

Legislative Analysis



DISPUTE RESOLUTION PROCEDURES UNDER THE VIDEO FRANCHISE ACT

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House Bill 4247 without amendment
Sponsor: Rep. Jeff Mayes
Committee: Energy and Technology

First Analysis (2-24-09)

BRIEF SUMMARY: The bill would add procedures to the Uniform Video Services Local Franchise Act under which the Public Service Commission (PSC) would resolve three types of disputes: (1) customer complaints against providers not resolved by the provider's own dispute resolution process; (2) disputes between providers and franchising entities (local governmental units); and (3) disputes between providers.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state and on local units of government. For a discussion of the fiscal impact, see Fiscal Information, later in the analysis.

THE APPARENT PROBLEM:

When the Video Services Local Franchise was enacted in late 2006, the act called for the Public Service Commission (PSC) to propose a dispute resolution process to be added to the act to resolve three types of disputes: (1) disputes between customers and providers; (2) disputes between providers and local franchising entities (local units of government); and (3) disputes between two video services providers. As required by the act, the PSC proposed dispute resolution procedures to the Legislature in May 2007. The bill would place substantially similar processes into the act.

While the PSC has informally resolved and attempted to resolve many disputes that have arisen since enactment of the Video Act, the PSC is unable to resolve several pending disputes between providers and local units of government because the Legislature has not yet adopted dispute resolution procedures. The PSC has urged the Legislature to adopt the bill to allow a mechanism for resolving the disputes that have arisen and will continue to arise under the Video Act.

THE CONTENT OF THE BILL:

The bill would add procedures to the Uniform Video Services Local Franchise Act, under which the Public Service Commission (PSC) would resolve three types of disputes: (1) customer complaints against providers not resolved by the provider's own dispute resolution process; (2) disputes between providers and franchising entities (local governmental units); and (3) disputes between providers.

The following is a detailed summary of the bill.

PSC dispute resolution proposal. As required by the Video Act, the PSC proposed dispute resolution procedures to the Legislature in May 2007 (Case No. U-15168). See:

http://www.michigan.gov/documents/mpsc/dispute_resolution_198239_7.pdf

[The PSC's proposed procedures are similar, but not identical, to the procedures contained in the bill.] The bill would delete the requirement that the PSC submit a dispute resolution proposal to the Legislature, as the PSC has already done this.

Customer notification; provider dispute resolution process. Under Section 10(2) of the Video Act, providers are already supposed to have a dispute resolution process and a local or toll-free number for customer service in place. In addition, under Section 10(3) providers must notify customers about their dispute resolution procedure created under the Video Act. The bill would require a provider to notify customers about its dispute resolution process at least *annually* and to include the dispute resolution process on its website.

[The bill does not adopt the PSC proposal that the customer service number be "visibly identified and placed on the customer's bill" and that the dispute resolution process be "reasonably easy to locate" on the provider's website.]

Required steps before a customer could file a complaint with the PSC. Under Section 10(4) of the bill, before a customer could file a complaint with the PSC, the customer would have to first attempt to resolve it under the provider's own dispute resolution process. If the dispute "cannot be resolved" by the provider's process, the customer could then file a complaint with the PSC. The provider would have to provide the customer with the PSC's toll-free customer service number and website address.

[Note: Some providers' processes appear to require customers to submit unresolved disputes to binding arbitration or to bring a lawsuit in a particular court.]

Customer complaints to the PSC. The bill would require the PSC to first process customer complaints against providers informally. If the dispute is not resolved informally, the customer would have to file a formal complaint meeting the technical requirements described below.

- Informal procedures. Upon receiving a complaint, the PSC would forward the complaint to the provider and attempt to mediate a resolution informally. The provider would have 10 business days to respond and offer a resolution. If this informal process does not resolve the dispute, the customer could file a formal complaint.
- Formal procedures. A formal complaint would have to (1) be in writing; (2) state the section or sections of the Video Act that the party alleges was violated; (3) state sufficient facts to support the allegations; and (4) describe the exact relief sought from the provider. The complaint would have to comply with technical procedural requirements set forth in Section 203 of the Michigan Telecommunications Act (MCL 484.2203). Among other things, complaints filed under that section are required to include all information, testimony, exhibits, or

other documents and information within the person's possession on which the person intends to rely.

