

STATUS OF COMPETITION FOR VIDEO SERVICES IN MICHIGAN

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MICHIGAN PUBLIC SERVICE COMMISSION
Department of Licensing and Regulatory Affairs
In compliance with Public Act 480 of 2006

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Introduction

On January 1, 2007, the Uniform Video Services Local Franchise Act (hereinafter referred to as “2006 PA 480” or the “Act”) became effective. 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/cable services in Michigan, as well as any recommendations for needed legislation to the Governor and Legislature by February 1 of each year. For the sixth year, the Commission has gathered information regarding the status of competition of video/cable services by developing electronic surveys for use by franchise entities (also referred to as municipalities or communities) and video/cable service providers operating throughout Michigan. The surveys, as well as the information collected from the surveys, are explained in further detail within the body of this report.

In addition to the survey information, this report provides a brief description of the Commission’s role as it pertains to the Act as well as the Commission’s video/cable franchise activities (including complaint handling) throughout the 2012 calendar year. This report also includes information relating to recommendations for legislative changes and the Commission’s conclusion on the status of video/cable competition for 2012.

I. Responsibilities and Activities of the Commission

This section provides an overview and analysis of the responsibilities and activities of the Commission since the Act became effective, and more specifically, during the 2012 calendar year. These responsibilities and activities have been divided into the following categories: Statutory Responsibilities, Outreach and Complaint Handling.

A. Statutory Responsibilities

The Act became effective on January 1, 2007. The Commission established a statewide uniform standardized form to be used by both video/cable service providers (providers) and franchise entities pursuant to Section 2(1) of the Act. The Uniform Video Service Local Franchise Agreement (Agreement) was formally approved on January 30, 2007 by the Commission in Case No. U-15169. The Agreement can be found on the Video/Cable Section of the Commission's website.¹

The Act required the Commission to develop a proposed dispute resolution process which was submitted to the Legislature in compliance with Section 10(3) of the Act. Public Act 4 of 2009 established the video/cable dispute resolution process. The Commission offers the process for the following types of complaints: customer vs. provider; franchise entity vs. provider; and provider vs. provider.

The Act provides that the Commission shall receive and rule on waiver requests from providers for an extension to requirements in Section 9 of the Act (deployment of services) and monitor the providers' adherence to its progress for compliance through annual reports. To date, the Commission has not received any such waiver requests.

¹ The Agreement, as well as the Act, can be located at: michigan.gov/mpsc/0,1607,7-159-49641---,00.html.

Lastly, the Commission has the authority to order remedies and penalties for violations of the Act. The Commission did not have cause to exercise authority to order remedies and penalties for violations of the Act in 2012.

B. Outreach

In May 2012, the Commission's Service Quality Division (SQD) developed a new constituent outreach initiative. Members of SQD staff attended 40 events throughout the state of Michigan. Video Franchise staff provided video/cable consumer information to be available at these events. SQD staff estimates that over 4,500 Michigan constituents attended outreach events and that the video/cable Consumer Tips was distributed to more than 2,800 constituents. Video Franchise staff also distributed video/cable Consumer Tips to over 1,700 Michigan municipalities regarding the video/cable complaint resolution process.² The Commission continues to alert subscribers with relevant and timely consumer education tips through its SQD listserv.³ Through the new outreach initiative, the listserv has increased subscribership from 787 to 1,567 in 2012.

Updates and enhancements are continually being made to the Commission's video franchise webpage.⁴ For example, any interested party can go to the video franchise webpage and click on "Video Cable Providers Offering Service in Michigan" and view an updated list of all the video/cable providers offering service as well as the contact information for each provider. When Video Franchise staff becomes aware of a new provider the list is updated accordingly. In addition, there is a link on the video franchise webpage to Michigan's

² The Consumer Tips was sent with the Annual Survey notification letter on October 30, 2012 to every municipality in Michigan.

³ SQD implemented an email listserv where constituents can subscribe to automatically receive important consumer alerts and information.

⁴ <http://www.michigan.gov/mpsc/0,1607,7-159-49641---,00.html>

Interactive Broadband Map.⁵ The map is detailed, user-friendly, and allows users to see if internet service – including internet service offered by a video/cable provider – is available in a particular area and if so which providers are offering those services.⁶

Other items on the video franchise webpage include: 2006 PA 480, Frequently Asked Questions (FAQs), the Uniform Video Services Dispute Resolution Process (Public Act 4 of 2009), an online complaint form, contact information for Video Franchise, and an archive containing the Video Competition Reports.

