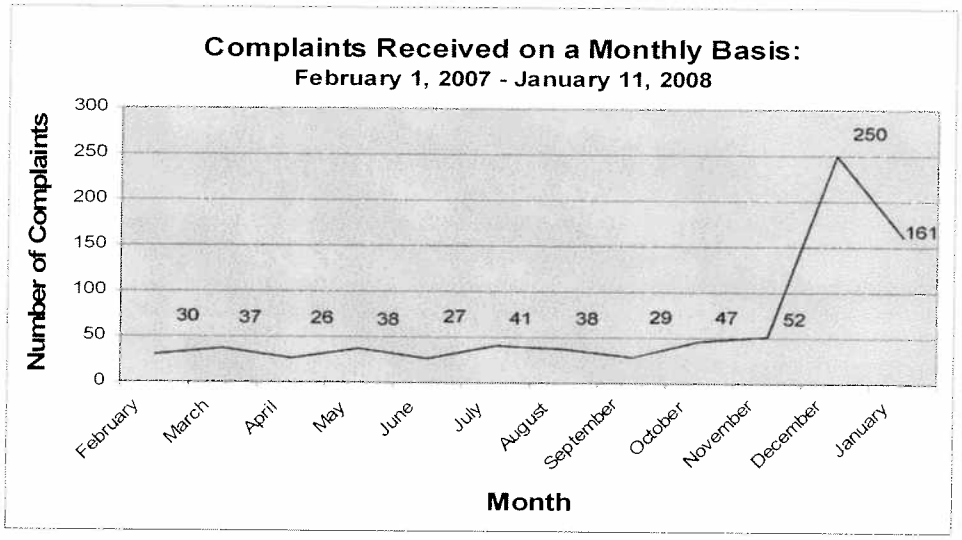


Figure 3
Source: MPSC Complaint Data

Figure 4 below provides a more in-depth analysis of the number of complaints that have been filed per month with the Commission.

[10]Since Comcast, Charter Communications (Charter), and Wideopenwest Michigan (WOW) are the three cable/video providers with the most subscribers in the state of Michigan, it can be expected that these providers would have the most complaints. Also, the Comcast complaints include only those PEG complaints where customers were willing to provide their contact information. The report has already recognized those PEG complaints where complainants were not willing to share their contact information. Lastly, it is very important to note that satellite providers ***are not*** included in this reporting information. Customers with complaints about their satellite provider are referred to the Federal Communications Commission. Satellite providers ***do not*** have franchise agreements, and therefore do not fall under 2006 PA 480.



[11]

Figure 4
Source: MPSC Complaint Data

The Commission has also received numerous inquiries (which are not included in the complaint charts) from State of Michigan agencies, agencies in other states, as well as numerous inquiries from providers and franchise entities in regard to the Act and the Agreement. It is expected that both inquiries and complaints received at the Commission will continue to increase after the Legislature adopts a dispute resolution process.

II. Commission Survey to Franchise Entities and Providers

In order for the Commission to fulfill its obligation per Section 12 (2) of the Act, the Commission developed a survey to be completed by franchise entities, as well as a survey to be completed by providers. Both surveys were called the "MPSC Annual Report Survey for 2007," and they were sent to parties on December 4, 2007. Once the surveys were sent, they were posted to the video franchising page[12] on the Commission's Web site on December 7, 2007. Respondents were given until December 31, 2007 to provide their responses to the survey questions.

[11] The dramatic increase in complaints during the months of December and January can be attributed to the PEG complaints that were received by the Commission. Complaints (133) for which customers did not provide their contact information were informally recorded, and are not included in this graph.
[12] The surveys can be located at: http://www.michigan.gov/mpsc/0,1607,7-159-16372_44800---,00.html.

This section is divided into two categories: "Franchise Entities Response to the Commission Survey," and "Providers Response to the Commission Survey." The information that was collected from the surveys is paraphrased in each of these two categories.