- Complaints involving \$5,000 or less. In cases of complaints involving \$5,000 or less, a mediator would be appointed within seven days of the date the complaint was filed.
- Complaints involving more than \$5,000. Cases involving more than \$5,000 would be handled as a contested case as under Section 203 of the Michigan Telecommunications Act (MCL 484.2203).

Provider-franchising entity and provider-provider complaints. Disputes between a provider and a franchising entity (local unit of government) or between two or more providers would be handled as follows:

- Informal procedures. The PSC would first attempt to resolve the dispute informally. If a provider or franchising entity believes that a violation of the act or the franchising agreement has occurred, either could begin an informal complaint procedure with the PSC by (1) filing a written notice of the dispute identifying the nature of the dispute; (2) requesting informal dispute resolution; and (3) serving notice of the dispute on the other party. PSC staff would then attempt to mediate the dispute informally. If a satisfactory resolution is not achieved, any party could file a formal complaint.
- Formal complaints. A formal complaint would have to (1) be in writing; (2) state the section or sections of the Video Act or the franchise agreement that the party alleges was violated; (3) provide sufficient facts to support the allegations; and (4) describe the relief requested. The party's attorney would have to submit a formal complaint in writing to the PSC that contained all of the information, testimony, exhibits, or other documents and information within the party's possession on which the party intends to rely to support the complaint. For a period of 60 days after the complaint is filed, the parties would attempt alternative means of resolving the complaint, but if they do not agree on the alternative method within 10 days, the PSC would order mediation.
- Recommended settlements. Within 60 days from the mediation order, the mediator would issue a recommended settlement. Each party would have seven days to accept or reject the recommended settlement in writing. If accepted, the recommended settlement would become the PSC's final order in the contested case. If a party rejects the proposed settlement, or fails to respond within seven days, the complaint would proceed to a contested case hearing in the same manner as provided under Section 203 of the Michigan Telecommunications Act.
- Contested cases. A party that rejects a recommended settlement would have to pay the opposing party's actual costs for the contested case, including attorney's fees, unless the PSC's final order is more favorable than the recommended settlement by at least 10 percent. Recommended settlements could not be disclosed to individual commissioners until the final order has been issued.

MCL 484.3310

BACKGROUND INFORMATION:

The PSC report dated January 1, 2009, entitled *Status of Competition for Video Services in Michigan*¹, describes the complaints handled by the PSC in 2008 or that are pending, but unresolved, because the Legislature has not adopted dispute resolution procedures for the Video Act. The overall number of complaints received by the PSC increased from 615 in 2007 to 1,030 in 2008. Comcast (52 percent), Charter (42 percent), and AT&T Michigan (6 percent) were the companies most frequently complained about by customers. The most common consumer complaints in 2008 were (1) billing, charges, and credits (160); (2) PEG channel issues (154); (3) Charter channel freezing (148); and (4) channel line-up (128). (In early 2008, the PSC received many complaints from residents in the Fenton and Linden areas regarding the image quality of their Charter service.)

Since the Video Law was enacted the PSC has received nine formal complaints between franchise entities (local units of government) and providers, including two new complaints filed in 2008. Of this total, four complaints are pending, while the other five were either withdrawn by the complainant or found not to meet the criteria for a formal complaint. The following complaints are currently pending but have not been heard or decided because the PSC has not yet been granted statutory dispute resolution authority:

Currently Pending Formal Complaints

Case No.	Parties Involved	Date Filed
U-15329	City of Detroit v. Comcast	6/19/07
U-15427	City of Adrian v. Comcast	9/20/07
U-15439	City of Romulus v. Comcast	10/19/07
U-15683	AT&T Michigan v. City of Clawson	10/24/08

Formal complaints between providers and local units of government generally involve franchise fees or Public, Education, and Government programming (PEG) fees.

FISCAL INFORMATION:

The Uniform Video Local Services Franchise Act imposes an assessment on video service providers based on the PSC's costs for administering the act. The cost of the assessment is prorated among the providers based on the number of subscribers, with the aggregate amount of the assessment not to exceed \$1.0 million. The FY 2008-09 enacted appropriation (as well as the FY 2009-10 Executive Recommendation) for the video franchise assessment is \$400,000, which is less than the \$1.0 million statutory maximum. Unless this assessment is extended by the Legislature, it will sunset on December 31, 2009. Because there is no change in the appropriation between the FY 2008-09 enacted appropriation and the FY 2009-10 Executive Recommendation, it is presumed that the sunset will be eliminated and the assessment extended.