C. Complaint/Inquiry Handling

Complaints and inquiries are received by calling the Commission's toll-free and general telephone lines, fax, mail, online complaint form, and customers who walk into one of the Commission's offices. The video/cable franchising section also receives referrals from the Governor's office, legislative staff, the Department Director's office and other state agencies with video/cable complaints and inquiries.

When contacting the Commission through the toll-free telephone line, a customer is prompted to select the appropriate industry of concern and calls are then answered live by a Video Franchising Complaint Specialist. A customer record is created for each customer complaint and/or inquiry. These records allow staff to track the history and progress of the customer's concern to completion and accumulate data used to analyze complaint and inquiry trends. A Video Franchising Complaint Specialist responds directly to the customer's inquiry or complaint, and when appropriate the complaint is forwarded to a provider complaint

⁵ <http://connectmi.org/>

⁶ The map provides broadband internet information from participating providers. In addition, since providers continually expand and enhance their infrastructure, it is recommended that consumers contact the potential provider for assurance that service is available and can be offered.

representative for resolution. The Commission follows the dispute resolution process as set forth in Public Act 4 of 2009.

1. Informal/Formal Customer Complaints

Overall, the number of customer complaints and inquiries increased from 2011. The Commission continues to assist customers on a variety of issues regarding billing problems, service outages, customer service, missed appointments, delayed service, rates/fees, channel line-up concerns, video/cable competition, equipment/cable line problems, and Public, Education, and Government (PEG) programming complaints. The Commission has been able to informally resolve such problems with the provider. When informal resolution is unsuccessful, the customer is allowed to file a formal complaint with the Commission pursuant to the Act. There were no formal customer complaints filed in 2012.

The Commission received 880 video/cable customer complaints and inquiries from January 1, 2012 to December 31, 2012. Figure 1 below shows the number of complaints and inquiries filed at the Commission (2007 – 2012):

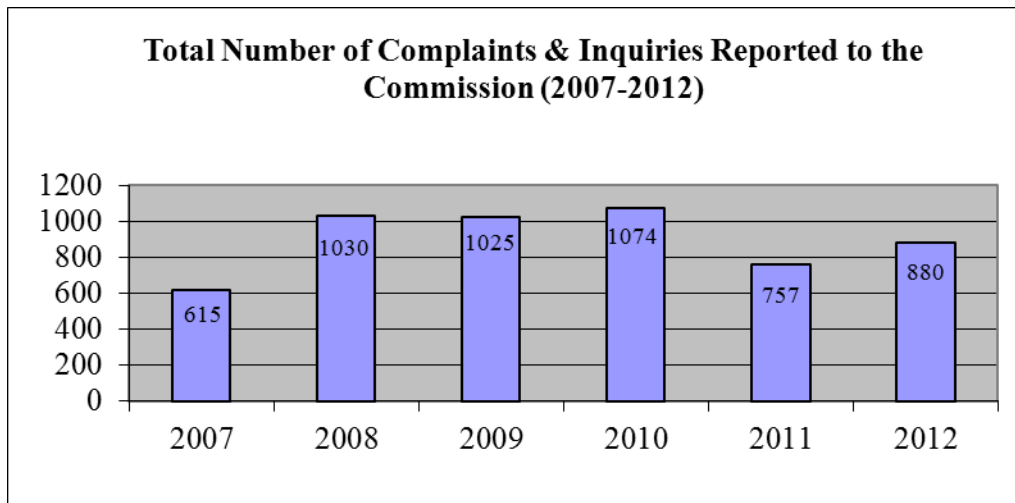


Figure 1
Source: MPSC Complaint Data

The 880 complaints and inquiries are those that are fully documented and reported to the Commission and do not include calls where customers were not willing to provide their name and contact information. Follow-up calls and the reopening of a complaint are not documented as a new complaint unless the complaint consists of an additional problem not originally reported by the customer.