A. Franchise Entities Responses to the Commission Survey

Section 12(2) of the Act states in part, "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." While the Act specifically states that the Commission will collect information from providers, it does not mention that the Commission should gather information from franchise entities. The Commission considers information from the franchise entities important in order to have an understanding of the effects on communities across Michigan.

On December 4, 2007, a survey specific to franchise entities was distributed to franchise entities, as well as the Michigan Chapter of National Association Telecommunication Officers and Advisors (NATOA), the Michigan Municipal League, the Michigan Township Association, the Birmingham Area Cable Board, and the Intergovernmental Cable Communications Authority. The letter and survey were also posted on the Commission's Web site on December 7, 2007. Staff encouraged organizations representing franchise entities that contacted the Commission to share the information with their members.

The Commission received a helpful number of responses back from franchise entities. In total, the Commission received responses from 51 franchise entities, two attorneys who work with over 27 franchise entities, and nine organizations/associations which have memberships including more than 1,242 communities. The responses to the survey questions involved comments relating to complaint handling, availability of competitors in communities, thoughts about the Act, and the impact the Act has had on their community. For purposes of this report,

the Commission has divided the responses into five categories: "PEG," "Customer Service/Offerings," "Complaint Handling," "Impact of Competition" and "Suggested Legislative Action."

The following information has been provided by the franchise entities and their respective organizations. The Commission believes that the Legislature should be aware of this information. However, it is important to note that this information is not necessarily the opinion of the Commission.

1. PEG

Respondents indicated that they have had several types of complaints and concerns in the PEG area. These complaints and concerns include the following:

- Providers not willing to pay the requested PEG fee in the Agreement
- The provider is removing PEG channels from the basic tier and moving them to a digital format
    - Has caused significant confusion among customers as to what they need to do in order to keep receiving the channels
    - Potential for significant loss of viewers
    - Possibility of PEG channels being lost in the higher channel tier
    - Higher costs for customers due to having to rent converter boxes to watch the digital PEG
    - Potential for significant costs to cities for channel branding of the new digital channels
- New providers' inability to demonstrate that they can have PEG programming on their systems
- Providers closing PEG facilities
- Cities having to assist PEG centers financially because providers are no longer providing PEG assistance
- PEG facilities are incurring higher costs for transmitting their shows to new providers
- Providers are making it difficult for schools and seniors to have access to PEG
- PEG channels unfairly being placed in obscure locations
- PEG channels being provided with a lower quality of service, as compared to other channels on the providers' systems
- Overall actions by providers toward PEG could ultimately diminish these channels for good.

In general, respondents have provided their thoughts and concerns regarding PEG issues. Respondents have also provided information regarding the negative impacts in this area.

2. Customer Service/Offerings

Franchise entities and their respective organizations have indicated that they have witnessed a decrease in customer service and offerings, not only to the individual customer, but as well as to the franchise entity itself. The concerns and complaints regarding customer service and offerings are as follows:

- Customer service is diminishing, while rates continue to increase
- Providers are distancing themselves from community involvement and communication
- Providers are closing local offices / cutting back on local staff
    - Causing decrease in customer service and problem resolution
    - Inconveniencing customers and forcing them to travel longer distances to providers' offices
- Elimination of free service drops to government and municipal buildings
    - Creates financial burden for communities
- Franchise fee revenue from the provider has decreased among some franchise entities
    - Loss in revenue creates an additional financial hardship on communities
    - Less franchise fee revenue means less money will be provided for PEG programming in some communities.

Overall, the respondents have stated that customer services and offerings have been negatively impacted.

3. Complaint Handling

The vast majority of franchise entities have indicated that they are still handling complaints internally. It appears that there may be some confusion as to the understanding of the Commission's role in handling customer complaints. For the time being, many communities are handling the complaints in the same manner as they did before the Act. These responses further highlight the importance and need for the Legislature to approve the Commission's Proposed Dispute Resolution Process.

