STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of AT&T Michigan )
for resolution of a dispute with the City of )
Clawson under the Uniform Video Services )
Local Franchise Act. )
) Case No. U-15683

At the December 23, 2008 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeith, Commissioner

ORDER ESTABLISHING AN EXPEDITED HEARING
AND DIRECTING THE CITY OF CLAWSON TO SHOW CAUSE

On October 24, 2008, AT&T Michigan filed a complaint for resolution of a dispute with the City of Clawson (Clawson) under the Uniform Video Services Local Franchise Act, 2006 PA 480 (Act 480); MCL 484.3301 et seq. Along with the complaint, AT&T Michigan also filed requests for a declaratory ruling, an order to show cause, and expedited consideration of its filings.

The complaint alleges that Clawson improperly rejected AT&T Michigan’s September 30, 2008 uniform video service local franchise agreement (franchise agreement) as incomplete. The rejection was communicated by Clawson to AT&T Michigan in a letter dated October 20, 2008. Attached to the letter was a document titled “Questions Supporting Incomplete Information on the AT&T Application for Video Service Local Franchise Agreement.” Complaint, Exhibit 2. This document contains a list of issues, stated as queries, that Clawson alleges must be addressed by the
franchise agreement in order for the agreement to be deemed complete. The list contains 30 queries. The queries cover a range of topics, including:

- public, educational, and governmental (PEG) channels (e.g., “Please provide those circumstances under which the provider limits or conditions access to PEG channels?”);
- audit procedures (e.g., “Is the franchise entity auditor allowed continued access once it is first provided without inordinate delays?”);
- rights-of-way\(^1\) (e.g., “To what extent, will the provider allow the Clawson contractor to remediate at the expense of the provider?”);
- fees (e.g., “To what extent has provider’s definition of Gross Fees (VI Fees D) been defined differently than in the proposed Franchise Agreement?”); and
- consumer protection (e.g., “To what extent does the provider agree to the applicability of the Michigan Consumer Protection Act?”).

The October 20 letter further rejects the franchise agreement as incomplete on grounds that AT&T Michigan’s claim of confidentiality for certain materials was not properly supported. Id.

On October 29, 2008, the Commission’s Executive Secretary sent a letter to the parties informing them of the Commission’s statutorily-mandated dispute resolution procedure for disputes between a provider and a franchising entity.\(^2\) MCL 484.3310(3). The Commission Staff (Staff) contacted the parties and informal mediation with the Staff took place on November 13, 2008. The mediation did not result in a resolution of the dispute.

On November 21, 2008, AT&T Michigan filed a report on the result of the informal mediation. Attached to the report is a letter from Clawson’s counsel to AT&T Michigan dated

\(^1\)Clawson concedes that some of these issues are properly addressed under the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act), MCL 484.3101 et seq.

\(^2\)On November 5, 2008, AT&T Michigan sent a letter to the Executive Secretary indicating that the company would participate in the mediation, but stating that AT&T Michigan does not agree that the dispute resolution process applies to a dispute over whether a municipality may reject a franchise agreement as incomplete when the franchise agreement is the standard agreement adopted by the Commission.
November 19, 2008, conveying a copy of a resolution adopted by Clawson on November 18, 2008.

The City of Clawson’s November 18, 2008 resolution, CM 11-182-08, states as follows:

NOW, THEREFORE, BE IT RESOLVED, that the City of Clawson finds that the Franchise Agreement meets the technical requirements of the Act and Public Commission Order, and solely for that reason, the City hereby does not oppose the Uniform Franchise Agreement with AT&T Michigan but does add the following conditions making that Agreement subject to the following terms and conditions:

a. AT&T in connection with any audit requested by Clawson shall comply with the requirements set forth in the attached Exhibit 1 the content of which is deemed to be incorporated as a part of the Uniform Franchise Agreement.

b. Unless otherwise specifically covered by statute, any dispute existing between the City of Clawson and AT&T pertaining to or arising under the terms and provisions of the Uniform Franchise Agreement shall be resolved by the party within five (5) days of the notification of a dispute. A mediator shall be mutually agreed upon to facilitate said dispute. In the event of an inability to mutually agree upon a mediator, then AT&T or Clawson shall immediately request the appointment of a mediator by the presiding judge of the Oakland County Circuit Court and proceed to the mediation within ten (10) days of such appointment. This mediation shall be conducted under the Michigan Court Rules MCR 2.410 and MCR 2.411.

c. The City of Clawson shall apply the following interpretation to subsection 4(e) of 484.3306 and the appropriate Section of the Uniform Franchise Agreement to include all revenue derived from compensation arrangements for advertising attributable to the local franchise area.

d. Notwithstanding the implementation of the Uniform Franchise Agreement, Clawson does further determine and declare pursuant to Act 480 of 2006, and in particular sections 3302 (g), (h), (j), (l), (m), (n) cover situations preempted by federal law and not within the jurisdiction of the Michigan Public Service Commission.

Thus, the November 18 resolution purports to unilaterally add terms and conditions to the franchise agreement regarding audit procedures, dispute resolution, compensation, and the Commission’s jurisdiction.
Discussion

Act 480 provides for uniform video service local franchises and promotes competition in the provisioning of video services in Michigan. Act 480 mandates uniformity, by requiring the Commission to adopt a “standardized form” for the franchise agreement. MCL 484.3302(1). Act 480 mandates a streamlined process, by requiring the Commission to adopt the standardized form within 30 days of the effective date of the act, and by: (1) giving franchising entities no more than 15 days to make a finding on the completeness of the agreement, (2) no more than 30 days to accept or reject the agreement, and (3) by deeming the agreement approved if the entity makes no response. MCL 484.3303(2), (3).