As previously stated, the Commission assisted video/cable customers with a number of issues. Figure 2 provides a listing of the most common types of video/cable complaints filed with the Commission in 2012:

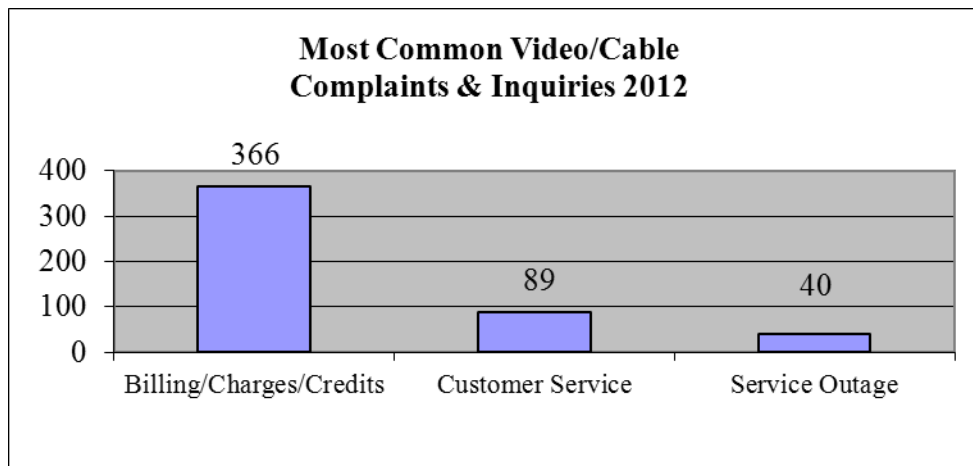


Figure 2
Source: MPSC Complaint Data

The most frequent complaint categories are Billing/Charges/Credits, Customer Service, and Service Outage.

The Commission received video/cable complaints from customers of 14 different cable providers. The three providers with the most complaints and inquiries filed with the Commission were Comcast (51 percent), AT&T Michigan (15 percent), and Charter (14 percent)

– the three companies with the highest subscribership in Michigan. The total number of complaints compared to the overall number of video/cable subscribers in Michigan remains low.⁷

2. Informal/Formal Franchise Entity vs. Video/Cable Provider Complaints

This past year the Commission received 13 informal complaints between franchise entities and video/cable providers, of which 12 were franchise entity vs. video/cable provider complaints, and one was a video/cable provider vs. video/cable provider complaint. Eleven informal complaints were successfully mediated by Commission Staff, one is still pending, and one progressed to a formal complaint which was filed with the Commission and subsequently settled between the parties involved. Issues disputed in these complaints involved PEG/franchise fees, interconnect issues, removal of existing equipment, and franchise agreements.

II. 2012 Commission Survey to Franchise Entities and Providers

As in the past, the Commission developed an electronic survey to be completed by franchise entities, as well as a separate survey to be completed by providers.

A. Franchise Entities' Responses to the Commission Survey

As in prior years, the Commission made the survey form available on its website for franchise entities to complete. The online survey was available November 1 – November 30, 2012.

Although the franchise entity survey is not mandatory and not required by the Act, the Commission believes it is important to continue to collect information from municipalities from across Michigan regarding the video/cable environment in their communities. Notification letters were sent to over 1,700 municipalities throughout Michigan making them aware of the

⁷ In 2012, there were 2,316,197 video/cable subscribers reported in Michigan. This number does not include satellite subscribers.

location and availability of the survey, and encouraging the communities to respond. The Commission also included its Video Franchise Consumer Tips that describes the dispute process for customers to file a video/cable complaint.

Of the more than 1,700 municipalities that the survey notification letters were sent to, 379 communities responded. This is an increase of 101 communities when compared to 2011. The information provides useful insight as to what is occurring in some communities throughout Michigan regarding video/cable service and competition. The Commission believes it is important to include this information in this report; however, the responses do not necessarily reflect the views of the Commission. Two hundred twenty eight of the municipalities that responded requested to be placed on the Commission’s listserv.

1. Provider Information

Franchise entities provided information regarding the number of providers that existed in their communities prior to the Act taking effect (January 1, 2007), as well as the number of providers currently offering video/cable service in their communities since the Act took effect:⁸

	Prior to 01/01/2007	As of 12/31/2012
Number of Providers	Number of Communities	Number of Communities
0	25	21
1	292	247
2	50	81
3	3	24
4	0	0

Figure 3
Source: MPSC Franchise Entity Survey

⁸ It is important to note that not all franchise entities complete every question on the survey.