4. Impact of Competition

Overall, the majority of respondents have indicated that they still have only their incumbent provider and have not had any new providers enter into their area since the Act took effect. However, a small number of respondents did report that they have had a new provider enter into their area since the Act took effect. At this time, the only new provider indicated by the franchise entities responses was AT&T.[13] A group of respondents also indicated that while they did not have any new providers enter their area since the effective date of the Act, they had already had an additional provider in their area prior to the Act taking effect. Those who indicated that they now have a new provider in their area since the Act took effect also indicated that they already had two other providers in their area prior to the Act. This information does not take into consideration the impact of satellite providers in communities across Michigan. An argument could be made that satellite providers offer a choice to customers, therefore strengthening competition. From the information that has been gathered, it is encouraging to see competition developing in some areas. However, it is essential to continue to monitor and analyze the trends over time before any further determinations can be made regarding the extent of competition envisioned by the Act.

5. Suggested Legislative Action

Overwhelmingly, the majority of respondents stated that they have suggestions and/or recommendations for changing the Act in order to improve the efficiency of implementation. As with the responses to the other questions, the franchise entities and their representative organizations provided a great amount of detailed information. The Commission has summarized much of that information into the following:

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[13] This should not be interpreted to imply that AT&T is the only new provider to enter the Michigan cable/video market since the Act took effect. Of those franchise entities that responded to the survey, AT&T was the only company identified as a new entrant.

- Desire by some to repeal the Act
- Amend the Act to include more local control
- Require providers to expand service into rural areas, where there currently is no service (Concern about possible geographic discrimination against rural population)
- Strengthen customer service and quality
    - Maintaining local office availability within reasonable distance
    - Imposing rate regulations
    - Ensuring providers are being responsive to customers
    - Forbidding providers from eliminating free service drops
    - Put in place the complaint procedure to be able to receive quick resolutions
    - Strengthen the penalties and fines that may be imposed by the Commission
- Better incorporate the existence and protection of PEG channels
    - Require PEG channels to remain on a provider's basic tier and not be unilaterally forced into the digital tier
    - Provide PEG channels with the same quality of services as any other channel on the provider's system
    - Overall strengthening of protection for PEG within the Act
- Lengthen the amount of time that a franchise entity has to approve the Agreement
    - Current time parameters are inadequate for some communities to approve the agreement.

As mentioned earlier, the opinions and concerns expressed in this section are that of the franchise entities and their respective organizations. These are not the opinions of the Commission. However, the information does raise awareness and demonstrates the need for the Commission to continue to monitor the overall environment.

B. Providers Response to the Commission Survey

In order for the Commission to meet its obligation in Section 12(2) of the Act, the Commission also sent a survey to providers on December 4, 2007. The survey was sent to 39 providers who are providing cable/video service throughout Michigan. Both the letter and the survey were posted on the Commission's Web site on December 7, 2007.

There are approximately 2,272,152[14] cable/video customers in Michigan as of December 31, 2007. The top three companies providing cable/video service in Michigan are Comcast, Charter, and Wideopenwest Michigan (WOW). Of the 39 providers now offering service in Michigan, AT&T Michigan,[15] Arialink Telecom, and Southwest Michigan Communication indicated that they became providers as a result of the Act being passed.

Currently, there are approximately 1,788 franchise agreements in place across Michigan. Approximately 27 percent of all franchise agreements in place in Michigan are now the Uniform Video Service Local Franchise Agreement.

Approximately 60 percent of the responding providers indicated that they have not had a competing provider[16] enter their footprint areas since the Act took effect. Three providers stated that they are the new competitor in the footprint in which they entered. Also, four providers indicated that they were already competing with other providers prior to the passage of the Act.

