

Uniform Video Service Local Franchise:

Michigan Public Service Commission's Proposed Dispute Resolution Process



May, 2007

Introduction

On December 21, 2006, Governor Jennifer M. Granholm signed into law the Uniform Video Services Local Franchise Act, 2006 PA 480, MCL 484.3301 *et seq.* (the Video Act). Section 10 (3) of the Video Act provides:

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.

In order to develop a process that would allow the Commission to review and address disputes that are not resolved under subsection (2) of Section 10 of the Video Act; as well as disputes between providers and providers and franchising entities, the Commission issued an order on January 9, 2007 in Case No. U-15168. The Commission's order sought public comment and suggestions regarding the proposed process referenced in Section 10 (3) of the Video Act. Interested parties were directed to file their comments and/or suggestions by February 8, 2007. Responses to those comments and/or suggestions were to be filed no later than March 1, 2007.

The Commission received comments from both providers, as well as representatives of the local franchising community. Taking into consideration the comments and suggestions that were received, as well as existing dispute processes, the Commission has developed the following proposed processes for reviewing and resolving disputes pursuant to the Video Act. In order to best serve the different parties of potential disputes that might arise, the Commission has set a distinct process for disputes involving customers. In addition, the Commission has based the proposed processes for all parties, in part, on current processes that have demonstrated effectiveness. Section 14 of the Video Act empowers the Commission to order remedies and penalties if, after notice and hearing, the commission finds that a person has violated the act. The proposed processes are designed to work in concert and allow the Commission to faithfully, fairly, and equitably administer the provisions of the law.

Customer v. Provider Dispute Resolution Process

Section 10 (2) of the Video Act provides:

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

The Commission did not receive comments specifically from individual customers or consumer groups. However, the Commission received comments from representatives of local franchise communities, local area cable commissions, as well as groups/associations all of which represent cable customers and citizens. The Commission uses its long-standing experience of assisting customers of energy and telecommunications providers as guidance for the customer versus

provider dispute resolution process. The Commission proposes a multi-staged approach in order to resolve disputes with expediency and yet enable a customer the opportunity to seek redress as needed. The following steps, based similarly on current processes for other energy and telecommunications issues, are proposed to address disputes between a customer and a video service provider:

Stage 1 (Provider Dispute Resolution): As required by the Video Act, each provider shall maintain a local or toll-free telephone number for customer service contact. This number should be visibly identified and placed on the customer's bill. In addition, as required by the Video Act, each provider shall establish a dispute resolution process for its customers AND each provider shall notify its customers of the dispute resolution process. In order to comply with this, providers should ensure that the dispute resolution process is provided at least annually to each customer. In addition, the provider should place the dispute resolution process on its website in a manner that is reasonably easy to locate.

The customer should first attempt to contact the video service provider to resolve the dispute. If a customer is dissatisfied with the provider's resolution, the provider should direct the customer to the Commission, providing the Commission's toll-free customer service number and the web address.

Stage 2 (Informal Complaints): If the customer remains dissatisfied with the Stage 1 dispute resolution or if no resolution has been reached regarding the complaint/inquiry, the customer may submit an *informal* complaint to the Commission and the following process for an informal complaint would take place:

1. A customer contacts the Commission with an informal cable/video complaint.
2. A Commission staff member is assigned to the informal complaint.
3. The Commission staff member forwards the complaint to the provider and informally mediates (if necessary) between the provider and the customer.
4. Upon receiving the complaint from the Commission, the provider is allowed up to 10 business days (under normal circumstances) to respond and provide a detailed resolution to both the customer and the Commission. Within the first 1-3 business days, the provider will make an initial contact with the customer, making them aware that they have received the complaint and are working to resolve it.
5. Upon receiving and reviewing the provider's response, if the Commission finds the customer's complaint has been adequately resolved, the Commission will then close the complaint. However, the Commission has the option to leave the complaint open so that it may follow-up with the provider and/or the customer if questions subsequently arise.

Stage 3 (Formal Complaints): A customer will be permitted to file a formal complaint *only*: 1) when the informal complaint process has been completed and; 2) a satisfactory resolution has not been reached between the provider and the customer.

All formal complaints must be found *prima facie* before they may proceed. In order to be found *prima facie* the complaint must identify the specific section(s) of the Video Act that are alleged to have been violated and state sufficient facts to support the alleged violation(s). The complaint must also state with specificity the relief requested. If a complaint is not found *prima facie*, it will not be accepted.