In 2012, municipalities indicated an increase (since the Act took effect) in the number of communities where two or more providers currently offer cable service.⁹ While communities with zero to one provider have gone down, numbers representing municipalities with two and three providers has gone up significantly. Prior to the Act taking effect, only 53 communities reported two or more providers offering service. As of December 31, 2012, that number almost doubled as 105 communities reported two or more video/cable providers offering service in 2012. With the number of providers in municipalities increasing since the Act took effect, the mix of communities with a greater number of video/cable providers shows that competitive choices for consumers continues to rise. It is important to note that satellite providers do not have franchise agreements and providers such as DirecTV and Dish Network are available options for video/cable customers in the state of Michigan.

2. Complaints

Of those municipalities that responded to the survey regarding customer complaints, 77 percent indicated they no longer record video/cable complaints. Even though the Commission has informed municipalities of Public Act 4 of 2009, only 49 percent of the respondents were specifically aware of Public Act 4 of 2009 by title. However, 72 percent of responding municipalities are aware the Commission can assist customers, franchise entities, and providers who have video/cable inquiries and/or complaints.

The most frequent complaints received by municipalities are as follows (from most to least):

⁹ It is important to note that the communities who responded this year are not necessarily the same communities who responded in previous years. Therefore, it is difficult to do a year-to-year comparison when inconsistencies exist among the municipality responses. This response rate represents approximately 22 percent of all of Michigan's municipalities.

1. Service Equipment Issues/Outages
2. Rates¹⁰
3. Customer Service
4. Billing Issues
5. Other¹¹

In 2012, 97 percent of respondents indicated they have not had any form of dispute with a provider regarding a franchise agreement.

3. Impact of the Video Franchise Act on Communities

Municipalities were surveyed on the impacts they have witnessed within their communities since the Act took effect. Similar to previous years, the impacts that were highlighted are: Video/Cable Competition, Franchise Fee Payments, PEG Fee Payments, and Video/Cable Complaints. Figure 4 displays community responses relative to the four categories since the Act became effective.

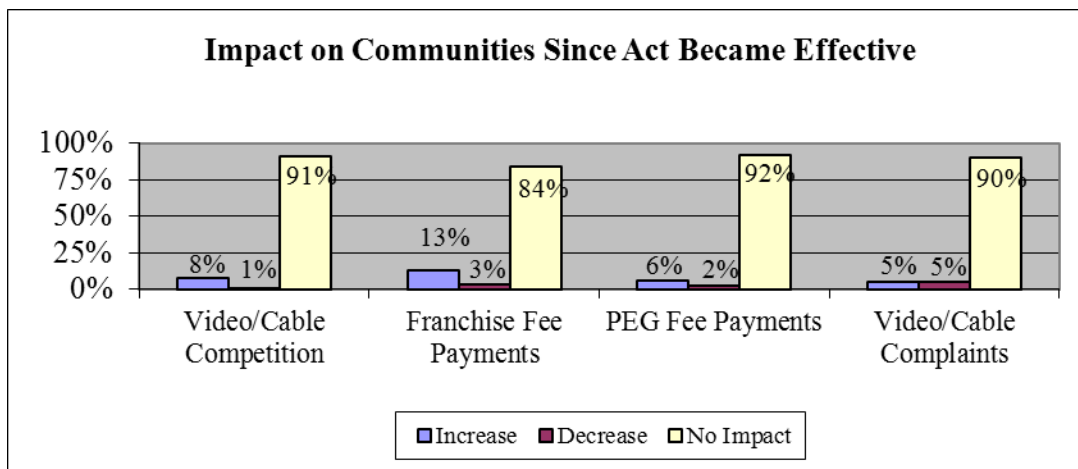


Figure 4
Source: MPSC Franchise Entity Survey

¹⁰ Pursuant to 2006 PA 480, neither the Commission, nor the franchise entity has rate regulatory authority or control over a provider. The Commission does not regulate video/cable rates.

¹¹ The complaints that were combined in the “Other” category were less frequent, but nonetheless, still reported. Some of those complaints include: Availability/No Service, Channel line-up/Programming, Lack of Competition/Monopoly, Unburied Cable, PEG issues, Maintenance Issue, and No Local Facility.

Similar to previous years, a high percentage of responding communities reported no impact in each of the four categories.¹² Only one percent of responding municipalities reported a decrease in Video/Cable Competition compared to eight percent reporting an increase.

4. Changes in Quality of Service and/or Service Offerings of Providers

The Commission again asked the municipalities to report on the changes they perceive are occurring throughout their communities during 2012 regarding Customer Service Quality, PEG Studio and Equipment, Service Offered by the Provider, and the Number of Customer Service Centers. Figure 5 reflects those responses from the municipalities.

