

HOUSE BILL No. 4247

February 11, 2009, Introduced by Reps. Mayes, Horn, Melton, Byrnes, Lindberg, Johnson, Durhal, Moore, Lipton, Geiss, Green, Proos and Meadows and referred to the Committee on Energy and Technology.

A bill to amend 2006 PA 480, entitled
"Uniform video services local franchise act,"
by amending section 10 (MCL 484.3310).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) A video service provider shall not do in
2 connection with the providing of video services to its subscribers
3 and the commission may enforce compliance with any of the following
4 to the extent that the activities are not covered by section
5 2(3)(I):

6 (a) Make a statement or representation, including the omission
7 of material information, regarding the rates, terms, or conditions
8 of providing video service that is false, misleading, or deceptive.
9 As used in this subdivision, "material information" includes, but
10 is not limited to, all applicable fees, taxes, and charges that

1 will be billed to the subscriber, regardless of whether the fees,
2 taxes, or charges are authorized by state or federal law.

3 (b) Charge a customer for a subscribed service for which the
4 customer did not make an initial affirmative order. Failure to
5 refuse an offered or proposed subscribed service is not an
6 affirmative order for the service.

7 (c) If a customer has canceled a service, charge the customer
8 for service provided after the effective date the service was
9 canceled.

10 (d) Cause a probability of confusion or a misunderstanding as
11 to the legal rights, obligations, or remedies of a party to a
12 transaction by making a false, deceptive, or misleading statement
13 or by failing to inform the customer of a material fact, the
14 omission of which is deceptive or misleading.

15 (e) Represent or imply that the subject of a transaction will
16 be provided promptly, or at a specified time, or within a
17 reasonable time, if the provider knows or has reason to know that
18 it will not be so provided.

19 (f) Cause coercion and duress as a result of the time and
20 nature of a sales presentation.

21 (2) Each video service provider shall establish a dispute
22 resolution process for its customers. Each provider shall maintain
23 a local or toll-free telephone number for customer service contact.

24 ~~—— (3) The commission shall submit to the legislature no later~~
25 ~~than June 1, 2007 a proposed process to be added to this act that~~
26 ~~would allow the commission to review disputes which are not~~
27 ~~resolved under subsection (2), disputes between a provider and a~~

1 ~~franchising entity, and disputes between providers.~~

2 (3) ~~(4)~~ Each provider shall notify its customers NOT LESS THAN
3 ANNUALLY of the dispute resolution process created under this
4 section. EACH PROVIDER SHALL INCLUDE THE DISPUTE RESOLUTION PROCESS
5 ON ITS WEBSITE.

6 (4) BEFORE A CUSTOMER CAN FILE A COMPLAINT WITH THE COMMISSION
7 UNDER SUBSECTION (5), THE CUSTOMER SHALL FIRST ATTEMPT TO RESOLVE
8 THE DISPUTE THROUGH THE DISPUTE RESOLUTION PROCESS ESTABLISHED BY
9 THE PROVIDER UNDER SUBSECTION (2). IF THE DISPUTE CANNOT BE
10 RESOLVED BY THE PROVIDER'S DISPUTE RESOLUTION PROCESS, THE CUSTOMER
11 MAY FILE A COMPLAINT WITH THE COMMISSION UNDER SUBSECTION (5). THE
12 PROVIDER SHALL PROVIDE THE CUSTOMER WITH THE COMMISSION'S TOLL-FREE
13 CUSTOMER SERVICE NUMBER AND WEBSITE ADDRESS.