For those providers that are now operating under the Agreement in certain franchise areas, only three providers have indicated that they have had either informal or formal disputes concerning the Agreement that was filed with the franchise entity. Issues involved in the disputes include franchise details and PEG fees.[17]

Information regarding the impact that the Act has had on providers' number of subscribers was also collected. Approximately 73 percent of those providers responding indicated that the Act has had minimal impact, if any, on their number of subscribers. While the

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[14] This number does not include satellite providers. Since satellite providers are not required to have franchise agreements with franchise entities, it is unclear as to how many consumers in Michigan use satellite providers.

[15] According to a January 17, 2008 AT&T news release, AT&T Inc. announced that more than 1,200 positions (including employees in construction and engineering, premise technicians, as well as call-center staff) have been filled as a result of 2006 PA 480.

[16] While some providers stated that a competing provider has not entered into their footprint area since the Act took effect, they did state that they were currently competing with satellite providers. As noted previously, the impact that satellite providers are having on cable/video providers is unclear since satellite providers do not require franchise agreements. Due to lack of data, it is also unclear exactly where satellite providers are competing and have customers.

[17] As stated in the Responsibilities and Activities of the MPSC: C. Complaint/Inquiry Handling section of this Annual Report, the MPSC has three formal complaints that are currently pending.

other 27 percent of providers stated that their companies incurred a change in the number of subscribers, they did not attribute that change to the Act. Some reasons cited by providers to explain changes in the number of subscribers include: the economy, the amount of fees, new services by incumbent providers, and the natural course of growth.

Lastly, providers were given the opportunity to offer any recommendations/suggestions that they have for changing the Act to improve the efficiency of its implementation. While the majority of providers either had no comment or believed that no changes were warranted at this time, there were three providers that did suggest changes. Two providers would prefer that the Act be changed to exempt smaller providers from the Act. One commenter defined "small provider" as providers with 10,000 or fewer subscribers. One provider voiced concern that the law discriminates against municipal cable systems.

III. Pending Legislative Amendments

There are currently four amendments pending with the Legislature. On July 17, 2007, SB 636 (relating to PEG Fee language) and also SB 637 (relating to the Commission's Proposed Dispute Resolution Process) were introduced in the Michigan Senate. On July 24, 2007, HB 5047 (relating to PEG Fee language) and HB 5048 (relating to the Commission's Proposed Dispute Resolution Process) were introduced in the Michigan House. The proposed legislation will be discussed in more detail in the Recommendations section of this report.

IV. Findings and Conclusion

Section 12(2) of the Act requires the Commission provide an annual report to the Legislature on the status of competition for video services in the state of Michigan. The Commission in this report provides the Legislature with a significant amount of information that ranges from the Commission's role and responsibilities, to the information that has been received from franchise entities and providers, and lastly, pending legislative amendments.

The Commission anticipates and expects that complaints will continue to increase as new providers enter the market and competition develops. The Commission will continue to adhere to its statutory responsibilities, as specified in the Act, but urges the Legislature to adopt its Proposed Dispute Resolution Process. In the interim, the Commission will continue to strengthen its outreach to the public, franchise entities, and providers.

The Commission will continue to monitor the impact on communities in Michigan, as well as the actions that are being taken by providers. Since the Commission is directed to resolve disputes between franchise entities and providers, it would be inappropriate to take a position at this time on any issues that might be brought before the Commission in a formally docketed case. However, as was mentioned, the Commission will continue to monitor these impacts, and may take action in the future, as appropriate per the Act.

While the responses from both the providers and franchise entities indicate that there is not an overwhelming amount of video service competition occurring throughout Michigan at this time, there are positive and encouraging signs that competition is beginning to take hold. Of the new providers that entered the video services market in 2007, three of those providers did so as a result of the Act. The Commission recognizes that competition and the entrance of new providers will not occur immediately. As new providers enter the video services market, they will likely either have to build and/or modify their infrastructure before they can begin to offer service. However, the information provided by franchise entities and providers presents some positive signs that competition is beginning to develop. The Commission will continue to monitor video service competition as it develops and take appropriate action as provided by the Act.