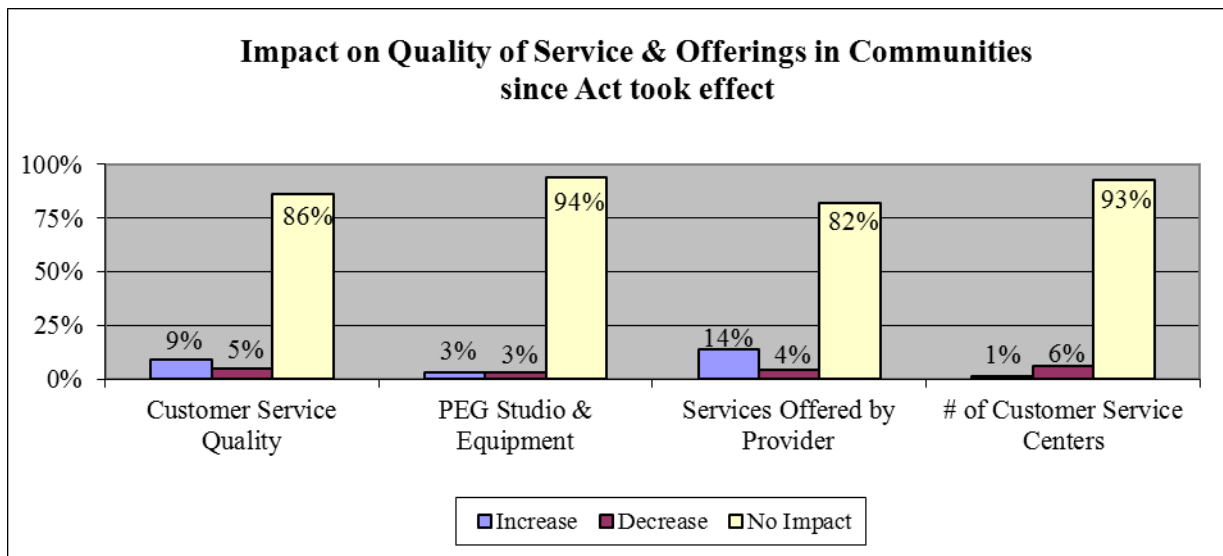


Figure 5
Source: MPSC Franchise Entity Survey

Overall, a large percentage of municipalities reported “no impact” in each of the four categories since the Act took effect. Fourteen percent of communities that responded reported that since the Act took effect there has been an increase in services offered by the provider.

¹² It is important to keep in mind that those communities that responded last year, are not necessarily the same communities that responded this year. Therefore, it is important to not make a direct comparison between the two and make the assumption that this is what is happening throughout the entire state.

Municipalities also provided feedback regarding whether a PEG channel is available. Based on the responses, 45 percent of municipalities indicated their community has a designated PEG channel.¹³

5. Franchise Entities' Suggestions or Comments

Franchise entities were provided the opportunity to offer any comments, recommendations, and/or suggestions.¹⁴ One topic more noteworthy this year is the Build Out/Expansion category. Several of the municipalities surveyed indicated concerns regarding expansion of video/cable services to rural areas within their respective township. The franchise entities' comments are categorized in Appendix A attached to this report.

B. Providers' Responses to the Commission Survey

In 2012, the Commission continued to use its electronic survey as the way to gather responses from providers. The survey notification letter was sent on November 28, 2012 to providers of video/cable service in Michigan. A total of 47 providers were sent the notification letter which represents an increase of one provider¹⁵ when compared to 2011. All 47 providers responded to the survey.

1. Video/Cable Subscribers

During 2012, 2,316,197¹⁶ video/cable customers were reported for Michigan. This is an increase of 2,116 customers compared to the total of video/cable customers reported in 2011 (2,314,081). Figure 6 shows the changes in video/cable subscribership:

¹³ Since a small percentage of municipalities responded to the survey, it should not be implied that the 45 percent is reflective of the entire state.

¹⁴ These recommendations and suggestions are the sole opinion of some of the franchise entities and do not necessarily reflect the views of the Commission.

¹⁵ Vogtmann Engineering.

¹⁶ This number does not include satellite providers. Satellite providers are not required to have franchise agreements with franchise entities and are not required to report to the Commission.