14 (5) A COMPLAINT FILED UNDER THIS SECTION INVOLVING A DISPUTE
15 BETWEEN A CUSTOMER AND A PROVIDER SHALL BE HANDLED BY THE
16 COMMISSION IN THE FOLLOWING MANNER:

17 (A) AN ATTEMPT TO RESOLVE THE DISPUTE SHALL FIRST BE MADE
18 THROUGH AN INFORMAL RESOLUTION PROCESS. UPON RECEIVING A COMPLAINT,
19 THE COMMISSION SHALL FORWARD THE COMPLAINT TO THE PROVIDER AND
20 ATTEMPT TO INFORMALLY MEDIATE A RESOLUTION. THE PROVIDER SHALL HAVE
21 10 BUSINESS DAYS TO RESPOND AND OFFER A RESOLUTION. IF THE DISPUTE
22 CANNOT BE RESOLVED THROUGH THE INFORMAL PROCESS, THE CUSTOMER CAN
23 FILE A FORMAL COMPLAINT UNDER SUBDIVISION (B).

24 (B) A FORMAL COMPLAINT FILED UNDER THIS SUBDIVISION SHALL BE
25 IN WRITING AND SHALL STATE THE SECTION OR SECTIONS OF THIS ACT THAT
26 THE CUSTOMER ALLEGES THE PROVIDER HAS VIOLATED, SUFFICIENT FACTS TO
27 SUPPORT THE ALLEGATIONS, AND THE EXACT RELIEF SOUGHT FROM THE

1 PROVIDER. THE FORMAL COMPLAINT SHALL COMPLY WITH THE SAME
2 REQUIREMENTS OF A WRITTEN COMPLAINT FILED UNDER SECTION 203 OF THE
3 MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179, MCL 484.2203. THE
4 COMPLAINT SHALL BE RESOLVED BY 1 OF THE FOLLOWING:

5 (i) IF THE DISPUTE INVOLVES AN AMOUNT OF \$5,000.00 OR LESS, THE
6 COMMISSION SHALL APPOINT A MEDIATOR WITHIN 7 BUSINESS DAYS OF THE
7 DATE THE COMPLAINT IS FILED. THE MEDIATOR SHALL MAKE
8 RECOMMENDATIONS FOR RESOLUTION WITHIN 30 DAYS FROM THE DATE OF
9 APPOINTMENT. WITHIN 10 DAYS OF THE DATE OF THE MEDIATOR'S
10 RECOMMENDATIONS, ANY NAMED PARTY IN THE COMPLAINT MAY REQUEST A
11 CONTESTED CASE AS PROVIDED UNDER SUBPARAGRAPH (ii) .

12 (ii) IF THE DISPUTE INVOLVES AN AMOUNT GREATER THAN \$5,000.00,
13 A CONTESTED CASE HEARING IN THE SAME MANNER AS PROVIDED UNDER
14 SECTION 203 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179,
15 MCL 484.2203.

16 (6) IF THE DISPUTE IS BETWEEN A PROVIDER AND A FRANCHISING
17 ENTITY OR BETWEEN 2 OR MORE PROVIDERS, THE DISPUTE WILL BE RESOLVED
18 IN THE FOLLOWING MANNER:

19 (A) AN ATTEMPT TO RESOLVE THE DISPUTE SHALL FIRST BE MADE
20 THROUGH AN INFORMAL RESOLUTION PROCESS. IF A PROVIDER OR
21 FRANCHISING ENTITY BELIEVES THAT A VIOLATION OF THIS ACT OR THE
22 FRANCHISING AGREEMENT HAS OCCURRED, THE PROVIDER OR FRANCHISING
23 ENTITY MAY BEGIN AN INFORMAL COMPLAINT PROCESS WITH THE COMMISSION.
24 THE PROVIDER OR THE FRANCHISING ENTITY SHALL FILE WITH THE
25 COMMISSION A WRITTEN NOTICE OF DISPUTE IDENTIFYING THE NATURE OF
26 THE DISPUTE, REQUEST AN INFORMAL DISPUTE RESOLUTION, AND SERVE THE
27 NOTICE OF DISPUTE ON THE OTHER PARTY. COMMISSION STAFF WILL CONDUCT

1 AN INFORMAL MEDIATION IN AN ATTEMPT TO RESOLVE THE DISPUTE. IF A
2 SATISFACTORY RESOLUTION TO THE DISPUTE IS NOT ACHIEVED, ANY NAMED
3 PARTY IN THE COMPLAINT MAY FILE A FORMAL COMPLAINT UNDER
4 SUBDIVISION (B).