¹ This report is found online at:
http://www.michigan.gov/documents/mpsc/Status_of_Competition_for_Video_Services_Report_2008_265417_7.pdf

The bill provides that before a customer can file a complaint concerning a service provider with the PSC, the complaint would first have to be filed with the service provider and an attempt made to resolve the complaint through the provider's dispute resolution process. Since the Video Act was enacted, the PSC has received hundreds of customer complaints concerning channel line-up, billing issues, service outages, and other miscellaneous issues. Generally, it has attempted to resolve these complaints informally following the process it recommended in May 2007, which is substantially similar to the process established in the bill. To the extent that the volume of complaints and past practices continue as they have over the course of the previous two years, the bill would likely have no significant fiscal impact on the PSC. However, because the bill establishes a formal dispute resolution process in statute, the behavior of customers, service providers, and the PSC could change.

In 2008, the number of complaints received by the PSC increased as more customers became aware of the role of the PSC and more communities and organizations began referring individuals to the PSC. To the extent the bill further increases customers' awareness of the process and the role of the PSC, it could increase the PSC's administrative costs related to the act. In addition, to the extent that the bill allows formal complaints between providers and local units of government that are currently in limbo to proceed, it could increase the PSC's administrative costs. Any additional costs to the PSC as a result of the bill could lead to an increase in provider assessments up to the statutory maximum of \$1.0 million.

According to the PSC's most recent report concerning the Status of Competition for Video Services in Michigan, 55 percent of local units of government no longer handle video/cable complaints in their offices, and those local units that do accept complaints do not handle very many. It appears that the Commission now receives the majority of consumer complaints. To the extent the bill further shifts this burden from local units to the PSC, local units could realize some cost savings.

To the extent that the bill would allow the formal complaints of providers or local units of government regarding franchise or PEG fees to go forward, the bill could affect the franchise fee or PEG fee revenue of some Michigan cities.

ARGUMENTS:

For:

The bill would add dispute resolution procedures to the Video Act to enable the PSC to resolve the various kinds of disputes that arise under the act as the Legislature intended when it passed the Video Act. The procedures contained in the bill are substantially similar to those developed by the PSC after consultation with stakeholders, and they have the PSC's strong support.

Against:

As the Legislature decided that the PSC, not local governments, should handle customer disputes under the Video Act, it is more appropriate that the PSC's contact information be placed on bills (along with providers' own information) rather than that of the local governments. It doesn't make sense to encourage customers to call local governments

who are no longer in a position to resolve their dispute. Customers should be encouraged to first call their providers and, if the problem remains unresolved, to call the PSC.

Some say that the attorney fee provisions contained in the act are too harsh and are more draconian than provisions in the Telecommunications and METRO Acts. Rather than requiring that a losing party pay the opposing party's costs, including attorney fees, in every case in which the losing party does not succeed in securing an award that is at least 10 percent more favorable than a recommended settlement, attorney fees should only be awarded in cases where the losing party rejected a proposed settlement on a frivolous basis.

Is it unclear how far consumers must pursue resolution of disputes with their providers using the provider's own dispute resolution process before the consumer can turn to the PSC for help. Some providers appear to require customers to bring disputes to binding arbitration or to specific, out-of-state courts. While most customer disputes are resolved informally, if a major dispute arose, is it clear what would be required?

POSITIONS:

The Public Service Commission testified in support of the bill. (2-17-09)

AT&T indicated support of the bill. (2-17-09)

The Michigan Cable television Association indicated support of the bill. (2-17-09)

The Michigan Municipal League (MML) testified in support of the bill if amended (1) to require that PSC contact information, rather than local governmental unit contact information, is placed on customer bills, as the PSC would now be responsible for dispute resolution and (2) to allow the award of actual costs and attorney fees under Section 10(6)(b) in frivolous cases, rather than making such an award mandatory in all cases where the losing party rejected a settlement and the final PSC award was not at least 10 percent better than the settlement. (2-17-09)

The Michigan Townships Association indicated support of the bill if amended as proposed by the MML. (2-17-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.