The formal complaint process will utilize a combination of the procedures provided for in Section 7 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act), MCL 484.3107, and Section 203 of the Michigan Telecommunications Act (MTA), MCL 484.2203. The following process for a formal complaint would take place:

1. A customer would submit their formal complaint, in writing, to the Commission. [Note: Section 203(7) of the MTA requires that the complaint contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the complaint.]
2. The Commission staff will review the formal complaint, and if found *prima facie*, it will then proceed according to procedures outlined in Section 7 of the METRO Act if the complaint involves a dispute of \$5,000.00 or less.
3. The Commission will appoint a mediator within 7 business days of the date of the complaint to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 10 days of the date of the mediator's recommendation request a contested case pursuant to the provisions of Sections 203(1), (7), (8), (9), (10), (11), (12), (15) and (16) of the MTA.
4. If the complaint involves a dispute of more than \$5,000.00 the Commission will conduct a contested case pursuant to the provisions of Section 203(1), (7), (8), (9), (10), (11), (12), (13), (15) and (16) of the MTA. This scenario allows for no formal mediation.

Provider v. Franchising Entity or Provider v. Provider Dispute Resolution Process

The Commission notes that it has received three requests for declaratory rulings from a provider against a franchising entity. In all three instances, staff worked to assist with resolution of the matters. In one instance, the Commission treated the matter as a complaint and declaratory ruling, setting the matter for pre-hearing conference on an expedited basis. Fortunately, all three matters have been resolved without further administrative proceedings.

The Commission provides the following processes for resolving disputes between providers and disputes between a provider and a franchising entity.

Stage 1 (Informal Complaint): If a provider or franchising entity believes that a violation of the Video Act or the Agreement has occurred, they may begin an informal complaint process with the Commission. The franchising entity(ies) or the provider(s) must file with the Commission a written **Notice of Dispute** identifying the nature of the dispute, request an informal dispute resolution and serve the **Notice of Dispute** on the other party(ies). Commission staff will conduct an informal mediation in order to resolve the dispute. If a satisfactory resolution to the dispute has not been achieved, any party may file a formal complaint pursuant to the provisions of Sections 203 and 203a of the MTA.

Stage 2 (Formal Complaint): A provider or a franchising entity may file a formal complaint **only** when the informal complaint process has been completed, and no satisfactory resolution has been reached.

All formal complaints must be found *prima facie* before they may proceed. In order to be found *prima facie* the complaint must identify the specific section(s) of the Video Act and/or the Uniform Video Service Local Franchise Agreement that are alleged to have been violated and state sufficient facts to support the alleged violation(s). The complaint must also state with specificity the relief requested. If a complaint is not found *prima facie*, it will not be accepted.

The following process for a formal complaint will take place:

1. A provider's or franchising entity's attorney would submit a formal complaint in writing to the Commission. [Note: Section 203(7) of the MTA requires that the complaint contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the complaint.]
2. The formal complaint would proceed pursuant to the provisions of Sections 203(1), (7), (8), (9), (10), (11), (12), (13), (15) and (16) and 203a of the MTA.
3. For all complaints, for a period of 60 days after the complaint is filed, the parties shall attempt alternative means of resolving the complaint.
4. Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record. If the parties cannot agree on an alternative means within 10 days after the date the complaint is filed, the Commission shall order mediation. Within the 60-day period, a recommended settlement shall be made to the parties.
5. Within 7 days after the date of the recommended settlement, each party shall file with the Commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case under Section 203.
6. If a party rejects or fails to respond within 7 days to the recommended settlement, then the complaint shall proceed to a contested case hearing under Sections 203(1), (7), (8), (9), (10), (11), (12), (13), (15) and (16).

7. The party that rejects the recommended settlement shall pay the opposing party's actual costs of proceeding to a contested case hearing, including attorney fees, unless the final order of the Commission is more favorable to the rejecting party than the recommended settlement. A final order is considered more favorable if it differs by 10% or more from the recommended settlement in favor of the rejecting party.
8. If the recommendation is not accepted, the individual commissioners shall not be informed of the recommended settlement until they have issued their final order under Section 203.
9. An attempt to resolve a contested case in this manner is exempt from the requirements of Section 203 and the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.