5 (B) A FORMAL COMPLAINT FILED UNDER THIS SUBDIVISION SHALL BE
6 IN WRITING AND SHALL STATE THE SECTION OR SECTIONS OF THIS ACT OR
7 PARTS OF THE FRANCHISING AGREEMENT THAT THE PARTY ALLEGES HAVE BEEN
8 VIOLATED, SUFFICIENT FACTS TO SUPPORT THE ALLEGATIONS, AND THE
9 RELIEF REQUESTED. A PROVIDER'S OR FRANCHISING ENTITY'S ATTORNEY
10 SHALL SUBMIT A FORMAL COMPLAINT IN WRITING TO THE COMMISSION THAT
11 SHALL CONTAIN ALL INFORMATION, TESTIMONY, EXHIBITS, OR OTHER
12 DOCUMENTS AND INFORMATION WITHIN THE MOVING PARTY'S POSSESSION ON
13 WHICH THE PARTY INTENDS TO RELY TO SUPPORT THE COMPLAINT. FOR A
14 PERIOD OF 60 DAYS AFTER THE DATE THE COMPLAINT IS FILED, THE
15 PARTIES SHALL ATTEMPT ALTERNATIVE MEANS OF RESOLVING THE COMPLAINT.
16 IF THE PARTIES CANNOT AGREE ON AN ALTERNATIVE MEANS WITHIN 10 DAYS
17 AFTER THE DATE THE COMPLAINT IS FILED, THE COMMISSION SHALL ORDER
18 MEDIATION. WITHIN 60 DAYS FROM THE DATE MEDIATION IS ORDERED, THE
19 MEDIATOR SHALL ISSUE A RECOMMENDED SETTLEMENT. WITHIN 7 DAYS AFTER
20 THE DATE THE RECOMMENDED SETTLEMENT IS ISSUED, EACH PARTY SHALL
21 FILE WITH THE COMMISSION A WRITTEN ACCEPTANCE OR REJECTION OF THE
22 RECOMMENDED SETTLEMENT. IF THE PARTIES ACCEPT THE RECOMMENDATION,
23 THEN THE RECOMMENDATION SHALL BECOME THE FINAL ORDER IN THE
24 CONTESTED CASE. IF A PARTY REJECTS OR FAILS TO RESPOND WITHIN 7
25 DAYS TO THE RECOMMENDED SETTLEMENT, THEN THE COMPLAINT SHALL
26 PROCEED TO A CONTESTED CASE HEARING IN THE SAME MANNER AS PROVIDED
27 UNDER SECTION 203 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA

1 179, MCL 484.2203. A PARTY THAT REJECTS THE RECOMMENDED SETTLEMENT
2 SHALL PAY THE OPPOSING PARTY'S ACTUAL COSTS OF PROCEEDING TO A
3 CONTESTED CASE HEARING, INCLUDING ATTORNEY FEES, UNLESS THE FINAL
4 ORDER OF THE COMMISSION IS MORE FAVORABLE TO THE REJECTING PARTY
5 THAN THE RECOMMENDED SETTLEMENT. A FINAL ORDER IS CONSIDERED MORE
6 FAVORABLE IF IT DIFFERS BY 10% OR MORE FROM THE RECOMMENDED
7 SETTLEMENT IN FAVOR OF THE REJECTING PARTY. IF THE RECOMMENDATION
8 IS NOT ACCEPTED, THE INDIVIDUAL COMMISSIONERS SHALL NOT BE INFORMED
9 OF THE RECOMMENDED SETTLEMENT UNTIL THEY HAVE ISSUED THEIR FINAL
10 ORDER.