On January 30, 2007, the Commission issued an order in Case No. U-15169 that adopted a standardized form for the uniform video service local franchise agreement to be used by all Michigan franchising entities and video providers. That uniform agreement is “the franchise agreement required under this act to be the operating agreement between each franchising entity and video provider in this state,” and meets all of the requirements of Act 480 for a uniform agreement. See, MCL 484.3301(2)(n), MCL 484.3302(3)(a)-(s). In conformance with Act 480, the order in Case No. U-15169, p. 1, provides “The adopted form shall be used without substantive or procedural changes for all video service local franchise agreements in the state of Michigan.” The franchise agreement submitted to Clawson is the uniform agreement adopted by the Commission. It was filled out by AT&T Michigan, and appears to contain no blanks or incomplete sections other than those required to be filled in by Clawson.

Act 480 addresses the issues raised by Clawson in its queries. PEG channels are addressed in Section 4. MCL 484.3304. Franchise and PEG fees are addressed in Section 6. MCL 484.3306. Audit procedures are addressed in Section 7. MCL 484.3307. Right-of-way issues are addressed
in Section 8, and under the METRO Act. MCL 484.3308, 484.3101 et seq. Alternative technology is addressed in Section 9. MCL 484.3309. Dispute resolution is addressed in Section 10 and in the procedures adopted by the Commission. MCL 484.3310. Claims of confidentiality are addressed in Section 11, and in the franchise agreement itself, which provides that “The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as ‘confidential.’” Case No. U-15169, Exhibit A, p. 2; MCL 484.3311. The Commission’s jurisdiction is addressed in Section 12. MCL 484.3312. Section 13 provides that franchising entities and video service providers are not required to use the uniform agreement, where they mutually agree on a voluntary agreement. MCL 484.3313. Act 480 provides no authority for the franchising entity or the video service provider to unilaterally change or add to the terms of the uniform agreement adopted by the Commission under the act.

The Commission has reviewed the complaint, attachments, and mediation report filed by AT&T Michigan. The complaint seeks various forms of relief against Clawson, including a declaratory ruling on the completeness of the franchise agreement. After consideration of the foregoing materials, the Commission finds that the complaint raises, and documents, allegations that, if proven, would appear to be manifestly contrary to both the black-letter requirements of Act 480 as well as the legislative policy to streamline the franchising process and handle any disputes expeditiously. Because the Commission finds that these matters must be handled expeditiously, and a resolution could not be achieved through mediation, the Commission finds that AT&T Michigan’s request for expedited consideration of its complaint and for issuance of an order requiring Clawson to show cause should be granted.
For these reasons, the Commission orders AT&T Michigan and Clawson to appear at a prehearing conference scheduled for 9:00 a.m. on January 13, 2009 at the Commission’s Lansing offices, 6545 Mercantile Way, Lansing, Michigan 48911. At the January 13, 2009 prehearing conference, the administrative law judge assigned to preside over the proceeding shall establish a hearing schedule that will allow the Commission to issue a final order in this matter by March 20, 2009. To facilitate this goal, the Commission will read the record so as to obviate the need for preparation of a proposal for decision.

The Commission infrequently sets a complaint for hearing on a show cause basis. The Commission wishes to underscore that it does not intend to tolerate actions that appear intended primarily to hinder or frustrate the streamlined procedures set forth in the act. Therefore, Clawson must show cause why the Commission should not make findings adopting AT&T Michigan’s allegations and imposing the penalties provided under MCL 484.3314. The scope of this proceeding shall be limited to consideration of the issue of whether AT&T Michigan’s September 30, 2008 franchise agreement was complete within the meaning of Act 480 and the Commission’s January 30, 2007 order in Case No. U-15169, and whether and what remedies and/or penalties should be imposed in the event that Clawson improperly rejected the franchise agreement.

THEREFORE, IT IS ORDERED that:

A. AT&T Michigan and the City of Clawson shall appear at the prehearing conference scheduled for January 13, 2009 at 9:00 a.m. at the Commission’s Lansing offices, 6545 Mercantile Way, Lansing, Michigan 48911.

B. The City of Clawson shall show cause why it should not be found to have violated the Uniform Video Services Local Franchise Act, 2006 PA 480; MCL 484.3301 et seq., and the Commission’s January 30, 2007 order in Case No. U-15169, and why the Commission should not
order such remedies and penalties against the city as are provided for in Section 14 of 2006 PA 480.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Steven A. Transeth, Commissioner

By its action of December 23, 2008.

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Its Executive Secretary
In the matter of the complaint of AT&T Michigan for resolution of a dispute with the City of Clawson under the Uniform Video Services Local Franchise Act. Case No. U-15683

Suggested Minute:

Case No. U-15683 involves a dispute over the uniform franchise agreement adopted by the Commission under the Uniform Video Services Local Franchise Act. The order before you directs AT&T Michigan and the City of Clawson to appear at a prehearing conference scheduled for January 13, 2009 at 9:00 a.m. at the Commission’s Lansing offices, and further directs the City of Clawson to show cause why it should not be found to have violated 2006 PA 480 and the Commission’s January 30, 2007 order in Case No. U-15169, and why the Commission should not order such remedies and penalties against the city as are provided for in Section 14 of 2006 PA 480.