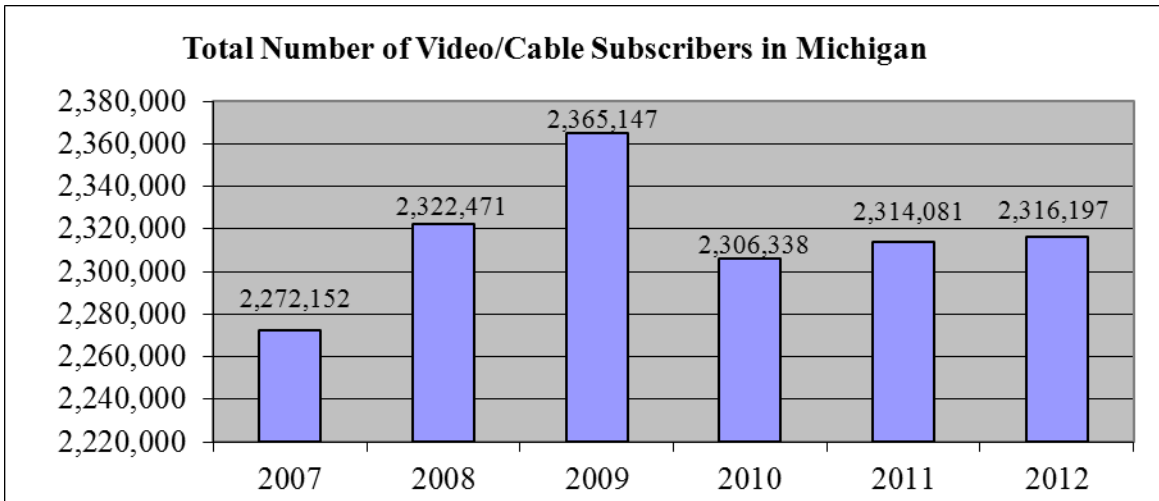


Figure 6
Source: MPSC Provider Survey

The three providers with the largest number of video/cable subscribers in Michigan are Comcast, Charter Communications, and AT&T Michigan (U-verse). Since the Act took effect on January 1, 2007, a total of 15 new video/cable providers¹⁷ have emerged to offer services in Michigan's market.

Even though there was an increase of video/cable customers in Michigan, compared to 2011, several providers reported an overall decrease in their customer base. The Commission sees this as a sign of competition in the industry, due to more providers offering service in Michigan and more municipalities that have two or more providers of video/cable service.

Figure 7 shows the trends in providers' customer bases in 2012.

¹⁷ Ace Telephone Company of Michigan Inc., Bloomingdale Communications, Inc., Drenthe Telephone, Martell Cable Service Inc., Mediagate Digital, Michigan Bell Telephone Company (AT&T Michigan), Michigan Cable Partners (MICOM Cable), Packerland Broadband, Sister Lakes Cable TV, Southwest Michigan Communications Inc., Spectrum Broadband, Summit Digital, Sunrise Communications LLC, Vogtmann Engineering, and Waldron Communication Company.

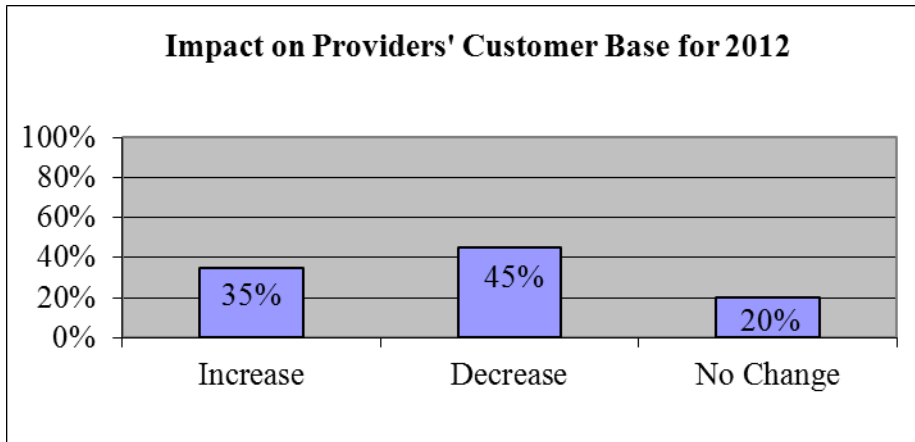


Figure 7
Source: MPSC Provider Survey

2. Video/Cable Competition

Overall, there are currently 1,991 franchise agreements in existence in Michigan (both individual franchise agreements that were entered into before the Act that have not yet expired, and the Uniform Video Service Local Franchise Agreements as required by the Act). When compared to 2011, this represents a net increase of 31 total franchise agreements. Of the 1,991 existing franchise agreements, 1,401 are classified as the Uniform Video Service Local Franchise Agreement, an increase of 119 from the previous year.