V. Recommendations

This section provides the Commission's recommendations for legislative revisions pursuant to Section 12(2) of the Act.

The Legislature currently has two bills pending in the House (HB 5047 and HB 5048) and two bills pending in the Senate (SB 636 and SB 637). The Commission recommends that the Legislature take action on HB 5048 and SB 637. With respect to SB 637 and HB 5048, the Commission has been awaiting approval of its Proposed Dispute Resolution Process since it was submitted on May 31, 2007. Codification of a process is needed to clarify the overall complaint process, define the Commission's role in that process and eliminate challenges to the Commission's authority to act in the absence of a statutorily defined process. In the interest of hastening the momentum toward competition in the provision of video services in Michigan, the Commission urges the Legislature to consider and adopt its Proposed Dispute Resolution Process within the next few months.

SB 636 and HB 5047 address the need for clarification of the PEG fee language. This amendment has been pending in both the House and Senate since mid-July, and would provide better direction and clarification to both providers and franchise entities.

In addition to the currently pending amendments, the Commission also recommends that the Legislature modify Section 3(3) of the Act which states:

> 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 Commission recommends that the Legislature change the language of the first sentence in Section 3(3) to read: "A franchising entity shall have <u>45</u> days after the submission

date of a complete franchise agreement to approve the agreement." The Commission has received feedback from franchise communities indicating that a 30 day due date is very burdensome. Some communities have their city/township meetings on a bi-weekly or monthly schedule. Depending on when the franchise entity receives the Agreement from the provider, the current 30 day time limit can make it very difficult for the franchise entity to approve a completed Agreement.

The Commission also recommends to the Legislature that Section 6(13) of the Act be amended. Section 6(13) currently states:

> 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.

The Commission recommends that the Legislature amend Section 6(13) by removing the last sentence of this section which states: "*This subsection does not apply after December 31, 2009.*" By doing so, it removes the additional time, energy, and resources that would be necessary to continually extend the deadline period. The Commission is committed to performing the duties assigned to it under the Act. However, it cannot do so unless it continues to receive the funding necessary to provide for adequate staffing for the required services.

Further, the Commission recommends that the Legislature extend the due date of the Commission's Annual Report from February 1 of each year, to <u>April 1</u> of each year. The current due date makes it difficult for respondents to provide timely and accurate year-end information to the Commission. In order to prepare the report by February 1 of each year, the Commission must request information before December 31: the providers and franchise entities do not have

information available until after the end of the year. To accommodate the narrow window of time to prepare the report, some respondents are forced to provide estimates instead of actual numbers. The Staff must then perform a truncated analysis on less than optimal data in order to meet the February 1 due date. Extending the due date to April 1, would allow legislative decision makers to benefit from a more factually grounded and thoroughly analyzed report.

Finally, the Commission recommends that language be added to the Act that directs video service providers doing business in Michigan on the effective date of this Act, to submit their company's contact information.[18] The Commission proposes that this information should be required using language similar to that currently found in Section 211(a) of 2005 PA 235, the Michigan Telecommunications Act. This will ensure that the Commission has accurate contact information available to it for complaints, as well as for future information and data collection. Also, in the event that a company changes its name, goes out of business, or is merged into another company, the Commission recommends they should be required to notify the Commission of this change as well. Providers do not submit their Agreements to the Commission, instead the Agreements continue to be submitted to the individual franchise entities and as such this information is not available to the Commission. The Commission proposes that this required information should be similar to the language that is currently found in Section 211(a) of 2005 PA 235, the Michigan Telecommunications Act.

The Commission will continue to monitor the status of video services competition in Michigan and inform the Legislature of any further recommendations for needed legislation.

[18] The company contact information should include: the name of the provider, a description of the services provided, the address and telephone number of the provider's principal office, the address and telephone number of the provider's registered agent authorized to receive service in this state, and any other information the Commission determines is necessary.