Consistent with previous years, the Commission asked providers to submit information regarding the competition they are encountering in their franchise areas. Providers submitted information on the number of competing providers they encountered in their specific franchise areas before the Act took effect and since the Act took effect. Similar to previous years, providers have reported a continued increase in competitors entering their franchise areas.

Figure 8 shows this comparison:

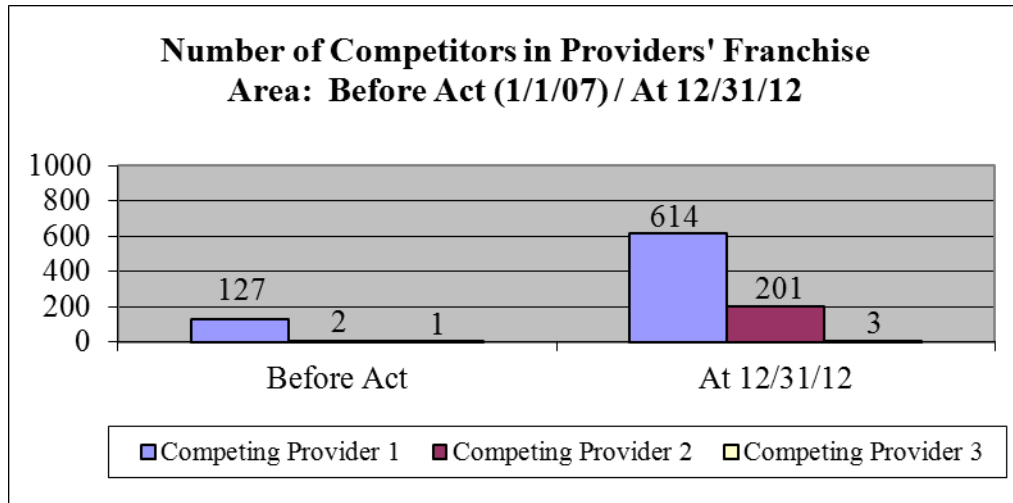


Figure 8
Source: MPSC Provider Survey

3. Disputes

Only two providers reported having an informal or formal dispute with a franchise entity regarding an Agreement. The disputes involved Franchise Fees and PEG.

4. Investment in Michigan

Similar to previous years, the Commission requested information from providers regarding how much funding they have invested in Michigan. Thirty four of the 47 video/cable providers responded with a monetary amount of what they invested in the Michigan video/cable market during 2012. The 34 providers reported investing a total of \$380,064,130.

III. Recommendations

This section provides the Commission's recommendations for legislative action pursuant to Section 12 (2) of the Act. The Commission offers the following three areas for consideration.

First, the Commission recommends the Legislature extend the due date of the Commission's Annual Report from February 1 of each year, to March 1 of each year. The current due date makes it difficult for providers and municipalities to provide timely and accurate year-end information to the Commission. The year-end data must be collected, analyzed and

summarized in this report in 30 days. Extending the reporting date would allow municipalities and providers additional time to provide more detailed responses to the surveys.

Second, the Commission recommends language be added to the Act similar to the language currently found in Section 211(a) of the Michigan Telecommunications Act, which requires the provider to register the following information with the Commission: 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. This contact information is necessary so the Commission has accurate contact information available to it for complaints, as well as for future information and data collection.

Third, the Commission recommends that if a company changes its name, goes out of business, or is merged into another company, it be required to notify the Commission of this change. Providers do not submit their Franchise Agreements to the Commission – the Franchise Agreements are submitted with the individual franchise entities. As such, this information is not available to the Commission.

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

IV. Conclusion

The Commission, adhering to its responsibilities as set forth in Section 12(2) of the Act, provides the Legislature and Governor with this report that includes information related to the Commission's role, activities, and responsibilities, as well as summarizes the information that has been collected from franchise entities and providers, and the Commission's legislative recommendations.

The total number of complaints received by the Commission is higher compared to last year, but still below the number of complaints received in 2008, 2009, and 2010. As new and existing providers continue to build-out their systems and competition increases, the possibility of customer complaints also increases. The Commission will continue to educate and inform customers of the dispute resolution process adopted in 2009, and will continue to monitor complaints regarding video/cable services in Michigan.

Increases in subscribers as well as the emergence of another video/cable provider are positive signs for the video services industry in the state of Michigan. Both franchise entities and providers have continued to report that video/cable competition is continuing to grow. Growth in competition has been observed each year since the Commission began issuing this report. Figure 8 shows a noted increase in the number of competitive providers in franchise areas since 2007 when the Act took effect. In addition to the increase in competitive providers, companies continued to invest hundreds of millions of dollars into the Michigan video/cable market in 2012.

As the Act enters its seventh year of existence, signs of progress and competition continue to be evident. It appears that both franchise entities and providers perceive that providers are offering more services to customers. In addition, more areas throughout Michigan are beginning to have a choice of video/cable service providers. The Commission will continue to monitor video/cable service competition as it develops and take appropriate action as provided by the Act.

Franchise Entities' Suggestions or Comments

- **PEG**
 - Allow PEG fees to be spent on personnel costs
 - Move PEG channels to an actual channel, not an application

- **Build Out/Expansion**
 - Build out needed for residents in rural communities with sparse population
 - Residents question when cable service will be available in their area
 - Cable provider not interested in expanding south of I-94 (too expensive)
 - Unable to access top quality service due to lack of expansion in more rural areas
 - Expand cable service into the outlying areas of rural townships
 - Have had a franchise for 6 years and still no expansion

- **Requirements for Providers**
 - System updates not completed as promised. Large numbers have gone to satellite
 - Upgrades needed to allow for better reception and channel selection

- **Competition**
 - There are two providers in our area, yet little increase in competition
 - Two providers offer service, but neither extended services to meet customer requests
 - Cost to extend service to reach potential customers affects competition
 - Additional providers = competition = good
 - Cable provider left when switch from analog to digital, stating not enough customers to afford the change-over. Now only satellite is available

- **The Act**

Amend PA 480:

 - Fulfill promise to keep Local Franchising Authority (LFA) whole
 - Permit LFA's to require 2% PEG fee based on LFA's determination of need
 - Reflect federal court ruling in *Dearborn vs. Comcast* (2008) preempting PEG portion of PA 480
 - Reflect federal court ruling in *Detroit vs. Comcast* (7/10/12) that:
 - Pre-2007 franchises are unchanged by PA 480
 - As MI Attorney General agreed, LFA's can reject uniform franchise under federal law (no automatic approval)
 - LFA's can enforce federal customer service standards
 - PA 480 has increased competition for some residents, but not all, while having no effect on cost and decreasing customer service
 - Since PA 480:
 - Franchise revenue remains flat
 - Lost in-kind and other services from the incumbent provider
 - Cable rates continue to increase

- Zero value added and has eroded local control of franchising
 - Customers have a choice now, but rates are still higher
 - Providers simply poach competitor's customers as evidenced by flat franchise revenue - as one increases the other decreases commensurately
 - This statute has proven to accomplish literally nothing for municipalities and only serves to benefit providers
 - The Act did nothing to improve service
 - Subscribers pay higher rates for cable services since PA 480 took effective
 - PA 480 was supposed to increase our services, but no apparent results – we have been trying to increase service for 8 years to no avail
- **Rates and Service Offerings**
 - No broadband/high speed internet service in many townships
 - No phone, cable service available
 - The State has totally failed bringing affordable internet service to this community, and has prevented our township government from providing the needed services
 - There are some issues of service not being available from cable provider in certain areas, as promised prior to bankruptcy of Broadstripe
 - Continual increase in cost for cable service is outrageous – no alternatives
 - Need affordable cable options to all citizens, not just those in high density areas
 - Lack of cable service availability in rural townships
- **Misc.**
 - Only METRO agreements, no actual franchise agreements
 - Island community – options are limited
 - No way to report consumer complaints – all deal directly with their provider
 - No franchise for cable or video in the township
 - Township is pleased to know the survey exists and pleased someone cares about the status of video/cable services
 - Fewer complaints, but cannot conclude that means better customer service
 - Small township – not aware of problems with quality of service or impact on the community